European Commission

General Block Exemption Regulation (GBER)
Frequently Asked Questions

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Competition

State funding that meets the criteria established in Article 107(1) TFEU constitutes State aid. As a general rule, State aid must be notified to and cleared by the Commission before it is granted. The General Block Exemption Regulation (hereafter the GBER or the Regulation) exempts Member States from this notification obligation, as long as all the GBER criteria are fulfilled. The Regulation simplifies the procedure for aid-granting authorities at national, regional and local level. It allows them to provide measures ranging from job creation and boosting competitiveness to measures that create a favourable environment for the Small and Medium Enterprises (hereafter SMEs).

The new GBER significantly extends the possibilities for Member States to grant "good aid" to companies without prior Commission scrutiny, simplifies the award of State aid and reduces the duration of processes for aid beneficiaries. It also introduces ex-post requirements for Member States such as the requirement to evaluate large aid schemes and to ensure greater transparency on aid awards.

The new GBER is a cornerstone of the State Aid Modernisation (SAM) agenda (see IP/12/458), which is a broad reform of State aid rules aimed at facilitating sustainable, smart and inclusive growth, focusing on cases with the biggest impact on the internal market and streamlining the rules to adopt faster and better informed decisions. The review of the GBER contributes to all SAM objectives, with a particular focus on simplification and dealing as a priority with cases that matter most for competition in the internal market. In addition, the GBER imposes conditions which aim to ensure that the beneficiary will indeed undertake the project or activity which he would not have undertaken had the aid not been granted (incentive effect). Lastly, the Regulation will lead to increased transparency, allowing all stakeholders to have a better grasp of the aid that has been granted and of its impact.

Member States will have a major role to play in designing and implementing schemes without prior notification. The purpose of this document – which is in fact a compilation of questions mainly received from the national administrations – is to offer guidance concerning the implementation of the GBER. This FAQs document does not intend to tackle all the interpretation questions that may arise, only the most common ones raised so far.

This document is a working paper prepared by the Commission services and is not binding on the European Commission as an institution. The FAQ follow the structure of the GBER and all references to Articles and recitals relate to the GBER unless otherwise stated.

Contents

1. Chapter I - COMMON PROVISIONS

Article 1:

1. **In order to assess whether an aid scheme reaches the threshold for evaluation foreseen in Article 1(2)(a), i.e. "average annual State aid budget exceeding EUR 150 million", what is the correct assesment method for the aid component in the cases of aid comprised in loans, in guarantees and in the case of tax schemes?**

Only the State aid component of the budget is relevant for the evaluation threshold of Article 1(2)(a). Article 5 GBER on the transparency of aid states that the "Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment".

For calculating the aid element comprised in loans, two provisions are relevant: Article 5(2)(b) GBER and the Communication from the Commission on the revision of the method for setting the reference and discount rates - 2008/C 14/02.

For calculating the aid element comprised in guarantees, two provisions are relevant: Article 5(2)(c) GBER and the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees - 2008/C 155/02.

In the case of a tax scheme, the budget corresponds to the estimated tax loss, per year, for all aid instruments contained in the scheme.

2. **What is the relation between the EUR 150 million thresholds set in Article 1(2)(a) (obligation to provide an evaluation plan) and Article 4(1)(v) - notification threshold for operating aid for energy produced from renewable energy sources?**

According to Article 1(2) and recital (8) of the GBER, in view of their greater potential impact, certain schemes with an annual budget exceeding EUR 150 million will be subject to State aid evaluation with the obligation for the Member State to submit an evaluation plan. The evaluation aims at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved and should provide indications on the impact of the scheme on competition and trade. In contrast to that obligation, the particular provision of operating aid for renewable energy in Article 4(1) (v) GBER, obliges Member States to notify to the Commission State aid exceeding EUR 150 million per year. This is to be calculated taking into account the combined budget of all schemes falling under Article 42 GBER, per Member State.

Therefore the two thresholds have different purposes. The first threshold concerns the expected average annual budget for a scheme within certain categories of the GBER that triggers a requirement of evaluation of such large scheme, and for which an evaluation plan has to be submitted within twenty working days after the scheme was put into effect. The second threshold refers to the expected aggregated annual aid to be granted by a Member State under all schemes falling under Article 42 that, if exceeded, triggers an ex ante notification obligation to the Commission, before putting into effect the aid measure.

The scheme concerning energy produced from renewable energy sources leading to a budget exceeding EUR 150 million will have therefore to be notified individually to the Commission. In reason of their different application, an operating aid scheme

concerning energy produced from renewable energy sources and that is subject to the evaluation requirement, will also necessarily be caught by the notification obligation in Article 4(1)(v).

3. **Article 1(3) of the GBER states that aid can be granted to (a) the fishery and aquaculture sector and (b) the primary agricultural production sector for "aid for research and development, innovation aid for SMEs". Can the provisions of Section 4 – Aid for research and development and innovation be used to support relevant activities in (a) the fishery and aquaculture sector and (b) the primary agricultural production sector?**

As long as there is no distinction within Article 1(3) a and b as to the type of aid or instrument, all Articles within the Section 4 are applicable to aid in the fishery and aquaculture sector. Except for Article 30 that deals with a particular type of aid to research organisations for undertaking studies in the fisheries and aquaculture sector, all other Articles of Section 4 apply to the primary agricultural production sector as well.

4. **What is the relevance of the GBER for regional aid in view of the exclusion enshrined in Article 1(3)(e)?**

Article 1 defines the scope of the GBER. According to Article 1(3)(e), the GBER does not apply to the certain categories of regional aid listed in Art 13. Article 13 excludes the application of Section 1 (Regional aid) of the GBER to certain aid measures listed there-in, but it does not preclude that such aid could not at all be exempted under another section of the GBER, provided it fulfils both general and specific conditions of the GBER.

5. **Article 1(4)(c) prohibits the granting of aid to undertakings in difficulty and Article 2(18) defines such undertakings. In case the aid beneficiary is a daughter company of the group, does it mean that the aid grantor has to control the whole concern? And if e.g. another daughter of the concern is in difficulty then no aid can be granted to the group and other companies belonging to it?**

In accordance with the case law, an undertaking is defined as a single economic entity having a common source of control. Therefore, as long as the group acts as a single economic unit, it shall be considered as one undertaking and the economic situation of all the legal persons part of the group shall be considered when granting aid under the GBER. Otherwise, a company that is in difficulty might bypass the GBER prohibition of aid to enterprises in difficulty, by simply setting up a wholly owned subsidiary and transferring its liabilities to that company.

6. **Can a State aid scheme impose as a condition of eligibility requirements relating to the headquarters of potential aid beneficiaries? Could the scheme require that the potential beneficiary is registered within that Member State?**

The rationale of the Article 1(5) GBER originates from the basic EU freedom of establishment for nationals of a Member State in the territory of another Member State as stated in the Article 49 TFEU. The same freedom of establishment extends

to legal persons that may set up branches in any other Member States and are therefore free to carry out their activity from different Member States, across the internal market. Any restrictions to this freedom to set up an establishment and carry out economic activity from that establishment is therefore contrary to the Treaty. Consequently, the provision of State aid should not be designed in such a way that would effectively prohibit undertakings from carrying out their activities in other Member States.

For the same reason, according to the Article 1 (5) (a) GBER, if the aid schemes provides that it is only available for undertakings having their headquarters in a certain Member State, the GBER would not apply. However, the requirement to have an establishment or branch in the aid granting Member State at the moment of payment of the aid is permitted. Therefore, to the extent that the condition to 'be registered' (by means of a branch or an establishment) is a necessary condition for carrying an aided activity in such Member State, it would appear to be coherent with the GBER.

7. With regard to the Article 1 (5) (a) of GBER what is meant by „the beneficiary that is predominantly established in the Member State"? Could the scheme provide for a requirement that the beneficiary is registered in the granting Member State?

The provision of State aid by one Member State should not be designed in such a way that would effectively prohibit undertakings from carrying out their activities in other Member States. This could, for example, be done by requiring the beneficiary to achieve a certain part of its turnover in the granting Member States. Also, it would not be allowed under the GBER to make the grant of aid subject to the obligation for the beneficiary to have its headquarters in the granting Member State (or in a certain region or municipality). However, the requirement to have an establishment or branch or activity in the granting Member State at the moment of payment of the aid is permitted. Therefore, to the extent that the condition to 'be registered' is a necessary condition for carrying an activity in such Member State, it would appear to be coherent with the GBER. Otherwise, such requirement would likely infringe internal market rules.

8. Is it possible to require that a company is formally established in the granting Member State at the time when the application for aid is made?

The GBER states in Article 1(5) a that a Member State might require that the company has an establishment in its territory at the time of payment of the aid. This cannot be interpreted as also meaning a requirement to have an establishment at the time of application for the aid as it would limit the possibility of companies located outside the granting Member State to apply for an aid and therefore carry out a particular project/investment.

9. What is the evaluation plan decision procedure under GBER and its possible outcomes?

Large aid schemes referred to in Article 1(2)(a) of the GBER can be implemented immediately by the Member States. However, for such schemes, the exemption under the Regulation expires six months following their entry into force.

The Member State is required to notify the evaluation plan within the first 20 working days following the entry into force of the scheme. Until a final notification form is adopted by the Commission as an annex to the Implementing regulation No 794/2004, Member States are encouraged to use the provisional supplementary information sheet for the notification of an evaluation plan, published on the DG Competition website. The Commission services will immediately start assessing the completeness and appropriateness of the evaluation plan.

The Commission should receive from the Member State the necessary information to be able to carry out the assessment of the evaluation plan and will request additional information without undue delay allowing the Member State to complete the missing elements for the Commission to adopt a decision.

Following the assessment of the evaluation plan, the Commission could exceptionally adopt a decision prolonging the exemption of the scheme beyond the initial six months.

If the Commission does not adopt a decision on the evaluation plan within the six months period, the scheme will no longer be exempted under the GBER. In this scenario, the concerned Member State will have to suspend its application until the evaluation plan has been approved.

Alternatively, Member States can notify the measure for a detailed assessment of its compatibility under the relevant State aid guidelines. Such assessment will review the whole scheme and the need for an adequate evaluation plan in line with the relevant State aid guidelines.

10. When does the 6 months period referred to in Article 1(2) a begin? Is it 6 months after the evaluation plan has been sent or 6 months from the starting date of the scheme?

The six months period begins from the date when the State aid scheme was put into effect.

11. Are there any short guidelines, practical information on how an evaluation plan subject to notification should be designed?

The Commission Staff Working Document "Common methodology for State aid evaluation" has been published on 28 May 2014 and is available on DG Competition's website http://ec.europa.eu/competition/state_aid/modernisation/state_aid_evaluation_methodology_en.pdf

The Staff Working Document provides guidance and best practices on the drafting of an evaluation plan and provides a description of its key elements. Member States are invited to take this guidance into account as much as possible[1].

Article 2: Definitions

12. What is meant by "without further implementing measures being required" in the definition of an aid scheme (Article 2(15))?

The wording regarding the measures that constitute a scheme for the purposes of Article 2(15) of the GBER is meant to clarify that, in order for a State aid measure to be considered a scheme, the legal basis is detailed enough to determine the

[1] Additional Frequently asked questions about State aid evaluation are available on the DG Competition website: http://ec.europa.eu/competition/state_aid/modernisation/evaluation_faq_en.pdf

group of beneficiaries and under which conditions they may benefit of the aid measures.

13. Does an undertaking subject to "collective insolvency proceeding" as described in Article 2(18)(c) GBER and in point 20 (c) of the Rescue and Restructuring Guidelines automatically qualify as "undertaking in difficulty"?

Article 2(18)(c) of GBER and point 20(c) of the Rescue and Restructuring Guidelines refer to national insolvency proceedings. Thus, it is for the national law to define the conditions under which an undertaking is to be regarded as insolvent. Whenever an undertaking, under this national definition, is (1) subject to collective insolvency proceedings or (2) fulfils the criteria for being placed under such proceedings at the request of its creditors, it shall be regarded as an "undertaking in difficulty" under point 20(c) of the Guidelines.

14. Can an undertaking subject to collective insolvency proceedings - whose continuation of the activity under a restructuring plan is approved and remains under the control of the (commercial) court – and which does not qualify in any other way as a firm in difficulty benefit from other types of aid?

A firm subject to collective insolvency proceedings under national law fulfils the criterion of Article 2(18)(c) and therefore must be assessed as undertaking in difficulty, even if it does not meet any of the remaining criteria of Article 2(18), and thus is excluded from aid granted in application of the GBER. The only aid category available to undertakings in difficulty under the GBER is aid to compensate for damages of natural disasters.

15. It is possible to choose the most favourable criteria among the ones of Article 2(18) of the GBER, or one must consider an undertaking to be in difficulty once at least one of the criteria is met?

According to Article 2(18) of the GBER, an "undertaking in difficulty" means an undertaking in respect of which at least one (emphasis added) of the circumstances described in points (a) – (e) occurs. Therefore, it is not possible to choose an assessment criterion. As soon as a firm fulfils at least one of the criteria of Article 2(18) of the GBER, it must be considered as being in difficulty and thus, pursuant to Article 1(4) c), the undertaking is not eligible for the categories of aid covered by the GBER, with the exception of aid schemes to make good the damage caused by certain natural disasters.

16. What is meant by the term "debt" in the debt to equity ratio referred to in Article 2 (18)(e)(1) of GBER?

The term "debt" should be understood as the book value of short-term and long-term financial liabilities.

17. Within the definition of "start of works" in Article 2(23) what is meant by "commitment that makes the investment irreversible"? Is a clause allowing for unilaternal termination sufficient to make a contract reversible?

'Start of work' is either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies. Whether the agreements and payments made on the basis of these agreements can be considered a "first firm commitment" to start the project does not necessarily depend on the formal classification of the agreements in question, but on the terms of those agreements. If contractual obligations make it difficult from an economic

standpoint to abandon the project in a given case, particularly because a considerable sum of money would be lost, work will be deemed to have started. A more detailed examination of the specific circumstances of the case would be needed to see if this is indeed the case.

As most contracts will have a clause allowing for unilateral termination under some conditions, this cannot be a sole factor for determining the nature of the commitment. However, if for instance the termination of that contract entails significant financial losses for the aid beneficiary, the contract may still be considered as a firm commitment to pursue the investment in the absence of State aid.

18. Taking into account the new provision in the Article 2(23) GBER regarding "start of works", can the acquisition of a land which has been acquired before the aid application has been submitted be considered (in total or partially) a financial contribution of at least 25% of the eligible costs pursuant to the Article 14 (14) GBER?

According to the Article 2(23) of GBER buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. However, this provision does not preclude the possibility to accept the acquired land as own contribution. Article 14(14) GBER provides that the aid beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support. Given the fact that land is eligible cost under the RAG and under the condition this land has been acquired on market terms, it is not considered to be aid and may well be accepted as own contribution in the meaning of the paragraph (38) RAG 2014-20.

19. What is meant by "the relevant lifetime of the investment" in Article 2(39)?

The lifetime of the investment that can be assimilated to the depreciation period in most accounting systems.

20. What is meant by 'transport related infrastructure' in Article 2(45)?

The transport sector is defined in Article 2(45) of the GBER as meaning

"the following activities in terms of NACE Rev. 2:

(a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;

(b) NACE 50: Water transport;

(c) NACE 51: Air transport, excluding NACE 51.22 Space transport."

Therefore, the transport related infrastructure excluded from the scope of application of regional aid under the GBER refers to infrastructure that is needed for and used to provide the transport activities listed in Article 2(45) of the GBER. Aid to the transport sector is subject to special rules and specific guidelines apply. For example, the regional aid provisions of the GBER will not apply to State aid granted to airports and the related airport infrastructure given that this type of aid

is assessed under the recently adopted Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3.)

21. Does the definition of 'transport sector' under the new GBER cover the cruise ship sector?

The transport sector is defined in Article 2(45) of the GBER as "the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically the 'transport sector' means the following activities in terms of NACE Rev. 2 (…).

(a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;

(b) NACE 50: Water transport;

(c) NACE 51: Air transport, excluding NACE 51.22 Space transport."

Therefore, all the activities that fall under NACE 50 code are excluded from the scope of application of regional aid under the GBER. Cruise ships would normally fall under the water transport NACE code 50 and would consequently be excluded from regional aid under the GBER.

22. What is meant by "new products" in Article 2(49)? Does a "new product" mean a different NACE classification?

According to Article 2 (49) of the GBER, a "diversification" project is an initial investment if it is "diversification of the output of an establishment into products not previously produced in the establishment". The important condition for qualifying a "diversification" project as an "initial investment" is that the products were not produced in that establishment before the project. However, the "product" is not defined by reference to NACE codes. NACE codes are used for the definition of the „same or similar activity" (Article 2(50) of the GBER). If the activity resulting into the new product falls under a different four digit numerical NACE code, it can also be considered as diversification into a new product. However, not in all cases would the activities resulting into new products have to fall under different four digit numerical NACE codes.

[Example: NACE code C.1089 – Manufacture of other food products n.e.c. If the company was producing soups and broths and now it decides to produce artificial honey, we could consider it a new product, despite of the fact the activities resulting into these products fall under the same NACE codes.]

23. What is meant by "initial investment in favour of a new economic activity" in Article 2(51)?

"Initial investment in favour of a new economic activity" means an investment carried out by an undertaking introducing a new activity, which is not the same or similar activity to the activity previously performed in the establishment. An investment in an existing establishment is not considered initial investment in favour of new economic activity unless it introduces a new activity, which is not the same or similar activity to the activity previously performed in the establishment. Therefore, if the new activity falls under the same four-digit numerical code of the NACE as the activity pursued so far in the establishment , it cannot be considered initial investment in favour of new economic activity. The definition is relevant for regional aid to large enterprises in that the GBER allows for exemption from the notification requirement of such aid only for initial investments in favour of new economic activity of large enterprises in 'c' regions.

24. What is the meaning of "a new establishment" in the context of Article 2(51)?

If a large enterprise sets up a new establishment, which is self-standing and is not just a simple extension of the production capacity of an existing establishment, it could be considered as initial investment in favour of new economic activity.

However, if the investment project cannot be considered as one that is setting up a new establishment, but the project could qualify as a diversification of the existing establishment into a new product, it could fall under the Regional Aid Guidelines 2014-2020[2] (hereafter "RAG"). In that case, the Member State would have to notify such a project to the Commission, and the Commission will assess it on the basis of the RAG.

25. What is meant by a "fundamental" change in the production process? How is it to be distinguished from a non-fundamental change?

Initial investment in the form of a fundamental change in the overall production process of an existing establishment means the implementation of a fundamental (as opposed to routine) process innovation. The simple replacement of individual assets without fundamentally changing the overall production process constitutes a replacement investment which is not eligible for regional investment aid as it does not qualify as a fundamental change of an overall production process, and thus is not considered to constitute an initial investment. The fact of having replaced individual items of equipment by others that are more performing (unless this leads to a fundamental change on the overall production process) would also be considered a non-eligible replacement investment.

26. What is meant by "extension of the capacity of an existing establishment"? Is this to be taken to mean production of a greater volume of all products?

The extension of capacity of an existing establishment means that the existing establishment is put into a situation where it can manufacture more volume of at least one of the products already produced in the establishment, whilst the underlying overall production process is not fundamentally changed.

27. If depreciation of "assets linked to the activity to be modernised" is to include all assets, however peripherally linked they are to production (such as the assembly hall premises, shared lighting etc.), how is the percentage share of these depreciations to be determined in order to be compared against the eligible expenditure? On the basis of the floor surface area of the assembly hall, the percentage use of the machines, the share of sales?

The term assets in the context of initial investments refers both to tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (28) GBER).Therefore, the buildings for manufacturing or storing manufactured products are covered by Article 14 (7) 2nd sentence of the GBER if these assets are linked to the activity to be modernised. Member State can carry out a pro rata

[2] Guidelines on regional State aid for 2014-2020, OJ C209, 23.07.2013.

calculation. The GBER does not prescribe the method to be applied by the Member State for that purpose, i.e. the Member State can rely on a bona fide approach that takes into account the specific situation and characteristics of the establishment and activity concerned and normal general depreciation rules.

28. What is meant by "diversification of the activity of an establishment" under the condition that the new activity is not the same or similar activity to the previously performed in the establishment?

According to Article 2(51) of the GBER an investment related to the "diversification of the of the output of an existing establishment" into products not previously produced in the establishment qualifies as "initial investment in favour of new economic activity", if the additional product results from a production activity that falls under a different class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities than the activity that was performed before the project in the establishment.

29. Under the old Shipbuilding framework, the definition of ship building covered repair and maintenance of vessels; this framework also exempted smaller vessels under 100gt or less than 365KW in the case of tugs. Do the definitions of ship building under the old ship building framework still apply under the new GBER and if so would it be possible to grant aid to a project that supported the refurbishment and development of infrastructure (quays, docks and workspace) to maintain and repair small vessels under the new GBER?

The GBER does not provide a new definition of "shipbuilding". Therefore, the most recent relevant definitions are provided in the 2011 Framework on State Aid to Shipbuilding[3] According to paragraph 12 of the Shipbuilding Framework, 'ship repair' means the repair or reconditioning, in the Union, of self-propelled commercial vessels. Paragraph 12 of the Framework also defines 'self-propelled commercial vessel'. If a vessel does not fall under the definition of 'self-propelled commercial vessel', its repair can be eligible for regional aid under the GBER. Therefore, as long as the infrastructure is used exclusively for this type of small vessels which do not fall under the definition of 'self-propelled commercial vessel', investments in the infrastructure could be eligible for regional aid granted under the GBER, unless they fall within the transport sector (including related infrastructure), which is excluded in Article 13(a) GBER

Such aid may fall under the scope of Article 56 GBER (local infrastructure), which however excludes port infrastructure.

30. What is meant by "establishment" in the context of an initial investment?

Based on the wording of definitions in Article 2(49) and (51) of the GBER, "establishment" in the context of an initial investment is understood as a production unit, and not a legal entity.

31. What is meant by the „scientific community" in the definition of „research infrastructure" in Article 2(91)?

The term "scientific community" corresponds to the term used in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a

[3] Framework on State aid for shipbuilding, OJ C364 of 14.12.2011, p. 9-13.

European Research Infrastructure Consortium[4] and relates to any structured or unstructured group or network of persons engaging in a systematic activity to acquire knowledge.

32. Are project feasability studies considered „knowledge transfer" under Article 2(91)? When are knowledge trasfer activities considered as economic or non-economic?

Technical and economic feasibility studies cannot qualify as "knowledge transfer" but may be eligible for aid under the conditions laid down for "feasibility studies".

Insofar as only Small and Medium Entreprises (SMEs) are eligible for aid for obtaining, validating and defending patents and other intangible assets, and as was the case under the previous RDI State aid rules, public research organisations that do not qualify as such cannot benefit from such aid.

The qualification of knowledge transfer activities as economic or non-economic does not depend on the selection process of the recipients but rather on whether those activities are conducted by a research organisation or research infrastructure (or jointly with, or on behalf of other such entities) and all profits from activities are reinvested in the primary activities of the relevant research organisation or research infrastructure (i.e. education for more and better skilled human resources, independent research and development for more knowledge and better understanding, wide dissemination of research results on a non-exclusive and non-discriminatory basis).

33. The term "smart grids" is defined in Article (2) paragraph (130)(a)(v) in GBER. The definition refers to equipment, lines, cables and installations. Are intangible assets related to the infrastructure and essential to its proper functioning also eligible (e.g. software enabling the management and monitoring of the grid and communication between different installations)?

The definition of "smart grids" is provided in Article 2(130)(a)(v). The eligible costs pursuant to Article 48(4) are those investment costs necessary to develop the said infrastructure and may include the costs of software.

Article 4

34. How to proceed in cases where the same entity will implement several projects for which it has received funding under separate contracts which, for example because of the geographical proximity, have economic or technological links? In such a case, will it be necessary to sum up the values of these projects or each of them will be treated separately?

[4] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community Legal Framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

The determining factor is whether there were separate investment decisions or all projects are based on one transaction or several inter-linked transactions. If the only linking element is economic or technological synergies it might not be sufficient to conclude that the entire investment is part of one single project. The national authorities are often in a good position to judge whether it is one investment decision or several ones as such projects are subject to a variety of permits (construction, environmental, etc.) from which the initial investment decision becomes clearer.

More detailed rules appy for regional aid.

35. How should we read the notification thresholds for investment aid in Articles 4(1) (bb) and (cc)? Are the two ceillings alternative or cumulative?

The Regulation shall not apply to aid or projects which exceed any of the two thresholds. For example, in order for a local infrastructure project to be covered by the GBER, the aid shall not exceed 10 Mio Euro *and* the overall cost of the project shall not exceed 20 Mio Euro.

Article 5

36. Is aid in the form of "equity" or "semi-equity" considered to be a transparent form of aid?

Aid in the form of "equity" and/or "quasi-equity" is not listed under Article 5 (2) of the GBER as categories of aid that would be considered to be transparent. According to recital 17 of the preamble to the GBER "Capital injections should not be considered transparent aid, without prejudice to specific conditions concerning risk finance and start-up aid."

However, such form of aid would be allowed in the following situations:

-specific provisions of the GBER allow such aid (see the GBER provisions concerning risk finance and start-up aid), or

-the nominal value of the capital injection is itself below the applicable threshold (be it de minimis or the individual notification threshold under the GBER).

In such cases, there is no risk of circumvention of the applicable thresholds, despite the fact that the GGE of the measure cannot be defined ex ante, since the nominal value of the capital injection is itself below the applicable thresholds.

Article 6

37. What is the meaning of the term "incentive effect" in the Article 6 (2) (e) GBER? Are there different tests for different company sizes?

Article 6(1) GBER requires for the aid to have incentive effect in order to qualify for the exemption under the GBER. According to recital 18, aid has insufficient incentive effect where the beneficiary would already engage under market conditions alone in activities or projects. For measures under the GBER, the aid is deemed to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts. Furthermore, the obligatory elements of the aid application are listed in the Article 6(2), which among others requires the description of the type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and denomination of the amount of public funding needed for the project.

In addition to the requirement that the beneficiary has submitted an application for the aid to the Member State concerned before work on the project or activity has started, in the situation of ad hoc aid to large entreprises, the Member State

concerned must verify that documentation prepared by the beneficiary establishes one or more of the conditions set out in points (a) and (b) of Article 6.

38. Article 6(3)(a) states that the regional ad hoc aid is compatible when the beneficiary demonstrates that – without the aid – either the project would not have been carried out in the area or would not have been sufficiently profitable for the beneficiary in the area concerned. Is the project deemed not sufficiently profitable when the return of investment (IRR) is objectively low or when carrying out the investment at that moment does not bring enough profits for the beneficiary - in a wider context?

The notion that the investment would not have been sufficiently profitable for the beneficiary in the area concerned should be understood by analogy to scenario 1 (investment decision) described in the RAG. Consequently, the profitability of the project – also when aid is granted under the GBER – should be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value of the project (NPV), the internal rate of return (IRR) or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the company as a whole or with the rates of return commonly observed in the industry concerned.

39. What are the applicable rules in case of combined regional investment aid and aid for consultancy services granted to a beneficiary in relation to the same project, including the requirements for the presence of incentive effect?

In this respect, we note that regional investment aid under the new GBER can be granted in line with its Article 14, while consultancy aid – for SMEs only – under the Article 18. These types of aid have different scopes and can be granted for different eligible costs. It can thus be considered that while regional aid under Article 14 relates to the physical investment in the project, aid under Article 18 relates to the activity of providing consultancy services for the phase prior to the investment. Consequently, it can be considered that in order to comply with the criteria of Article 6 of the new GBER, and thus to have incentive effect, the beneficiary concerned should have applied for the regional investment aid before the start of works on the – physical – investment project, and in case of an ad-hoc aid it should have also complied with the conditions of Article 6(3)(a) and should have applied for the consultancy aid before signing the consultancy contract. In line with Art. 2(23), it does not seem necessary in such case to have applied for the regional investment aid before the start of the preparatory (consultancy) activities.

40. Is Article 6(2) applicable to both SMEs and large companies under schemes?

Yes, both aid schemes for SMEs and large undertakings shall comply with the incentive effect conditions described in Article 6(2). The provisions in Article 6(3) apply only for ad hoc aid to large enterprises.

41. Does Article 6(5)(h) of the GBER apply to all aid for culture and heritage conservation covered by the GBER ?

Article 6(5)(h) applies to aid for culture and heritage conservation as defined in Article 53. It specifically refers to this Article only and does not apply to Article 54 (Aid schemes for audiovisual works).

42. How is the incentive effect met when aid is granted in the form of interest rate subsidies?

The incentive effect is met if the aid application for an interest rate subsidy is made before start of works and before signature of a legally binding loan contract allowing to finance a part of the project costs. In this case, the signature of the loan with the subsidised interest rate is the aid granting moment. Making a request after this point would not qualify as meeting the incentive effect requirement as the aid would be considered granted at the time of the signature. Therefore, in order to meet the incentive effect, the request should be made before the loan is signed. Investments may not start before such request for aid is made.

In addition to the requirement that the beneficiary has submitted an application for the aid to the Member State concerned before work on the project or activity has started, in the situation of ad hoc aid to large entreprises, the Member State concerned must verify that documentation prepared by the beneficiary establishes one or more of the conditions set out in points (a) and (b) of Article 6.

43. Article 6(2)(c) of the GBER states that the application for aid shall contain certain information, inter alia "location of the project". What is meant under "the location of the project"? How precisely the location has to be specified (e.g. in the town/village or county)? In case the measure includes the visits to foreign trade fairs will the location of the project be the place of the fair?

The location of the project should be as specific as possible, including the town/village if this is known. If aid is given for participation in fairs, the location of the fair shall be mentioned.

Article 7

44. Is Value Added Tax on productive and non-productive assets and services eligible for support under the GBER?

According to Recital (23) GBER, all figures used should be taken before any deduction of taxes or other charges. The principle is that if the Value Added Tax (hereafter VAT) is a real cost in the sense that it cannot be recovered, then it is part of the eligible cost and therefore eligible for support under the GBER. If the VAT can be recovered, is not considered a real cost and therefore shall not be considered as eligible cost under GBER.

45. With reference to Article 7(4) of the GBER which stipulates "where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the discount rates applicable at the various times the tax advantage takes effect", what is the basis for calculation of the aid element?

Discounting of aid amounts means the calculation of the net present value of each aid tranche (in the case of tax advantages, the aid tranche represents the gross grant equivalent of the tax advantage granted to the undertaking). The discount rate to be used for each such aid tranche will depend on the time when such aid is granted. The rate to be used for discounting purposes is indicated in the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

46. What evidence can be adduced to prove that the beneficiary spent the money to finance eligible costs?

According to Recital (23) of the GBER, Member States shall require that the identification of eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. In addition, pursuant to Article 12 of the GBER, Member States have the obligation to maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in the GBER are fulfilled. Such records should be kept for a period of 10 years. Therefore, in the context of the monitoring exercise on a particular GBER scheme, Member States may be requested to provide to the Commission all the relevant documentation to show that beneficiaries used the aid to finance projects that fulfil all GBER conditions, including the eligible costs.

Article 8

47. Cumulation of aid under GBER with any other State aid in respect of the same eligible costs is acceptable if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under GBER. How to proceed when cumulation refers to aid granted under GBER with aid for which the Commission issued a decision approving some higher intensity than set forth in GBER?

Article 8 refers to cumulation under the GBER. Of course, if the Commission approved higher aid intensities in a Commission decision, such aid is allowed for that specific project. Any aid already granted under the GBER for the same eligible cost will have to be taken into account when giving the additional aid under the decision but the total aid may reach the intensity specified in the Commission decision.

48. How is it possible to comply with the rule on the cumulation of aid for a single project that includes several different categories of eligible costs, falling under several Articles of the GBER?

If there is no overlap between the eligible expenditures under each of the Articles mentioned, the aid intensity for each relevant expenditure may indeed go up to the maximum foreseen for the specific Article.

49. Does the term "public funding" in Article 8(2) mean State aid only or the amount of State aid and EU funding together?

The term "public funding" refers to State aid and EU funding together. Please note that EU funding is to be understood as centrally managed EU funding which is outside the direct and indirect control of a Member State; this notion does not include funding under the Structural Funds (ERDF, Cohesion Fund?). Structural Funds are managed and controlled by the Member States and therefore would qualify as State aid. As a consequence, they would need to be taken into account for the calculation of the notification threshold, aid intensity under the GBER etc.

50. Does "funding rate" in this Article 8(2) mean "aid intensity"?

The term "funding rate" is broader than "aid intensity". It refers to the ratio of the total amount of public funding to the eligible costs for a specific project.

51. How should one understand "the most favourable funding rate laid down in the applicable rules of Union law" in Article 8(2)?

If we take for example a project with eligible costs of 100, that is eligible for aid under both a centrally managed EU funding program and a State aid scheme, with the State aid rules providing for a maximum intensity of 50% while the centrally managed EU funding program provides for a maximum intensity of 70%. In this example, the amount of State aid granted should not exceed 50% and the total public funding should not exceed an intensity of 70%. Therefore the project could receive 50% State aid and an additional 20% from the EU funding. The amount of EU funding is not taken into account for the calculation of notification thresholds and aid intensities under the State aid rules.

52. Investment aid enabling undertakings to achieve energy efficiency may be supported with 30 % of the eligible costs (Article 38 GBER). Investment aid for the construction or upgrade of research infrastructure may be supported with 50 % of the eligible costs (Article 26 GBER). Would it be in line with Article 26 of the GBER to support the investment cost of energy efficiency measures relating to research infrastructures with 50 % of the eligible costs?

Yes, the cumulation rules laid down in Article 8(3)(b) of the GBER apply to the extent that those investments costs are borne in the context of the construction or upgrade of research infrastructures.

Article 9

53. Article 9(6) of the new GBER provides that Member States have two years within which to comply with the provisions of Article 9. Does the requirement in Article 9(1)(c) - i.e. to publish details on a State Aid website of each individual aid award exceeding EUR 500.000 - apply to all such awards from the 1st July 2014, or only to such awards from the date on which the website is established?

Member States have the obligation to comply with the transparency provisions of Article 9 at the latest within two years after the entry into force of Commission Regulation (EU) No 651/2014. In practical terms this means that Member State have to publish information on their national or regional transparency website on individual aid awards above EUR 500.000 that were awarded after 01.07.2016. On the transparency requirements in general, please refer to the relevant Commission Communication, available here http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1405601594344&uri=CELEX:52014XC0627(02)

54. Is aid information to be published with the date the aid was granted on the central website as soon as possible starting from 1 July 2016. Does the reporting obligation after 1 July 2016 concern only individual aid under schemes notified to the Commission after 1 July 2016 or also to individual aid granted after 1 July 2016 for schemes notified before that date?

Individual aid awards above EUR 500.000 granted after 1st of July 2016 have to be published at the national or regional transparency webpage. This concerns both, schemes that were notified before and after 1st of July 2016. There is no obligation to publish individual awards granted before that date. However, on voluntarily basis, Member States can publish this information earlier.

55. Is the summary information referred to in Article 11 and laid down in Annex II (or a link to that information) or the full text of each aid measure, as referred to Article 11 (or a link to the full text) not to be published on the central website provided that no individual aid award under the scheme exceeds EUR 500.000?

The obligation to publish the summary information sheet referred to in Article 11 and laid down in Annex II (or a link to that information) and the full text of each aid measure, as referred to Article 11 (or a link to the full text) concerns all aid measures that are put in place under the GBER, by each Member State. Such publication obligation deriving from Articles 9(1) (a) and (b) should be fulfilled once the respective schemes are in place, independent of the amount of individual aid awards to be granted. Once an individual aid award above Euro 500 000 is granted under a specific scheme, it shall also be published on the transparency web page, within the deadlines foreseen in Article 9(4).

56. With regard to Article 9(4), what types of aid does the deadline for publication apply to?

The obligation to publish the summary information sheet referred to in Article 11 and laid down in Annex II (or a link to that information) and the full text of each aid measure, as referred to Article 11 (or a link to the full text) concerns all aid measures that are put in place by Member States. Once an individual aid awards above Euro 500 000 is published on the transparency page, it shall be linked to the summary information sheet of the aid measure under which it was granted.

2. Chapter II - MONITORING

Article 10

57. Since the transparency condition is one of the general conditions for the applicability of the GBER, does the failure to comply with this condition render the measure incompatible with the internal market? What other possible sanctions are linked to a failure to publish aid on the central website?

As stated in Article 10, failure to comply with the GBER conditions (including publication and information) might lead to a Commission decision that all or some of the future aid measures adopted by the Member State in question, that otherwise fulfil the GBER requirements, are to be notified to the Commission in accordance with Article 108(3) of the Treaty.

58. Regarding sanctions foreseen in Article 10, will they be automatic?

As provided under Article 10, the application of such sanction can only be done following a Commission decision, to this specific purpose. As stated in Recital (29) the sanction would have to be applied in a proportionate way compared with the number of occurrences and the gravity of the failure to comply with the GBER compatibility criteria by the relevant Member State.

Article 11

59. Article 11 stipulates: "Member States, or in the case of aid granted to European Territorial Cooperation projects, alternatively the Member State in which the Managing Authority, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located, shall transmit to the Commission (…) the summary information in the standardised format laid down in Annex II …". Does it mean that in case of European Territorial Cooperation (ETC) projects Member States can choose whether the Managing Authority or each Member State separately will send the summary information to the Commission?

In order to avoid duplication of efforts, in case of ETC projects summary information can be sent by the Member State in which the Managing Authority is located (not necessarily by the Managing Authority itself) via the usual channels used for State aid notification. The other participating Member States may also place the information on their website (Article 9(1) of the GBER).

3. Chapter III – Specific provisions for different categories of aid

Article 13

60. According to the provisions of Article 13, regional aid shall not apply in the energy generation, distribution and infrastructure sector. What are the NACE code references that this exclusion concerns?

In more precise terms, only NACE division 35 is excluded from the regional aid provisions of GBER. This includes the following economic activities:

35 - Electricity, gas, steam and air conditioning supply

35.1 - Electric power generation, transmission and distribution

35.1.1 - Production of electricity

35.1.2 - Transmission of electricity

35.1.3 - Distribution of electricity

35.1.4 - Trade of electricity

35.2 - Manufacture of gas; distribution of gaseous fuels through mains

35.2.1 - Manufacture of gas

35.2.2 - Distribution of gaseous fuels through mains

35.2.3 - Trade of gas through mains

35.3 - Steam and air conditioning supply

35.3.0 - Steam and air conditioning supply.

When deciding whether the aid favours energy generation, distribution activities or energy infrastructure, the activity that is target of financing/investment will be the main criterion of the assessment.

61. In a situation where relocation was caused by a compelling reason such as a flood protection measure, would the subsequent regional aid measure still fall outside the GBER?

Yes, a notification of such aid measure would be necessary.

62. How is the term "concrete plans" in Article 13(d) to be interpreted and how should be the existence of such concrete plans proven?

The term "concrete plans" should be evaluated on a case-by-case basis. The granting authority could also envisage, for example, a declaration form, where the beneficiary would need to make a declaration that no such plans exist, and a monitoring mechanism that would verify that no relocation took place.

63. Should the word *beneficiary* in Article 13(d) be interpreted as *beneficiary at group level* or only *the beneficiary* as legal entity*?*

The assessment shall be done at the level of the economic unit (group level) and not only at the level of a subsidiary (given legal entity).

64. Article 13 of the General Block Exemption Regulation (GBER)5 states that "Regional investment and operating aid "... shall not apply to: ... (d) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned."

The implementation of the provision concerning the notification obligation raises the following important interpretation questions: (i) At what level is the beneficiary considered; (ii) What is the area of reference for "closing down the same or similar activity[6]"; (iii) What is the geographical scope of the provision, i.e. what is the relation between the location of the closed activity and the location of the new investment; (iv) What is the concept of "closing down an activity"?; and (v) What period of the closure should be taken into account for the notification obligation?

1. The beneficiary is to be defined at "**group level**", which is considered to be an economic entity with a common source of control rather than just a single subsidiary (a single legal entity).

2. The "**closure of the same or similar activity**" is to be looked at the **level of the given establishment**, rather than at the level of a region or a Member State. In other words, the activity would be considered to be closed down if the beneficiary closes down this activity in a particular establishment (even if he continues the same or similar activity elsewhere in the region or in the MS).

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[5] OJ L 187, 26.06.2014, p. 1.

[6] Article 2(50) of the GBER stipulates that the "same or a similar activity" means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

3. The provision applies only if the **closure/relocation involves different EEA countries**, i.e. the closure happens in one EEA country and the aided investment is carried out in another EEA country. Aid given to a beneficiary who has (partially) closed the same or similar activity elsewhere in the same Member State is not excluded from the benefit of the GBER.

4. The concept of closing down means that the activity is fully (100%) closed at the establishment concerned or that the activity is partially closed when this results in substantial job losses. For the purpose of this provision substantial job losses are defined as losses of **at least 100 jobs** or as a job reduction of **at least 50%** of the workforce in the establishment on the date of the application (compared to the average employment in the establishment in any of the two years preceding the date of application). Consequently, notification is necessary in all cases of full closures and if at least one of the two thresholds is exceeded in case of partial closures.

5. The notification of the aid measure is necessary if the beneficiary has closed down the same or similar activity within two years before the date of application or if the beneficiary plans to close such an activity over the entire period from the date of the application and two years after the completion of the initial investment.

65. Article 13 excludes the transport sector from the scope of regional aid. Is this sector also excluded from the regional operating aid schemes in these regions?

Pursuant to Article 13 (a) GBER, the transport sector is excluded from the scope of application of regional aid. The rationale for excluding the transport sector from the regional aid provisions in the GBER is to prevent the application of the regional aid rules instead of the more appropriate sector-specific rules. Both regional investment aid and operating aid are concerned by the exclusion.

66. Can the activities listed in Article 13 (c) benefit of regional operating aid when intended to compensate additional costs, other than transport costs, in the outermost regions?

Article 13(c) lists a number of sectors for which Member States cannot grant regional operating aid compensating for the transport costs in outermost regions. However, Article 1(3)(b) stipulates that the GBER applies to aid granted in in the primary agricultural production sector, intended to compensate for additional costs (other than transport costs) in outermost regions as provided in Article 15(2)(b).

The other sectors mentioned in Article 13 (c) are either excluded from the scope of the GBER altogether (e.g. fisheries as per Article 1(3)(a)), or are subject to sector-specific rules (e.g. electricity, gas).

67. Is it correct that regional investment aid for port infrastructure cannot be granted under the GBER, as the Regulation does not apply to the transport sector as well as the related infrastructure?

Correct.

68. Are yachts considered to be part of shipbuilding in the meaning of the GBER?

As shipbuilding is not defined in the RAG or in the GBER and as RAG makes a reference to the former Framework on State Aid to Shipbuilding, the definitions given in the latter are still considered to be relevant. According to paragraph 12 of Framework on State aid to shipbuilding, 'shipbuilding' means the building, in the Union, of self- propelled commercial vessels. Yachts do not seem to be caught by

the 'Self-propelled commercial vessel' definition, therefore construction of yachts could be considered eligible under the GBER.

Article 14:

69. Is it possible to grant aid under Article 14 of the GBER or under RAG for production of bioenergy or biofuels?

According to Article 13 (1) (a) of the GBER the regional aid section does not apply to aid which favours activities in /…/ energy generation, distribution and infrastructure.

According to recital 33 to the GBER energy generation, distribution and infrastructure are subject to sector-specific internal market legislation, which is reflected in the criteria for ensuring that aid in these areas is compatible with the internal market and consistent with the Union's environmental and energy policies. Regional aid granted under Section 1 of the GBER pursues economic development and cohesion objectives, and is therefore subject to very different compatibility conditions. The provisions of this Regulation on regional aid should therefore not apply to measures concerning energy generation, distribution and infrastructure. Section 7 of the GBER contains specific rules for production of renewable energy, including biofuels. Since the GBER contains specific rules for energy production, including biofuels, investment aid for production of renewable energy and biofuels would not be covered by the regional aid provisions of the GBER.

70. What is meant by "single investment project"?

The rule regarding the single investment project aims to avoid artificial splitting of an aided project into sub-projects in order to escape the notification obligation and/or to escape the capping of the aid amount in accordance with Article 2(20) of the GBER.

As defined by Article 14(13) of the GBER, the date of start of works of two investments concerned is decisive for the qualification of a single investment project. If the date of start of works of the aided projects are started within the period of three years, if the investments are made in the same NUTS 3 region and if the companies making the investments belong to the same group, then the investments concerned form a single investment project. Please note that in order to belong to same group, the companies need to form a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control.

Please note that the ''initial investment'' is defined in Article 2 (49) of the GBER and that the 'start of works'' is defined in Article 2(23) of the GBER.

71. May the same beneficiary (at group level) commence a new initial investment only after three years from the date of start of works on the previous initial investment for which aid was granted in the same NUTS 3 region, in order to avoid the division of projects into sub-projects?

Article 14(13) of the GBER does not restrict commencing a new initial investment project but provides when such projects are considered to be part of a single investment project (SIP) and clarifies the total amount of aid that may be granted if such a SIP amounts to a large investment project.

72. Does the three years rule apply if works on the first aided investment in the same NUTS 3 region started before 1 July 2014 (before the GBER enters into force) and works on another aided investment started after 1 July 2014 (but within a period of three years)?

For measures that fall under GBER 2014, i.e. the aid was granted after 30 June 2014, the rules on the single investment project as defined under Article 14(13) of the GBER 2014 apply. For this purpose the 3 years rule applies from the date of start of works of the aided projects carried out by the same beneficiary (at group level) in the same NUTS 3 region regardless of the fact whether those happened before the entry into force of the GBER, i.e. before 01/07/02014.

For measures that fall under GBER 2008, i.e. the aid was granted before 1 July 2014, the rules on the single investment project as defined under Article 13(10) of the GBER 2008 apply, regardless of the fact whether the works started before or after 1 July 2014.

73. In the GBER there is no longer a reference to Regulation No 139/2004. Why has the reference been removed and does this mean that in the grant implementation process the same conditions as given by the Regulation No 139/2004 can be used?

According to Article 3 (2) of Regulation 139/2004 control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by: - ownership or the right to use all or part of the assets of an undertaking; - rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Article 14 (8) (c) provides as one of the conditions for eligibility of costs of intangible assets that the assets "must be purchased under market conditions from third parties unrelated to the buyer." Unrelated parties are referred to also in other provisions of the GBER in connection with acquisition of assets (e.g. Articles 2 (49) and (51), 14 (4) and 17 (3) (b)).

Since the GBER does not refer to control in terms of Article 3 of Regulation 139/2004, but to "parties unrelated to the buyer ", the fact that the buyer does not control the seller, is not sufficient for fulfilling the criteria of the relevant Articles of the GBER. The parties have to be unrelated. For that, there should be, at the very least, no influence (decisive or not) on the composition, voting or decisions of the organs of an undertaking. That is why even a very small equity participation (e.g., 1%) would mean that the parties are not unrelated.

74. If an individual grant for broadband respects the regional aid map and the aid intensities set forth therein, and there has been a tender open to all types of projects, including broadband projects, could this type of wide tender be accepted as a "competitive selection process" under Article 14(10) of the GBER?

The regional aid section of the GBER has the horizontal objective of promoting regional development rather than focusing on a specific sector. Therefore, public procurement procedures which are open to all sectors and all type of projects that fall under the scope of regional aid could be accepted as long as the "competitive selection process" carried out by the Member State complies with EU Public Procurement Rules.

75. Is the net present value (NPV) of eligible costs of investments subject to the single investment project rule to be calculated as the sum of the three NPVs calculated on the date of starting the

different investments, or the NPVs should be calculated for the same date (first investment or last investment)?

The sub-projects of the investment do not happen at simultaneous times. The values of the eligible costs of and the aid to the sub-projects need to become time-consistent and hence comparable in order to be able to carry out the addition of the eligible costs and of the aid amounts of the sub-projects. Therefore, the NPV should be calculated to the time of one investment sub-project. Based on the case practice, all sub-projects should be discounted to the date of granting the aid for the first sub-project.

76. What is meant by "group"?

In general, a corporate group or group of companies is understood as a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control. The definition of 'single undertaking' included in the Regulation №1407/2013 is only relevant in the context of that Regulation.

77. What are the effects of cumulating the provisions of Article 14 with Article 17?

The cumulation rules of Article 14 apply only for regional investment aid within the borders of the regional aid map and using the regional aid intensities as defined for large enterprises and for SMEs.

Under Article 17, SME investment aid can be granted to SMEs irrespective of their location and for both types of eligible costs at the same moment, but only at the SMEs intensities of 20% for small and 10% for medium sized enterprises.

78. What is meant by "the assets that are reused"?

Article 14 (7) 2nd sentence of the GBER reads as follows: "For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works."

This sentence concerns initial investment for diversification of the output of an establishment into products not previously produced in the establishment (see Article 2 (49) (a) GBER), and initial investment in favour of new economic activity for diversification of the activity of an establishment (see Article 2 (51) (a) GBER).The term "assets" includes in the context of initial investments both tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (29) GBER).

In a "diversification" project certain assets used for producing a previously produced product would continue to be used for production of a new product. For instance, land and buildings that were used for producing product "A" could completely or partially be used for producing product "B". Such assets are the "reused assets".

The GBER does not require that assets used in an abandoned production are reused. However, pursuant to Article 14 (7) of the GBER, where existing and new assets are combined in a new production activity, the value of the new assets must exceed by at least 200 % the book value of the assets that are reused, as

registered in the fiscal year preceding the start of works . It means that the eligible costs must be at least three times as high as the book value of the "reused assets". The book value is the residual value of these assets as entered to the books of the beneficiary in the end of the fiscal year that precedes the start of works. If an asset (e.g., a building) is only partially reused, the book value of the asset can be taken into account "pro rata". If the condition in Article 14 (7) is not fulfilled, the investment is not considered to constitute an initial investment in the form of diversification of an existing establishment diversification of the output of an establishment into products not previously produced in the establishment (Article 2 (49) of the GBER).

79. What is meant by "the book value of assets"?

The book value of assets refers to the net book value (i.e. the cost of the asset minus the accumulated depreciation).

In case of a ''*fundamental change in the manufacturing process*'', the value of the eligible costs has to exceed the value of the depreciation for the last 3 years prior to the start of works counting from the date of the granting of the aid.

In a *''diversification of an existing establishment*'' scenario, the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the fiscal year preceding the start of works. It means that the eligible costs have to be more than three times higher than the book value of the ''reused assets''. The book value is the residual value of these assets as entered to the books of the beneficiary in the end of the fiscal year that precedes the start of works.

80. Regarding the notion of "fundamental change in the production process": does it mean that during the modernisation (fundamental change) all the assets (or some of the assets) have to be replaced by the new assets and the costs of the new assets have to be at least the same as the depreciation of the old assets during the preceding 3 years entered in the accounts?

Initial investment in the form of a fundamental change in the overall production process of an existing establishment means the implementation of a fundamental (as opposed to routine) process innovation. The GBER does not define the notion of fundamental change. However, the GBER requires that the eligible expenditure to be incurred for investments in tangible and intangible assets necessary for the implementation of this process innovation exceeds a certain threshold. Under Article 14 (7) of the GBER this threshold is defined as "the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years." The sum of depreciation is calculated over the three fiscal years that preceded the start of works of the project. "Start of works" is defined in Article 2 (23) of the GBER.

The simple replacement of individual assets without fundamentally changing the overall production process constitutes a replacement investment which is not eligible for regional investment aid as it does not qualify as a fundamental change of an overall production process, and thus is not considered to constitute an initial investment. This holds also if individual items of equipment are replaced by others that are more performing unless this leads to a fundamental change on the overall production process. Under Article 14 (4) eligible costs are investment costs in tangible and intangible assets. Under Article 14 (8) for large undertakings the costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment. Under Article 14 (6) the assets acquired have to be new, except for SMEs.

81. Do the assets that are re-used in the case of State aid to a diversification of an existing establishment qualify as eligible costs?

In principle, only new assets can qualify as eligible costs for all types of initial investments foreseen by regional aid provisions of the new GBER (except for SMEs and for the acquisition of an establishment, as specified in Article 14(6) of the GBER, where used assets purchased from a third party can be eligible as well). In the diversification of an existing establishment (being a particular type of initial investment) there is one additional requirement. This investment project as such can be composed of two types of assets: 1) already belonging to the company and re-used for the project (and not being eligible for aid) and 2) new or- in special circumstances mentioned above- purchased from a third party used assets (eligible for aid). However, for the project to be considered eligible for aid, the value of its new assets (or purchased from a third party used assets) must exceed by at least 200% the book value of re-used assets as registered in the fiscal year preceding the start of works. As only the new assets (or- in special circumstances mentioned above- purchased from a third party used assets) are eligible for aid, the total aid will be calculated with reference to the amount of these assets.

82. If depreciation of "assets linked to the activity to be modernised" is to include all assets, however peripherally linked they are to production (such as the assembly hall premises, shared lighting etc.), how is the percentage share of these depreciations to be determined in order to be compared against the eligible expenditure? On the basis of the floor surface area of the assembly hall, the percentage use of the machines, the share of sales?

The term assets in the context of initial investments refers both to tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (28) GBER). Therefore, the buildings for manufacturing or storing manufactured products are covered by Article 14 (7) 2nd sentence of the GBER if these assets are linked to the activity to be modernised. Member State can carry out a pro rata calculation. The GBER does not prescribe the method to be applied by the Member State for that purpose, i.e. the Member State can rely on a bona fide approach that takes into account the specific situation and characteristics of the establishment and activity concerned.

83. How is asset depreciation to be calculated for companies that have existed for less than three years?

The Member State can apply a bona fide estimate, taking into account standard depreciation rules under its fiscal law.

84. What can be the financial contribution "in the form free of any public support"?

The financial contribution free of any public support means funding derived from the own resources of the company or loans obtained in the market on commercial terms, and not covered by State guarantees. The shareholder structure of the company is not relevant in this case.

The centrally managed Union funding is considered public support, even if it is not State aid.

85. Is there any best practice on how to demonstrate that the assets of an establishment were acquired on market conditions, especially in the case of acquisitions of entire establishments (undertakings) and intangible assets?

We would consider as best practice the expertise conducted by an independent company, or proving that the acquisition of an establishment takes place between independent companies or in full respect of the "arm's length" principle.

86. In the case of regional aid, does the condition regarding the provision of wholesale access to build broadband infrastructure only apply to NGA networks, or also to basic broadband networks?

The subsidized network operator must offer active and passive wholesale access under fair and non-discriminatory conditions both in cases of basic broadband and NGA.

87. How is Article 14 to be applied in relation to undertakings' investments consisting in the construction and equipping of research laboratories?

Article 14(11) GBER specifies that if the aid is granted for research infrastructure, the access to the latter needs to be transparent and non-discriminatory. This provision would therefore not be applicable in case of a laboratory infrastructure of undertakings which use this infrastructure for solely for their own purposes.

88. What should be the adopted maximum limits of regional investment aid for a single investment project implemented in stages?

According to Article 14 (13) of the GBER, any initial investment started by the same beneficiary at group level within a period of three years from the date of start of works on another aided investment in the same NUTS 3 region shall be considered to be part of a single investment project. The applicable aid intensity for each partial project is the aid intensity applicable under the regional aid map in force at the time of awarding the aid (adjusted by scaling down, where applicable).

Article 15:

89. How are the thresholds in Article 15 to be applied?

When the aid per beneficiary under all operating aid schemes does not exceed the amount resulting from one of the alternative methods to determine the additional operational costs (other than transports costs) referred to in Article 15(2)(b)ii of the GBER, the aid can be considered justified in terms of contributing to regional development and proportionate to the handicaps that undertakings face in the outermost regions.

90. Can the regions covered by the measure choose to apply only one of the criteria or any criterion of Article 15(2)(b)ii, which ever would be the most favourable to the beneficiary?

The regions covered by the measure may apply only one of these criteria. They may apply any criterion of Article 15(2)(b)ii, which is most favourable to the beneficiary. In any case, Member States shall ensure that the applicable threshold is respected.

91. If the level of aid to be granted under a scheme does not exceed the limits provided in Article 15, can the aid be considered compatible with the internal market and exempt from notification?

In order for operating aid to be considered compatible with the internal market and exempt from notification, it has to be ensured that aid from all operating aid schemes granted to the same beneficiary does not exceed the limits provided in Article 15 of the GBER and that other, specific and general conditions laid down in the GBER are respected.

Member States need to introduce in the national legislation specific provisions and effective mechanisms for control in order to ensure that the aid granted under all operating aid schemes per beneficiary does not exceed the limits laid down in the GBER and the respect of the other GBER conditions. Thus Member States shall also monitor cumulation with other operating aid schemes under which the beneficiaries can receive aid.

92. To calculate the requirement laid down in point ii) of paragraph a), of number 2, of Article 15 of GBER, will it be acceptable to consider an average value calculated on the basis of a consultation to several freight forwarders operating in an outermost region?

Article 15(2)(a)(ii) allows for the granting of operating aid aimed to compensate for aid which is *objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit*. In this respect, the Commission services consider that an average value calculated on the basis of a consultation to several freight forwarders would enable the beneficiaries to later choose for the lowest possible offer from freight forwarders. Therefore, we consider that for the purpose of calculating these costs, the Member State should take into account the lowest possible offer.

Ideally, those additional transport costs should be compensated on the basis of the actual costs incurred by the beneficiaries as demonstrated by an invoice.

93. What is meant by "journey"?

The definition of a "journey" as referred to in Article 15(2)(a) of the GBER should be understood to mean *"the movement of goods from the point of origin to the point of destination, including intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport"*. The 'point of destination' is defined as *"the place where the goods are unloaded"* (Article 2(53) of the GBER), whereas the 'point of origin' is defined as *"the place where the goods are loaded for transport"* (Article 2(54) GBER). Therefore, the additional transport costs should be calculated on the basis of the journey from the place of production (factory) to the place of delivery to the distributor/customer.

Article 16:

94. Urban development projects must be implemented via urban development funds in assisted areas. What is the connection between point 8 and 11 of Article 16?

The possibility to "assign the implementation of the urban development aid measure to an entrusted entity" laid down in Article 16(11) of the GBER means that a Member State may entrust the implementation of a public financial instrument (i.e. the provision of equity, quasi-equity, loans or guarantees on behalf of the State) to a financial institution. To the extent that analogous provisions are laid

down in Article 21 for risk finance aid, it can in this context be considered that qualifying financial institutions are those which are referred to in Article 2(79) of the GBER. In any case, urban development fund managers must be selected through an open, transparent and non-discriminatory call.

Article 17:

95. Does the term "third parties which are unrelated to the buyer" only relates to structural relationships or to contractual relationships such as supplier contracts between the buyer and the seller?

For the parties to be unrelated, there should be, at the very least, no influence (decisive or not) on the composition, voting or decisions of the organs of an undertaking. That is why even a very small equity participation (e.g., 1%) would mean that the parties are not unrelated. A typical contractual relationship without such a participation would not be considered to be within the scope of this provision.

Article 18:

96. Can internal services be financed in the context of preparatory works?

Article 18(3) of the new GBER specifically states that: "*The eligible costs shall be the costs of consultancy services provided by external consultants*". Consequently, it is not possible to grant aid for internal consultancy services.

97. Can the costs of preparatory studies and consultancy related to the investment project be included in the eligible costs of the investment even if they were encountered before the application for aid?

As such treatment of consultancy costs is not specifically foreseen in the provisions of the new GBER, this is not allowed. Any aid for consultancy (for SMEs) should be granted under Article 18 of the new GBER.

Article 19:

98. How is the incentive effect to be applied in relation to participation in fairs?

In order to comply with the provisions of Article 19 GBER regarding maximum aid intensity and the requirements regarding incentive effect, beneficiaries under the call will have to submit (maybe after an initial pre-selection phase) a request detailing the relevant eligible costs of fairs in which they intend to participate. It should be possible in the same request to identify the location. The incentive effect condition in this case must be met before any binding commitment to participate in the fair(s) is made.

Article 20:

99. What is meant by "investment expenditure directly related to the project"?

Based on the comments received in the public consultation on the GBER, an effort was made to harmonise the wording of Article 20(2) with European Territorial Cooperation rules and extra-territorial cooperation cost categories as mentioned in the European Territorial Cooperation Regulation (Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal). The investment expenditure directly related

to the project should be interpreted as meaning investment costs in tangible and intangible assets that are undertaken by the project-partners and are directly related to the European Territorial Cooperation project.

100. Does aid intensity refer to the entire eligible costs of the project budget or the budgets of individual beneficiaries?

The aid intensities are established at the level of individual beneficiaries. Please note that in case of participants of the project which are not engaged in economic activity, their funding is not considered State aid and therefore the maximum aid intensity requirement does not apply to them.

Article 21:

101. Is it correct that in the context of a follow-on investment under Art. 21 para 6 GBER it is not required that an independent investor makes the investment?

Correct, the private investor making the follow-on investment should be the same as the investor who made the initial investment. The requirement of "independent private investor" as defined in GBER Article 2 (72) relates to the time of the initial investment.

102. Can the requirement in Article 21 (7) that generation of new capital should reach "at least 50 % of each investment round" be clarified?

This provision addresses a situation where the aided investment involves the replacement of existing shareholders. In this case, out of the entire amount of each investment round involving such capital replacement operations, at least 50% must be invested in newly issued shares. One should not take into account previous investment rounds. E.g. where 1m EUR is invested under a risk finance measure (private and public funds combined), 500.000 EUR of that can be used as replacement capital but the other 500.000 EUR must serve as new capital for the undertaking.

103. What does it mean that private investors should be chosen in the framework of an open, transparent, non-discriminatory call?

Art. 21 para 13 (b) GBER makes reference to a genuine call to select private investors. The documents published for such a call should not define in detail the financial conditions under which the risk finance investment will be made, but should rather leave them open for independent private investors to make proposals. The outcome of the call should be specific on the conditions under which independent private investors are willing to invest alongside the public investor (cf. Art. 21 para 13 (b): "*a call, which is [..] aimed at establishing appropriate risk-reward sharing arrangements*").

The call is aimed at finding independent private investors that will invest with fresh funds as part of the risk finance provided together with the public investor. The purpose of risk finance measures is for the public investment to constitute a proportionate incentive for independent private investors.

104. Does the GBER allow Member States to design risk finance measures with a downside protection mechanism other than by way of guarantees?

Article 21.13 (b) GBER requires that, for instruments other than guarantees, the open call aimed at establishing the risk-reward sharing arrangements favours selection criteria based on asymmetric profit sharing over downside protection. However, if the result of the call is that asymmetric profit sharing is not possible, Article 13 (b) does not prohibit downside protection.

Article 21.13 (c) GBER does not apply to guarantees, but to all other financial instruments, such as loans and equity. It can for instance be agreed that the public investor will cover the first loss piece, but in that case this first loss piece must be limited to 25% of the total investment. Please note that the 25% cap does not limit the public investment to 25% of the total investment, but only limits the first loss taken by the public investor.

In this context, please note that paragraph 48 of the Risk Finance guidelines requires, amongst other, that, for instruments other than guarantees, where the public investor would cover a first loss higher than 25% or where the open call favours selection criteria based on downside protection over upside incentives, the risk finance measure needs to be notified and will be assessed under the Risk Finance Guidelines.

105. What are consequences of the situation in which the task to implement a risk finance measure is assigned to the entity entrusted with the task?

The Member State may entrust the implementation of a risk finance measure (e. g. providing the State financing or the State guarantees on behalf of the State) to an entrusted entity, which acts as the State.

In some cases it occurs that the entrusted entity shares risk with the State under the measure by co-investing own financial resources. Where it co-invests, the entrusted entity acts in its own capacity as a financial institution by taking risk on its own balance sheet, and is no longer subject to the risk finance rules on entrusted entities, but must respect the risk finance rules on financial intermediaries.

What is important to note is that the notion of an "entrusted entity" refers to its role (acting on behalf of the State), but not to the process of selecting such institution, i. e. entrustment does not necessarily imply an appointment. In other words, the State may select or appoint a financial institution to act as its entrusted entity.

106. How shall the remuneration of the financial intermediaries be calculated?

A market conform remuneration should be established on the basis of a competitive procedure for the selection of the financial intermediary. Any other additional advantage granted to the financial intermediary through the measure would have to be passed on to the investee undertakings or capped at the de-minimis level.

107. Can the Commission clarify whether the levels of required investment of GBER Article 21 (10) a-c also apply to follow-on investments in so far as the target undertaking meets the relevant criteria in GBER Article 21 (6)] a-c?

Follow-on investments under the risk finance rules are only allowed for eligible undertakings that have received an initial risk finance investment in the period prior to their first commercial sale up to 7 years thereafter. If a follow-on investment is made in the period prior to first commercial sale, the aggregate private

participation rate of Article 21, paragraph 10 (a) applies. If a follow-on investment is made in the period up to 7 years after first commercial sale, the aggregate private participation rate of Article 21, paragraph 10 (b) applies. A follow-on investment may be made even after the initial 7-year period, but in this case, pursuant to Article 21, paragraph 10 (c), the risk finance measure must leverage additional independent private finance representing at least 60% of the follow-on risk finance investment.

108. Does the GBER cover the situation where the entrusted entity co-finances and manages the fund?

According to Article 21(17), "*a Member State may assign the implementation of a risk finance measure to an entrusted entity*". This means the Member State may entrust the implementation of a public financial instrument (i. e. the provision of a loan or equity financing or guarantees on behalf of the State) to a financial institution, in which case the financial institution acts as an entrusted entity of the State. GBER Article 2 (79) specifies the types of qualifying financial institutions that may be entrusted by the State.

According to point 20 of the Risk Finance guidelines, the State and the entity acting on its behalf may not finance the SMEs directly. This means that financing to SMEs must be provided by financial intermediaries (they carry out credit risk assessment or investment due diligence), as per Article 17(13)a. The financial intermediaries must be selected through an open, transparent and non-discriminatory call as per Article 17(13)b.

109. Should Article 21 (18) (a) be interpreted as meaning that also the de minimis threshold has to be respected by the SMEs covered by this provision?

According to recital (19) of the de minimis Regulation, where a de minimis aid scheme is implemented through financial intermediaries, it should be ensured that the latter do not receive any State aid. This can be achieved, for example, by requiring financial intermediaries that benefit from a State guarantee to pay a market- conform premium or to fully pass on any advantage to the final beneficiaries, or by respecting the *de minimis* ceiling and other conditions of this Regulation also at the level of the intermediaries.

In the light of the above, Article 21 (18) (a) GBER is meant to address situations where aid is present at several levels, not only at the level of the final beneficiary (SME-level in this case). As regards the SME level, all the conditions under the de minimis Regulation (including the aid ceiling) should be applied. However, the risk scheme as such (including aid at the level of the financial intermediary and at the level of the SME) would still have to be designed in accordance with the GBER provisions or in accordance with the prescriptions of recital (19) in order to be exempted from notification.

Article 22:

110. Can start-up aid be made available through initial investments and follow on investments, provided that the total of the start-up aid to any one eligible undertaking respects the overall limits?

Yes, start-up aid can be given for a total up to the maximum amounts mentioned in paragraphs 3(c) and 5, as long as the eligible undertaking remains at the moment of granting within the definition in paragraph 2 (i.e. within the 5 year period).

111. For the awarding of aid for start-ups, the GBER does not require a call for tender. Is this the same in case the aid for start-ups is given by a fund, or must the fund management in this case be selected in accordance with Article 21 GBER in an open, transparent call?

Article 22 GBER requires neither that the aid is awarded via a financial intermediary, nor that, if a financial intermediary is used, it must be selected in an open, transparent call.

However, if start-up aid is granted via a financial intermediary, it needs to be ensured that no aid remains at the level of the financial intermediary. If the financial intermediary is selected through an open, transparent, non-discriminatory call, then the presence of aid at the level of the financial intermediary can be excluded, provided that, in case of debt instruments, the financial intermediary is subject to the obligation to pass on in full to the final beneficiary any advantage stemming from the instrument; if not, the Member State needs ensure in another way that there is no aid at that level.

112. Does the concept of "entrusted entity" also apply in the case of aid for start-ups?

The rules on entrusted entities only apply within the scope of Article 21, which encompasses underlying basic principles that apply to aid for risk finance aid. It should be noted in this connection that the status of "entrusted entity" as defined in Article 2(79) of the GBER excludes that such entity intervenes or co-invests in a risk finance aid measure, as in such a case the entity concerned would rather have the status of a "financial intermediary". As regards start-up aid granted pursuant to Article 22 of the GBER, the concept of "entrusted entity" is not relevant as this provision does not require aid to be deployed via intermediated financial products.

113. Can start-up aid be provided at different times and through a mix of aid instruments?

Yes, start-up aid can be provided at different times, as long as at the time of granting the beneficiary complies with the eligibility conditions.

The maximum amount of start-up aid that can be given is not equal to the maximum nominal amount allowed for loans (e.g. 1 million EUR), plus the maximum guaranteed amount for guarantees (e.g. 1.5 million EUR), plus the maximum gross grant equivalent amount (e.g. 0.4 million EUR).

The calculation of the amounts that can be granted in case of a mix of aid instruments is on a proportional basis as described in paragraph 4 ("[..] *the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument*").

If we take as an example a company in a non-assisted area that does not qualify as an 'innovative enterprise', to which the authorities wish to give a mix of start-up support in the form of a loan with duration of 10 years, in the form of a guarantee with duration of 10 years and in the form of a grant:

For the part in form of loan, the maximum nominal amount is 1 million EUR, so if 200 000 EUR is given as nominal loan amount, this represents 20% of the maximum nominal amount for loans.

For the part in form of guarantee, the maximum guaranteed amount is 1.5m EUR, so if 600 000 EUR is guaranteed, this represents 40% of the maximum guaranteed amount.

Therefore the support in form of grant is allowed up to 40% of the gross grant equivalent amount of 0.4 million EUR, which means that 160 000 EUR of gross grant equivalent is allowed.

114. Article 5.4 of the old Research and Development and Innovation guidelines (2007- June 2014) restricted a beneficiary of young innovative enterprise aid to Research and Development aid and risk capital aid for a period of 3 years after receipt of the aid. There does not appear to be any similar restriction on a beneficiary under Article 22 of the GBER.

The restriction was discontinued. The cumulation rules laid down in Article 8(4) GBER however apply.

Article 25:

115. Can the Commission confirm that when the beneficiary has obligation of maintenance under national legal basis or the provisions of Structural Funds, this maintenance period can be taken into consideration as part of the project, therefore depreciation costs occurred during this period are also eligible?

No, regardless of any specific obligation laid down in the national legal basis or the provisions of Structural Funds, costs of buildings and land are only eligible to the extent and for the duration period used for the aided Research and Development project.

116. Can the Commission confirm that the following costs are eligible, if they are directly linked to the research and development project: costs of participation of conferences related to the project such as travelling costs, accommodation costs, participation fees?

Yes, such costs can be eligible as additional overheads and other operating expenses if they are incurred directly as a result of the project.

117. How should Article 25.6(b)(i), second indent, be interpreted? What contribution should provide the research and knowledge-dissemination organisation, and what is the maximum funding rate for the entire project in case of collaboration?

Article 25.6(b)(i), second indent, of the GBER provides for a possible increase in aid intensities for Research and Development projects which are carried out through effective collaboration (in the meaning of Article 2(90) of the GBER) between undertakings and research and knowledge-dissemination organisations. In particular, aid intensities may thus be increased by up to 15 percentage points, under the condition that the collaborating research and knowledge-dissemination organisations bear at least 10% of the eligible costs and have the right to publish their own research results. Since aid intensities must be established for each

beneficiary of aid, including in the case of collaborative projects, the maximum funding rate for a specific project will however depend on the number and type of collaborating parties, as well as on the categories of research activities carried out and share of eligible costs borne by each one of them.

118. Can you confirm that the aid for process and organisational innovation concern both products and services?

Yes.

119. Under which applicable rules can large undertakings receive aid for industrial property rights?

Aid for obtaining, validating and defending patents and other intangible assets can only be granted to SMEs. However, large undertakings could for instance receive aid for the "costs of knowledge and patents bought or licensed from outside sources at arm´s length conditions" in the context of aid for Research and Development projects (Article 25 GBER).

120. Can investment aid be granted for Research and Development projects aiming at improving technical and utility value of products, technologies and services?

All R&D&I aid should in principle lead to increased technical and practical value of products, technologies or services. Please note that routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements, are not eligible for funding.

Article 26:

121. What is meant by research infrastructure?

Research infrastructures are defined by their content on the basis of Regulation No. 723/2009[7].

122. Is it possible to grant State aid to research organisations for construction or upgrade of research infrastructure if the use of the infrastructure is not linked to any concrete Research and Development and Innovation project?

Yes.

123. Can research organisations be aid beneficiaries of the investment aid for construction and upgrade of research infrastructure?

Yes.

124. Can investment aid be granted for research infrastructure covered under Art 26 GBER to undertakings, which will have exclusive right to use it?

No. State aid for construction and upgrade of research infrastructure is in accordance with Art.26 of GBER compatible with the internal market, only if the access to such infrastructure is granted to several users on a transparent and non-discriminatory basis. Preferential access under more favourable conditions to the

[7] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

publicly co-financed infrastructure could only be granted to undertakings which have financed at least 10 % of the investment costs. The access must be in proportion with their contribution to the investment costs and the conditions of access must be made public. Therefore, an exclusive use of publicly funded infrastructure by an undertaking or a group of undertakings (dedicated infrastructure) is not in line with Article 26 of GBER.

125. Would it be in line with GBER to support the investment cost of energy efficiency measures relating to research infrastructures with 50 % of the eligible costs?

Yes, to the extent that those investments costs are borne in the context of the construction or upgrade of research infrastructures the cumulation rules laid down in Article 8.3(b) of the GBER apply.

126. Can the users of publicly supported infrastructure receive *de minimis aid*?

Yes, users of publicly supported infrastructure may receive *de minimis* aid, provided that all the applicable conditions are respected.

127. How are the eligible investment cost calculated? What about cases that may require the re-assignment of existing assets?

Article 26 of the GBER lays down the rules applying to investment aid for research infrastructures, that is to say aid for the construction or upgrade of research infrastructures that perform economic activities. In this context, the eligible costs referred to in Article 26(5) are the investment costs in tangible and intangible assets, as defined in Articles 2(29) and (30) of the GBER.

As a rule, and insofar as the aid relates to the construction and upgrade of research infrastructures, it is therefore expected that the eligible investment costs relate to the acquisition of new assets that will be used for performing economic activities, of which at least 50% have indeed to be borne by the aid beneficiary.

In those cases that may exceptionally require the re-assignment of existing assets (such as land and buildings) from non-economic to economic activities, and to the extent that such assets would qualify as eligible costs, this has to be done on the basis of a proper separation of the financing, costs and revenues of each type of activity. Under these circumstances, existing assets that have been provided or financed by the State for non-economic activities before the *Aéroports de Paris* judgment of 12 December 2000 (Case T-128/98 *Aéroports de Paris v Commission* ECLI:EU:T:2000:290) may generally be considered as not including State aid. Otherwise, such assets may be considered for the purpose of determining the "own contribution" from the aid beneficiary only if they have been fully depreciated by the date of their re-assignment or a compensation for their use equivalent to the market price is due by the economic "division" of the aid beneficiary to its non-economic "division".

128. What conditions should be met to consider the bonus for the dissemination of the results reasonable?

Taking account of the national specificity and the individual character of each R&D project, the Member State should define the optimal process for the research

results (and not merely the overall deliveries of the project) to be disseminated to the widest extent possible, at national as well as EU level.

129. May this provision provide the basis for the financing of R&D infrastructure in undertakings and in the case of projects implemented by the scientific and industrial consortia in which an undertaking will be the leader/applicant?

Subject to compliance with the definition of "research infrastructure" laid down in Article 2(91) of the GBER, the R&D&I State aid rules do not contain any limitations relating to ownership (public or private) or nature of activities (economic or non-economic) of the relevant infrastructure.

However, in line with the said definition, the research infrastructure eligible for support under Article 26 of the GBER needs to be used by the scientific community, where the expression "scientific community" is used in the same sense as in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)[8] and relates to any structured or unstructured group or network of persons engaging in a systematic activity to acquire knowledge. Furthermore, in line with Article 26 of the GBER, it is essential that access to the infrastructure is granted to several users on a transparent and non-discriminatory basis.

In light of the above, support for a research infrastructure used by one undertaking for its own purpose (therefore excluding its use by the "scientific community" on a non-discriminatory basis) falls outside the scope of Article 26.

130. In what period should the monitoring be carried out?

The monitoring mechanism applies where a research infrastructures receives public funding for both economic and non-economic activities and should be carried out for the economic life of the infrastructure, i.e. for the depreciation period of the relevant assets.

Article 27:

131. Are the costs referred to in Article 2(42), (personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc.) also applicable to Article 27?

The cost categories mentioned in Article 2(42) of the GBER are directly relevant for regional operating aid only. Insofar as operating aid for innovation clusters is concerned, eligible costs are limited to the personnel and administrative costs related to the eligible activities listed in Article 27. Therefore, any costs that do not fall under the relevant categories (personnel and administrative costs) cannot be considered as eligible for this purpose.

132. Since which moment is the 10 years period computed?

The period during which operating aid may be granted for innovation clusters starts at the moment when such operating aid is granted for the first time.

133. Besides costs of salaries, holiday pay, health checks and taxes, may personnel costs include costs of staff training and travelling to market the cluster?

Yes, to the extent that such costs are clearly and strictly linked to the marketing of the cluster.

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[8] OJ L 206, 8.8.2009, p. 1.

134. When organising training programmes, workshops and conferences, are costs of buying materials and services also eligible (catering, renting a room, etc.)? Or travel costs for bringing over a speaker?

Yes, to the extent that such costs are clearly and strictly linked to the organisation of a specific training/workshop/conference.

135. What is considered eligible for marketing purposes? Does marketing of the cluster include travelling abroad (for personnel) and organising an event there (e.g. to meet other clusters, to market what the cluster has to offer) or participating in a fair?

Eligible costs for marketing purposes are those personnel and administrative costs (including overheads) which are incurred with a view to increase participation of new undertakings or organisations, as well as visibility of the relevant cluster. To the extent this is the case, eligible costs can thus refer to travelling abroad, organising an event or participating in a fair.

136. May operating aid be provided both to existing clusters and to new ones?

Yes. Since operating aid is limited to a maximum of 10 years, for existing clusters this however means that any past aid needs to be taken into account, i.e. the starting date for the calculation is the date of the first aid granted.

137. May the operating costs listed in Article 27(8), points a), b) and c) be implemented by companies outside the cluster, as eligible costs?

As follows from Article 27(2) of the GBER, operating aid for innovation clusters shall be granted exclusively to the legal entity operating the cluster. The eligible costs are limited to the personnel and administrative costs incurred by the cluster operator and relating to the eligible activities listed in Article 27(8). Therefore, any costs that do not fall under the relevant categories (personnel and administrative costs) cannot be considered as eligible for this purpose.

138. How is Article 27(4) of the GBER to be interpreted? May there be an "exemption from the payment obligation" for cluster members or users?

As follows from Article 27(1) of the GBER, aid for innovation clusters is reserved to the legal entity operating the innovation cluster (and not e.g. its members or users) and can only be block exempted if all the necessary conditions are fulfilled. One of these conditions is that fees charged for using the clusters' facilities and for participating in their activities correspond to the market price or reflect costs.

However, although there may not be an "exemption from the payment obligation", cluster members or users can benefit from aid granted in compliance with other GBER provisions (typically, aid for start-ups under Article 22 and aid for innovation advisory and support services under Article 28) or the *de minimis regulation* to purchase the clusters' services.

Article 28:

139. May aid associated with obtaining and defending intellectual property rights cover only the costs associated with obtaining such rights to research results and processes carried out by the undertaking/beneficiary on his own, or also the acquisition of rights of a third party who carried out the research and patented its outcome?

The eligible costs listed in Article 28(2)(a) of the GBER are costs for obtaining, validating and defending patents and other intangible assets and have to be incurred by the beneficiary directly. Costs linked to acquisition of rights from a third party can only be eligible under Articles 25 ("aid for research and development projects") or 29 ("aid for process and organisational innovation") of the GBER, provided they are incurred in the framework of an eligible R&D&I project or activity.

Article 30:

140. Can the Commission confirm which Articles within *Section 4 – Aid for research and development and innovation* can be used to support relevant activities in (a) the fishery and aquaculture sector and (b) the primary agricultural production sector?

As long as there is no distinction within Article 1(3) (a) and (b) as to the type of aid or instrument, all Articles within the Section 4 are applicable to aid in the fishery and aquaculture sector. Except for Article 30 that deals with a particular type of aid to research organisations for undertaking studies in the fisheries and aquaculture sector, all other Articles of Section 4 apply to the primary agricultural production sector as well.

Article 31:

141. How is Article 31(2) to be interpreted?

Aid for training which is mandatory under national law lacks incentive effect as it would be pursued even in the absence of public funding, and, therefore, cannot be block exempted. In this regard, it is irrelevant whether the training is carried out to comply with national standards which are mandatory for the undertaking in question or for its employees and also whether the training is carried out by the undertaking itself or an external trainer. As long as the State is paying for this training, which is mandatory under national law, and the training benefits the undertaking directly or indirectly (in case the employees are trained outside the undertaking), the aid is covered by Article 31(2) and cannot be granted.

142. Can accommodation costs of seafarers be exceptionally covered regarding training aid in maritime transport?

Article 31(3)(b) explicitly excludes accommodation from eligible costs (in contrast with the previous GBER). Article 31(5) (applicable only to maritime transport) requires that training is conducted on board of ships and trainees are supernumerary (i.e. not active crew members). In order to comply with those two conditions trainees have to stay on board of a ship during training. Thus, in the case of training on board of ships accommodation costs are operating costs directly relating to the training project. Accommodation cost may be found compatible should a training aid be notified and assessed under the Maritime Guidelines.

143. Which is the maximum aid intensity for mid-sized businesses and small enterprise, for the training to workers with disabilities or disadvantaged workers?

As stated in point 4 of Article 31, the aid intensity shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:

(a) by 10% if the training is given to workers with disabilities or disadvantaged workers;

(b) by 10% if the aid is granted to medium-sized enterprises and by 20% if the aid is granted to small enterprises;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers is thus 50%+10% = 60%;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers in mediums sized enterprises is thus 50%+10%+10% = 70%;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers in small enterprises is thus 50%+10%+20% = 80% but limited to the maximum aid intensity of 70%.

144. Which types of training would be covered by Article 31 and what does the Commission mean by 'national mandatory standards on training'?

The purpose of Article 31(2) is to allow for the support of training measures undertaken by enterprises with the purpose of developing and updating the knowledge of their workforce (e.g. management trainings, language trainings). However, trainings that are mandatory under the national system for example health and safety training would have to be pursued anyway, even in the absence of the aid. Aid for such trainings, thus, lacks incentive effect and can, therefore and in accordance with Article 31(2), not be block exempted

145. What is meant under "trainers' personnel costs" and "wage costs" – only salaries or all related non-wage costs (social insurance contributions, additional remuneration, allowances, etc.)? How should eligible personnel costs be calculated – gross (before social security contributions and other non-wage costs that shall be paid by the employer) or net?

"Trainers' personnel costs" are identified in Article 31 point 3 (a) of GBER as "the hours during which the trainers participate in the training". This can be either the fees paid to the trainers or, if they are in-house trainers, an allocation pro-rata of their salaries to the hours spent on training. According to the recital (23) of the GBER: "(…) *The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. All figures used should be taken before any deduction of tax or other charges.* (…)" Therefore all sums should be calculated on the basis of gross amounts.

The notion of "wage costs" is not defined in the GBER in relation to training aid but is applicable to regional aid measures or aid measures for certain categories of employees. The notion of "wage costs" may however be relevant for training aid under "trainees' personnel costs for the hours during which the trainees participate in the training" (see above). Article 2 point 31 of GBER defines 'wage cost' as "the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs".

As regards "allowances" or "additional remuneration", pursuant to Article 31(3)(b) of the GBER additional costs not related to the trainers' or trainees' personnel costs

may only be covered, if they qualify as "*operating costs directly relating to the training project*". Therefore, if "allowances" or "additional remuneration" are considered for example as necessary travel expenses, then they can be covered by this category.

146. Do the costs of advisory services linked to the training project include consultancy fees for the preparation of the project proposal?

Consultancy fees for the preparation of the project proposal can be considered as "*costs of advisory services linked to the training project*" and therefore falling within the list of eligible costs as defined in Article 31 point 3 (c) if this project proposal has been eventually chosen.

Article 32:

147. How should Articles 32(3) and 33(3) be interpreted?

These paragraphs intend to clarify in what circumstances the recruitment or wage costs of newly employed personnel shall be eligible for support, even in case of no net increase in the number of total employees of the undertaking (and without prejudice to the net increase in another establishment of that undertaking). Therefore, as the beneficiary of the aid will be the undertaking, the conditions concerning the net increase should apply at the level of the undertaking.

148. May firms acquire grants for the recruitment of disadvantaged workers in less than 12 months, if there is a net increase in the number of employees?

The condition in paragraph (3) of Article 32 is meant to ensure that no employees are made redundant with the objective of re-hire of disadvantaged workers in order to benefit from the State aid. If the company is in existence for less than 12 months, the average number of workers shall be calculated over the period for which the company was in existence. The firm may thus acquire grants for the recruitment of disadvantaged workers if there is a net increase in the number of employees.

149. What is the meaning of "regular employment"? Is State subsidised employment considered to be regular employment?

State subsidised employment may also be considered as regular employment. The reason for requiring the worker not to be in regular employment is linked to the definition of 'disadvantaged worker'. In this context, the type of work or financing shall not change the nature of 'regular employment', meaning lasting a certain minimum duration. The other conditions in Article 32 regarding the net increase in the number of workers shall also be complied with.

Articles 33-34:

150. For what duration may State aid for the employment of workers with disabilities be granted?

Article 33 and 34 may be used to compensate the additional costs of employing workers with disabilities and the scope of the scheme may limit the benefit to one or more undertakings based on objective criteria. The duration however will have to be limited to the GBER duration and the aid will have to be capped ex ante (to the notification threshold) to ensure that the aid amount remains transparent.

151. If the beneficiary provides sheltered employment, eligible costs may be, among others, the costs of constructing, installing or modernising the production units of the undertaking concerned. Does this investment mean the rooms in which the employer

offering sheltered employment carries out production, or should it be understood broadly - as all units that the employer uses to conduct economic activity, e.g. to provide services, as well as other rooms, e.g. rest and social base as required under national law?

This eligible cost shall be understood broadly as covering all units that the employer uses to conduct economic activity.

152. Could it be considered aid to keep disabled workers in their posts when the recruitment has taken place one or two years before the date of granting the aid?

If at the time of employment the workers was not disabled but becomes disabled during the validity of the contract, the company employing him may receive support under Article 33 of the GBER starting with the moment when the worker becomes disabled. If however the worker is already employed for two years before the company requests support, it is doubtful whether the condition of Article 33(4) is fulfilled.

153. Could the term "any given period" mean that a limited period is required or could the term "any given period" also be interpreted in the sense of a period of time as long as the validity of the employment contract?

Any given period in the context of Article 33(2) shall be interpreted as a period of time as long as the validity of the employment contract. The eligible cost base in Article 32(2) is stricter as this refers to the recruitment of disadvantaged workers that, after a certain period, are considered to have been duly integrated in the working market and no need of additional support exists.

Article 36:

154. How is the maximum aid intensity established in collaboration projects if the partners are undertakings of different sizes?

Investment aid granted under Article 36 for undertakings going beyond standards for environmental protection can be granted with a maximum aid intensity of 40% of the eligible costs. This intensity can be increased by 20 percentage points for small enterprises and by 10 percentage points for medium enterprises. Regional bonuses can be added depending on the location of the investment.

The aid intensity shall be established **for each beneficiary**, see e.g. the fact that the relevant notification threshold is set per undertaking. This interpretation is further supported by the Research and Development and Innovation (RDI) State aid rules which typically involve collaboration projects (see Article 31(3) of the GBER 2008 "The aid intensity shall be established for each beneficiary of aid, including in a collaboration project, […]" and point 15(c) of the 2014 RDI Framework "The aid intensity is calculated per beneficiary"). This means that, when the aid is calculated, first, the eligible costs of each partner must be identified, then, the relevant maximum aid intensity (50% for the medium-sized company and 60% for the small company) can be used to calculate the maximum aid amount.

155. Should only the purchase price of a vehicle be subsidised or are also the lease costs covered?

The purchase price of a transport vehicle can be covered by investment aid under Article 36 of the GBER provided that the vehicle complies with adopted Union standards and its acquisition takes place before those standards enter into force. If the vehicle complying with Union standards is purchased after the Union standards have entered into force, its acquisition costs are not eligible for investment aid.

GBER allows lease costs to be covered by investment aid only when it is in the form of financial leasing, which contains an obligation to purchase the asset at the expiry of the term of the lease.

156. Are best available techniques conclusions considered to be the Union standards applicable according to the Article 2(102) of the new GBER?

According to Article 2(102), Union standards are defined as the obligation under Directive 2010/75/EU of the European Parliament and of the Council to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT.

In light of the above, the BAT conclusions set the Union standard for Member States. Only after a period of four years following the publication date of BAT conclusions, the Union standards become mandatory for undertakings. During this 4-year period, the BAT conclusions are considered, for the purposes of Article 36(3), adopted Union standards but not yet in force.

157. As to what moment in the process of project submission/evaluation/implementation is the amount of eligible costs determined? Taking into consideration the Article 36(3) of the new GBER, is the amount of eligible costs to be re-evaluated if in the process of project implementation new Union standards are adopted?

For the purposes of Article 36(3) of the GBER, the evaluation of eligible costs (and the applicable Union standards) shall be made at the moment of the project "evaluation", meaning when the project is assessed by the national authorities in view of deciding if aid would be granted for it. If new standards are adopted after the aid has been granted, during the implementation of the project, there is no need to re-evaluate the eligible costs of the aid amounts. However, when new standards are adopted before the aid is granted, these should be taken into account in the evaluation of the project and the eligible costs and amounts of aid should be adjusted accordingly (for example the measure could be converted in "earlier adaptation to future Union standards").

158. What is the meaning of the concept of extra investment costs under Article 36(5) of the GBER?

In Article 36(5) the extra investment costs refer to the additional investment costs necessary and directly linked to the investment that enable going beyond the applicable Union standards or ensuring an increased level of environmental protection in the absence of Union standards.

They could be identified as the difference between the investment costs of a project guaranteeing higher level of environmental protection (allowing the undertaking to go beyond the applicable Union standards) and the investment costs of another technologically comparable project that achieves a lower level of environmental protection (allowing the undertaking to simply meet the applicable Union standards).

159. Is it necessary to take into account the operating costs and benefits, for calculating the eligible costs for investment aid for environmental protection?

According to Article 36(5) of the GBER the extra investment costs refer to the additional_investment costs necessary and directly linked to the investment that enable going beyond the applicable Union standards or ensuring an increased level of environmental protection in the absence of Union standards.

They represent the difference between the investment costs of a project guaranteeing higher level of environmental protection (allowing the undertaking to go beyond the applicable Union standards) and the investment costs of another technologically comparable project that achieves a lower level of environmental protection (allowing the undertaking to simply meet the applicable Union standards). Operating costs and benefits do not need to be taken into account.

Article 37:

160. How should the end of the investment be understood? Is this the physical completion, or maybe performance of start-up, or putting into actual use and its beginning?

Under Article 37(2) of the GBER investment aid for early adaptation to future Union standards is permissible if the investment is implemented and finalised at least one year before the date of entry into force of the standard concerned.

An investment shall be considered implemented and finalised when the measures it is aimed at are put in place and can deliver a result, guaranteeing the achievement of the Union standards.

161. Can investment aid to comply with the Union standards be granted under Article 37 for energy efficiency measures that are excluded under Article 38(2)?

Article 38(2) of the GBER states that aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

Article 37 can be used to provide aid for early adaptation to standards already adopted, including for energy measures that would not qualify for aid under Article 38(2). Of course, all the conditions foreseen in Article 37 should be complied with.

Article 38:

162. Does this provision include aid for mobility actions aimed at the achievement of energy saving like vehicle fleet management systems or mobility plans in undertakings, when the criteria established by Article 38(3) are fulfilled?

According to GBER, "energy efficiency" means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption.

Aid measures directed to vehicle fleet management systems or mobility plans of undertakings can be granted under Article 38 of the GBER, provided the measures lead to reduced energy consumption, in line with the definition of the GBER for energy efficiency.

163. What is the best way to deal with investments where there is an increase in capacity as compared with the counterfactual scenario?

According to Article 38(3)(b), the reference investment should be a "similar, less energy-efficient investment". This should be read in light of the purpose of the provision. The purpose of comparing the planned investment with a reference investment is to ensure that aid is only granted to cover costs resulting from the higher level of energy-efficiency. Thus, Article 38(3)(b) explicitly states that "the costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible".

By calculating the eligible costs on the basis of a comparison between the planned investment and an alternative investment with a significantly lower capacity, costs not directly linked to the achievement of a higher level of energy efficiency, i.e. costs related to the higher production capacity, would be included in the eligible costs. Hence, such an investment would not be acceptable as a reference investment under Article 38(3)(b) of the GBER.

The reference investment should be similar in terms of size and capacity. In this respect, point 73 of the EEAG and in particular footnote 49 clarify that the reference investment should be "a technically comparable investment", meaning "an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for the targeted objective)".

164. For the purpose of Article 38, is it possible to consider total investment costs as eligible costs?

We confirm that in certain situations, when the energy efficiency project is exclusively aimed at increasing the energy efficiency (and no investment would have been necessary to be made by the beneficiary in the absence of the aid) it is possible to consider the total investment costs as eligible costs.

165. Does Article 38 also apply to savings made in power and heat generation, for example by acquiring more efficient sources (boilers), since in such cases there is a fuel saving and thereby a saving in primary energy?

Investment aid for energy efficiency measures can be granted under Article 38 of the GBER. According to the GBER, "energy efficiency" means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption.

It follows that measures aimed at fuel savings in power and heat generation (including cogeneration units) could, in principle, be covered under this Article, provided the measures lead to reduced energy consumption, in line with the definition of the GBER for energy efficiency.

166. How do standards concerning the financing of energy efficiency projects apply?

Aid under Article 38 of the GBER can only be granted for energy efficiency projects that are not necessary to comply with Union standards. The provision refers in general to all standards applicable to the beneficiaries, not specifically to standards imposing a certain level of energy efficiency.

Union standards are defined in Article 2(102) of the GBER as:

(a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings; or

(b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT; for the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of this Regulation; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable.

As a general rule, if the beneficiary already complies with all the Union standards applicable to it (including standards adopted but not yet in force), aid for energy efficiency projects can be granted to the respective beneficiary. If however the beneficiary does not comply with all the standards applicable to it, it must be checked that the energy efficiency project for which aid is required would not be necessary for the beneficiary to comply with those standards. If a project is necessary to comply with a Union standard, the beneficiary would be obliged to undertake the respective project (or an equivalent project) anyway and the aid would have no incentive effect.

167. Could installations of undertakings whose primary activity is not electricity/heat production benefit from aid granted under Article 38 of the GBER given that they enable undertakings to achieve energy efficiency?

According to Article 2(103) of the GBER, "energy efficiency" means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption.

Aid for measures aimed at enabling installations (regardless of the nature of their activity) to achieve energy efficiency can be granted under Article 38 of the GBER, provided the measures lead to reduced energy consumption, in line with the definition of the GBER for energy efficiency.

Nevertheless aid shall not be granted where improvements are undertaken to ensure that the undertakings comply with Union standards already adopted, even if they are not yet in force (Article 38(2) of the GBER).

Article 39:

168. What is meant by "efficiency fund managers"?

The energy efficiency fund manager is defined in Article 2(106) of the GBER as "a professional management company with a legal personality, selecting and making investments in eligible energy efficiency projects". Any company complying with the definition provided in GBER can be an energy efficiency fund manager.

According to Article 39 of the GBER, "the aid shall be granted in the form of an endowment, equity, a guarantee or loan to an energy efficiency fund or other financial intermediary, which shall fully pass it on to the final beneficiaries being the building owners or tenants. The aid granted by the energy efficiency fund or other financial intermediary to the eligible energy efficiency projects may take the form of

loans or guarantees." There is therefore a distinction between energy efficiency funds and other financial intermediaries.

An energy efficiency fund is defined in Article 2(105) of the GBER as "a specialised investment vehicle set up for the purpose of investing in energy efficiency projects aimed at improving the energy efficiency of buildings in both the domestic and non-domestic sectors." An energy efficiency fund will be managed by an energy efficiency fund manager, who will make investments from the fund. It is not excluded that energy efficiency fund managers use the services of financial intermediaries under certain circumstances.

A bank (or another financial intermediary) setting up a unit to grant aid to final beneficiaries for energy efficiency measures in buildings will most likely qualify as a financial intermediary, but not as an energy efficiency fund.

169. In what form can energy efficiency funds or other financial intermediaries grant aid to final beneficiaries? Can the aid be in the form of a grant?

Under Article 39(5) aid granted by energy efficiency funds or other financial intermediaries may take the form of loans or guarantees.

Article 2 of the GBER provides the following definitions for loans and guarantees:

- loan is defined in point 82 as "an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period";

- guarantee is defined in point 67 as "a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions".

Grants are a form of aid which is not expected to be repaid by the recipient. They therefore do not fall within the mentioned definitions, nor comply with Article 39(6), which states that the repayment shall not be less than the nominal value of the loan. In this context grants are consequently excluded as a form of aid that could be granted through energy efficiency funds or other financial intermediaries.

Article 40:

170. Does the reference to "conventional electricity and heating installations" include conventional electricity and thermal energy installations?

According to Article 40(4), the eligible costs shall be the extra investment costs for the equipment needed for the installation to operate as a high-efficiency cogeneration installation, compared to conventional electricity or heating installations of the same capacity or the extra investment cost to upgrade to a higher efficiency when an existing installation already meets the high-efficiency threshold.

According to Article 2(108) of the GBER "cogeneration" or combined heat and power (CHP) means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy.

From the stated above it follows that conventional electricity and thermal energy installations can be used for the calculation of the eligible costs provided that the principles of calculating the eligible costs, set out in Article 7 of the GBER, are respected.

171. Does this article apply to support for the construction of biogas plants that use biowaste?

Investment aid for high-efficiency cogeneration can be granted under Article 40 of the GBER. According to Article 40(4), the eligible costs shall be the extra investment costs for the equipment needed for the installation to operate as a high-efficiency cogeneration installation, compared to conventional electricity or heating installations of the same capacity or the extra investment cost to upgrade to a higher efficiency when an existing installation already meets the high-efficiency threshold. If follows that the costs of the fuel, or of the installation producing the fuel used by the cogeneration units cannot be covered by aid granted under this provision of the GBER.

172. Could installations of undertakings whose primary activity is not electricity/heat production be treated equally to those belonging to undertakings from the energy sector and benefit from aid for the promotion of energy from renewable sources under Article 41 of the GBER (biomass) or aid for high-efficiency cogeneration under Article 40 of the GBER (gas) respectively?

If the conditions set out in Articles 41 and 40, as well as in Chapter I, are complied with, aid can be granted to eligible installations, regardless of which is the primary activity of the undertaking.

Article 41:

173. What is the best way to determine the difference between the costs of both investments as long as investments in the renewable energy field are environmentally friendly by default, therefore one could consider the base scenario as being "no investment" at all, instead of a "similar" investment?

Indeed, investments in renewable energy production facilities are environmentally friendly. The reference investment would normally be a less environmentally friendly energy production facility with the same capacity.

Please note in this context that Annex 2 of the EEAG provides a list of typical counterfactual (reference) investments. In case of doubt, we suggest referring to the examples provided in this Annex to establish the correct counterfactual also for the environmental measures designed under the GBER.

174. Granting of investment aid is limited to new installations. Does this limit refer to "new installation" or rather to "new investment"? Are costs for reconstruction or expansion of renewable installation eligible under Article 41(5)?

Under Article 41(5) of the GBER the investment aid can cover part of the upfront costs (depending on the amount of the eligible costs) of new renewable installations.

Reconstruction works (upgrading or refurbishment) of an existing plant can also be eligible for investment aid under Article 41(5) of the GBER if this operation concerns considerable parts of the plant and is prolonging its expected lifetime.

However, maintenance operations and replacement of small parts and components of a plant, that are normally done during the expected lifetime of the plant, would not qualify for investment aid under Article 41(5) of the GBER.

175. How should the expression "no aid shall be granted or paid out after the installation started operations" be understood?

Article 41 of the GBER specifies the rules for granting investment aid in favour of renewable energy. Articles 42 and 43 of the GBER detail the rules which are applicable to operating aid in favour of renewable energy.

Article 41(5) states that "no aid shall be granted or paid out after the installation started operations and aid shall be independent from output". This provision serves to distinguish between investment aid and operating aid and thus whether Article 41 of the GBER is applicable or whether the provisions of Article 42 respectively Article 43 of the GBER need to be complied with.

Moreover one of the general conditions for the application of the GBER is that the aid has a clear incentive effect (Recital 5 of the GBER). Please note that the Commission considers that aid does not present an incentive effect for the beneficiary in all cases where work on the project had already started prior to the aid application by the beneficiary.

However, when the aid (or part of it) is paid within a short period of time after the completion of the project in order to allow the authorities to carry out necessary verifications that the project complies with all the applicable criteria (e.g. verify that the project has been finalised, verify that the alleged expenses have been incurred by beneficiaries), such aid would still qualify as investment aid that can be granted under Article 41(5) of the GBER, as long as all the other conditions are complied with (in particular the aid amount should be totally independent from the output).

176. Does Article 41(5) prohibit to pay out the last tranche of investment aid if the plant started operation?

Article 41 applies to aid granted for compensating part of the upfront investment costs only, whereas Articles 42 and 43 applies to aid paid out over the depreciation period (economic life time). Article 41(5) does therefore not prohibit to pay out the last tranche of investment aid as a balance payment to match differences between anticipated and actual expenditure in order to avoid overcompensation.

177. Biofuels are made from raw material that is agricultural or forest based biomass. Agricultural biomass is manure, agricultural residues (straw), food crops residues, oilseed rape, cereals and sugar beet. Forest based biomass is wood wastes. Which of these raw materials can be used for food-based biofuels, which are defined as biofuels produced from cereal and other starch rich crops, sugars and oil crops?

Only the last three categories mentioned as agriculture biomass, namely oilseed rape, cereals and sugar beet, should be considered food-based. Biofuels from residues (even food crops residues) qualify as second generation biofuels.

178. What is meant by "aid shall be independent from the output"? In relation with boiler houses under what circumstances can aid be regarded as independent from the output?

Investment aid should be established in connection with the eligible investment costs. It should be independent from the output in the sense that its amount cannot vary depending on the quantity of energy produced.

For example, aid calculated as X% of the eligible investment costs is independent from the output (and therefore acceptable under Article 41 of the GBER), while an

aid calculated as Y EUR/MWh is not independent from the output (and therefore not acceptable under Article 41 of the GBER).

179. Can credit tax be granted as investment aid?

Investment aid for the promotion of energy from renewable sources should be, in line with Article 41(5) only granted to new installations. It should be granted and paid out before the installations start to operate.

Aid that is paid out in tranches, during a certain period of time after the installations have started to operate, in different forms (including tax credits) is usually not considered investment aid, but operating aid, even if it is meant to cover (also) investment costs.

180. What is meant by "small installation" in Article 41(6)(c)?

There is no strict definition of a small installation, referred to by Article 41(6)(c). This possibility is included to acknowledge that some investments to promote energy produced from renewable sources might be very small so that there are no technically comparable conventional power plants that could be used as reference investment. Article 41(6)(c) applies to only such investments. Normally these are cases where the installations producing energy from renewable sources are not the only installations used by the beneficiary to produce energy, but are rather used as secondary installations to complement the energy available from other sources (e.g. secondary installations that are used when renewable sources are available, aimed to reduce the use of the main conventional energy installations). In such cases it is possible that in the absence of the aid the most credible counterfactual scenario would be an increased use of the other (less environmental friendly) existing installations or sources of energy.

This would be the case, for example, when small installations producing energy from renewable sources are part of an integrated system producing energy, and in the absence of the aid the beneficiary would be able to use the rest of the respective integrated system and no other investment would be necessary.

181. Is Article 41 for granting aid to boiler houses which currently use conventional energy for producing heat for conversion to energy from renewable sources?

Yes, investment aid can be granted under Article 41 of the GBER for the conversion of conventional energy boilers to energy from renewable sources. More in general, large investments made to an existing plant can be eligible for investment aid under Article 41 of the GBER, if they concern considerable parts of the plant and are prolonging the expected lifetime of the plant, or are necessary to allow the plant to produce energy from renewable sources. However, maintenance operations and replacement of small parts and components of the plant, that are normally replaced during the expected lifetime of the plant, would not qualify for investment aid under Article 41 of the GBER.

182. In case an existing oil-using boiler house is rebuilt into a boiler house using renewable energy sources, could the costs of the whole investment be regarded as extra investment costs?

In line with Article 41(6) the eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. Where the

costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, this renewable energy-related cost shall constitute the eligible costs. Where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

Taking the example of an existing oil-using boiler house that is rebuilt into a boiler house using renewable energy sources, it would be necessary first to establish what the counterfactual scenario would be – what would happen in the absence of the aid. If the existing oil-using boiler house already complies with all the necessary standards, and could continue to operate using oil, without requiring any investments in the foreseeable future, then the costs of the whole investment to convert it into a boiler house using renewable energy sources could be regarded as extra investment costs and would constitute the eligible costs. If however the existing oil-using boiler house would need certain investments in the absence of the aid, in order to continue to operate (e.g. investments necessary to comply with certain standards or investments to replace depreciated parts of it) the eligible costs should be calculated by reference to the respective counterfactual scenario, and the respective costs (that the beneficiary would incur in the absence of the aid) should be deducted.

183. Article 41(1) provides for the possibility to grant investment aid for the promotion of renewable energy. Can this legal basis be used for granting aid to boiler houses which currently use conventional energy for conversion to renewable energy?

It is in principle permitted to grant aid for the conversion of an already existing boiler house which uses conventional energy sources (e.g. oil) to a boiler house that uses renewable energy sources (e.g. wood chips), but only in relation to the investment costs necessary for the respective conversion.

184. Is the modernisation of a plant already in operation, known as repowering, eligible for investment aid under Article 41 of the GBER?

Modernisation (upgrading or refurbishment) of an existing plant can be eligible for investment aid under Article 41 of the GBER, if this operation concerns considerable parts of the plant and is prolonging the expected lifetime of the plant.

However, maintenance operations and replacement of small parts and components of the plant, that are normally replaced during the expected lifetime of the plant, would not qualify for investment aid under Article 41 of the GBER.

Article 42:

185. What are the "generally accepted accounting principles"?

The GBER does not specify the depreciation method. Depreciation of the plant would normally be understood in accounting terms applied during the economic life of the plant and equipment, rather than as tax depreciation. As indicative reference, you may want to see the International accounting standard 16 in Regulation (EC) No 2002/1606 on the application of international accounting or Article 12(5) and (6) of the Accounting Directive 2013/34/EU.

The actual depreciation method can vary from one Member State to another. Past case practice shows that in many Member States the depreciation period applied refers to the economic lifetime of the plant. The calculation of the aid amount should also follow this period. The Commission will assess the overall duration of

the aid case by case in the light of the method used and the overall design of the measure.

186. What is understood by "common connection point" in Article 42(10)? Will multiple installations be considered as one if the connection point has a single owner? What about if the installations have different owners but a common connection point?

Under Article 42(10) installations with a common connection point to the electricity grid shall normally be considered as one installation. The ownership of the actual connection point is irrelevant for determining the total size of the installation.

When separate legal entities own installations with a common connection point, the possibility of considering these installations as one shall be evaluated on case by case basis, depending on:

- The types of installations involved: if they are installations of a similar kind, using the same type of primary energy source;

- The relationship between the legal entities: if they are unrelated or are related through a certain form of common ownership (part of a holding company, subsidiary and a parent company, etc.);

- The authorisation process: if it is necessary to obtain one authorisation for each installation or if one authorisation is enough for all of them;

- The way the installations are (inter)connected, the way the costs for the connection to the grid are split.

This assessment is normally done by the national authorities, which are well placed to verify all these aspects and decide if there are separate projects or components of a single project.

187. What is understood by a "competitive bidding process"?

Article 42(2) requires that operating aid promoting renewable energies is subject to a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria which are open to all generators producing electricity from renewable energy on a non-discriminatory basis.

Article 2(38) of the GBER defines a competitive bidding process as "a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid".

These requirements are therefore applicable to Article 42(3) and Article 42(4) which deal with some specific cases.

188. What is meant by "negative prices"?

"Negative prices" are wholesale electricity prices, whose values are below zero (0).

189. What approach should the granting authority take when levelised costs are difficult to establish in practice?

If the levelised costs are difficult to establish in practice, the calculation of the total levelised production costs could be based on the average costs of all plants to which the scheme applies where this provides for the correct typical representative production costs.

190. Should a competitive bidding process be introduced in all circumstances?

The intention to set up a competitive bidding process is in line with the requirements of Article 42(2) of the GBER. Please note that the bidding process can be limited to specific technologies only in specific circumstances, if the conditions under Article 42(3) apply.

191. If the government guarantees to buy the produced energy at an agreed tariff above the market rate, is this considered State aid?

A publicly supported purchase of energy at a level above market price is likely to constitute State aid. The aid element would in principle amount to the difference between the price paid and the market price of the energy concerned. The GBER contains provisions on operating aid for renewables in Articles 42 and 43. Provided that all the applicable conditions set out in the GBER are met, such State aid could in principle be handled under this Regulation.

192. If a tender procedure is open to all technologies, but sets limits in the form of efficiency thresholds is the justification for applying such thresholds also subject to reporting to the Commission pursuant to Article 11(a)?

Under Article 11(a) of the GBER the Member State must submit to the Commission via the Commission's electronic notification system a summary information about each aid measure exempted under GBER together with a link to the full text of the aid measure, including its amendments, within 20 working days following its entry into force.

In this context all key features and requirements of the aid measure must be communicated to the Commission.

Article 42(3) allows for some limitations in the bidding process but extends the scope of the reporting obligation for aid which is granted on the basis of such a limited bidding process. For such aid measures the information that must be submitted to the Commission includes also a detailed assessment of any restrictive conditions introduced to limit the competitive bidding process. When certain limits are imposed, the justification for the respective limits should therefore be included in the information sent to the Commission.

Article 43:

193. Does Article 43(5) permit that the total levelised costs of producing energy from the counterfactual fuel are used as a proxy where there is no market price for the form of energy concerned? If so, is it for the Member State to identify the appropriate counterfactual fuel?

The GBER only refers to the market price of the energy concerned in Article 43(5) to which there is a cross reference in Article 42(8). Article 43 specifies the

conditions for granting operating aid to renewable energy in small scale installations.

Article 43(5) essentially caps the aid to the difference between the production costs of renewable energy and the market price of the energy concerned. In most cases market prices are readily available, notably in the case of electricity prices.

In some cases the market price may not be readily available. In such case the best proxy for the market price should be taken. Such best proxy could be the total levelised costs of the counterfactual form of energy.

Article 43(5) does not define the market price of the energy concerned. It is for the Member State to identify the correct market price in line with the rules set out in Article 43.

194. Can it be presumed that where a market does not exist (and therefore neither a futures market or relevant swap rate) that Article 43(6) does not apply?

Article 43 specifies the conditions for granting operating aid to renewable energy in small scale installations. Article 43(5) limits the aid amount to the difference between the total levelised costs of producing renewable energy and the market price of the energy concerned.

The calculation of the total levelised production costs is sensitive to the rate of return used. Therefore, Article 43(6) caps that rate of return that can be used for the calculation of the total levelised costs. Article 43(6) is phrased in a general way referring to generally available swap rates and does not require to identify a rate for a specific market (e.g. heat market).

In order to benefit from the GBER, all conditions of the Articles need to be respected, including Article 43(6). If these conditions are not respected and the Member State would still put in place the measure, such measure would need to be notified.

195. Where the GBER is used for a scheme rather than ad hoc aid, do the "total levelised costs" in Article 43(5) refer to average costs of all plants to which the scheme applies?

Article 43 specifies the conditions for granting operating aid to renewable energy in small scale installations. Article 43(5) limits the aid amount to the difference between the total levelised costs of producing renewable energy and the market price of the energy concerned.

In case of a scheme the total levelised production costs can be based on typical representative production costs of producing renewable energy for each relevant category of renewable energy.

The calculation of the total levelised production costs could be based on the average costs of all plants to which the scheme applies where this provides for the correct typical representative production costs. The plants to which the scheme applies should be a relevant category ensuring that the calculated production costs can be considered typical and representative for all plants.

196. Where the GBER is being used for a scheme allowing to pay out the aid over a set period (e.g. 20 years), does the requirement to update levelised costs regularly apply only in relation to the setting of support levels for future applications for aid?

Article 43 specifies that the levelised costs need to be updated at least every year. The update of the levelised costs impacts on the maximum amount of aid that can be granted. Once the aid is granted to an installation, payment of the aid can take place in line with the support period set out in the conditions of the scheme (until depreciation). Adjustments in the levelised costs would therefore only impact on new applications for which the aid was not yet granted.

197. Is cost plus methodology appropriate for a calculation of the internal rate of return?

Member States are not restricted to using a specific calculation methodology for the determination of the internal rate of return. However, in setting the level of return, Member States must respect the limits set out in Article 43(6) of the GBER.

Article 44:

198. In which circumstances would Article 44(2) of the GBER apply?

Aid in the form of reductions in environmental taxes under Directive 2003/96/EC can be exempted from the notification requirement contained in Article 108(3) TFEU if the conditions contained in Article 44 of the GBER are fulfilled. Article 44(2) of the GBER provides that beneficiaries must at least still pay the applicable minimum level of taxation set by the ETD. The minimum level of taxation referred to in the GBER is the respective minimum level listed in Annex I to the ETD. In other words, Article 44 of the GBER can only be applied in cases where tax reductions are given to some undertakings or groups of undertakings while these still pay taxes equal or above the minimum levels contained in Annex I to the ETD. In such cases, all other conditions of Article 44 of the GBER should equally be complied with.

Article 45:

199. Can the definition of "hazardous substances" and/or "environmental damage" include concrete and other materials associated with permanent structures in order to clear derelict or brownfield land?

Article 45 of the GBER specifies the conditions for granting aid for the remediation of contaminated sites. A contaminated site is defined in Article 2(121) as a site where there is a confirmed presence, caused by man, of hazardous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land.

The eligible costs are defined in Article 45(4) as the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

For determining whether a site is eligible for support, it is required that there are hazardous substances of such a level that they pose a significant risk to human health or the environment. The GBER does not provide further specific conditions and therefore it does not exclude that such risk relates from derelict or brownfield land, as long as they pose a significant risk to human health or the environment.

200. Would a derelict building in a dangerous state of repair be a hazard to health?

Under this provision, it is required that there are hazardous substances present at the site, making it a contaminated site. Only decontamination (i.e. the removal of these hazardous substances) of contaminated sites could be caught by the notification exemption contained in Article 45 of the GBER.

Article 46:

201. Is Article 46 applicable to aid for a heating distribution network favouring greenhouses? If so, can all the investments costs in order to use and transport the waste heat from an existing power plant to the users be considered as costs for the "distribution network"?

The scope of Article 46 is not limited to cities and can also relate to the heating of business areas/industrial zones. The expansion of district heating to industrial zones is encouraged and promoted under the Energy Efficiency Directive (see Annex VIII). However, the district heating network needs to be energy efficient as defined in Article 2(124) of the GBER.

In the event of an existing power plant, the additional investment costs can be considered as the costs of the distribution network as long as the investment is not an integral part of the production plant and the investment serves the purpose of a (controlled) distribution of heat to all the users. The network should benefit all users and indirect beneficiaries of the aid should be excluded, see for instance paragraph 35 of Commission decision N208/2010.

202. Can the duration of any clawback mechanism for operating profit not only equal the operating lifetime of the asset but also be shorter than this subject to the specific circumstances of a project?

Article 46 specifies the conditions for granting aid to district heating and cooling. The Article distinguishes between aid for the production plant and aid for the distribution network.

Article 46(5) caps the eligible costs for the distribution network to the investment costs. Article 46(6) limits the aid amount to the difference between the investment costs and the operating profit.

The clawback mechanism referred to in Article 46(6) serves to avoid that the aid amount exceeds the above mentioned difference. The GBER does not specify the design or duration of the clawback mechanism, but rather the purpose of a clawback mechanism and what it needs to ensure.

In view of the purpose of a clawback mechanism the duration of a clawback mechanism would logically equal the operating lifetime of the asset. Without excluding the possibility of a shorter duration, general circumstances that justify a shorter duration of the clawback mechanism cannot be identified ex ante.

203. Can the funding gap method be used under the GBER?

The criteria of identification of the eligible costs, at least for the distribution network of energy efficient district cooling and heating projects as set out in the GBER diverge from the "funding gap approach" as defined in point 32 of the EEAG as follows:

a) the GBER considers the *eligible costs* as the total investment costs less the operating profit (as defined in Article 2(39) of the GBER);

b) the EEAG, for the distribution network (point 76) enable to consider as eligible costs the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

Regarding the eligible costs under the GBER (point a above), it should be noted that, as stated in Article 2(39) of the GBER, only a positive operating profit is taken into account. If the operating profit of the investment over its lifetime is equal to zero (operating cost=operating benefit), the entire investment cost may be subsidised. If the operating profit is negative (operating cost > operating benefit), only the total investment costs may be subsidised.

204. In the case of district heating, should there be deducted one year operating profit or should there be taken into account costs during the first five years of the investments (as it was mentioned in the Community Guidelines on State aid for environmental protection (2008/C 82/01), point 82) or the entire lifetime of the investment (20 years)?

Aid for energy infrastructure, as well as for district heating network infrastructure under the GBER, cannot exceed the difference between the investment cost and the operating profit of such infrastructure. The operating profit shall be estimated over the entire economic lifetime of the investment.

205. Does this article apply to any heat generation facilities connected to a heat supply network?

Energy efficient district heating and cooling is defined in Article 2(124) of the GBER as "district heating and cooling which satisfies the definition of efficient district heating and cooling system set out in Article 2(41) and (42) of Directive 2012/27/EU. The definition includes the heating/cooling production plants and the network (including related facilities) necessary to distribute the heat/cooling from the production units to the customer premises." Article 46 of the GBER allows, under certain conditions, aid to be granted for energy efficient district heating and cooling.

If an investor is considering investment in both the production plant and the connecting distribution networks, these should be assessed as two separate investments, specific rules and specific aid intensities applying to each of them: the aid intensities under paragraph 3 would apply for the production plant and under paragraphs 6 would apply for the distribution network. The eligible costs for the respective parts are also different, as defined by paragraphs 2 (for the production plant) and 5 (for the distribution network).

Article 47:

206. What would an acceptable method for evaluating a "state of the art" investment be?

The state of the art is defined in Article 2(129) of the GBER as "a process in which the re-use of a waste product to manufacture an end product is economically profitable normal practice." According to the GBER, where appropriate, the concept

of state of the art must be interpreted from a Union technological and internal market perspective.

Beyond the state of the art would normally refer to new and innovative technologies, meaning new and unproven technologies compared to the state of the art in the industry, which carry a risk of technological or industrial failure and are not optimisation or scaling up of an existing technology.

For an example of a measure approved by the Commission in the waste sector, as going beyond the state of the art, please see the decision adopted in the case SA.37380, available on our website, http://ec.europa.eu/competition/state_aid/cases/249982/249982_1562944_119_2.pdf .

207. What is meant by "a conventional process"?

A conventional process should be understood as a process normally used by the recycling industry and which is economically profitable (corresponding to what is the state of the art).

Article 48:

208. How is the aid amount under Article 48(5) calculated?

In the case of investment aid for energy infrastructure the eligible costs are the investment costs.

The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment (i.e. aid amount = the investment costs – operating profit). Operating profit is defined in Article 2(39) of the GBER as "the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive", meaning that operating losses cannot be covered by aid.

Where an estimation of future operating profits is not possible ex ante, a clawback may be put in place.

209. If the electric line part of a project is eligible for aid under Article 48 of the GBER, how should the operating profit be calculated?

Operating profit is defined in Article 2(39) of the GBER as "the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive", meaning that operating losses cannot be covered by aid.

Under Article 2(39) of the GBER operating costs shall include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing of these.

Where an estimation of future operating profits is not possible ex ante, a clawback may be put in place.

210. How to ensure that the energy infrastructure projects are not split artificially in order to comply with the GBER notification threshold?

Energy infrastructure is defined in Article 2(130), but there are no pre-established criteria for the delimitation on an energy infrastructure project. Each project must be assessed individually, taking into account in particular the technical features of the projects, as well as its economic and administrative aspects.

It is not allowed to artificially split one project into pieces (e.g. with the aim of remaining under the notification threshold).

National authorities (and national energy regulators) must assess whether several projects receiving aid are separate projects, or if they are parts of a single project that was split artificially, on the basis of the detailed information they usually receive about the respective projects, including approvals, accreditations or licences for certain projects.

Article 49:

211. Is this provision applicable to financing risk analyses before starting clean-up of a contaminated location, specifying suitable clean-up methods, clean-up limits and usually alternative clean-up scenarios as well?

Aid under Article 49 of the GBER can be granted to finance risk analyses before starting clean-up of a contaminated location.

212. Do the environmental studies have to be related to a specific investment for environmental protection in order to comply with the requirement of Article 49(1)?

Article 49(1) clarifies that aid for environmental studies can only be granted if it serves the specific purpose for environmentally friendly investments mentioned in Section 7 of the GBER. Article 49(1) does not require that the study is linked to an individual investment.

Article 50:

213. What is the meaning of "wild fires of natural origin"?

Article 50 of the GBER only covers aid to compensate for damage caused by certain natural disasters. Wild fires caused by forest activity are excluded from the scope of the GBER, as they are not of natural origin, but are caused by accident, with civil damage liability of the human or company that caused it. In most cases where the Commission approved aid to compensate for damage caused by forest fires, declaring it compatible with Article 107(2)(b) TFEU, these events were qualified as exceptional occurrence (in cases of fires resulting in widespread loss) and not as natural disaster.

214. What is meant by "competent authority"?

"Competent public authorities" within the meaning of Article 50(2)(a) are public authorities or agencies responsible or entrusted to declare an event as a natural disaster. In its decisions, the Commission has accepted as competent authorities both national and regional authorities, as well as national or regional civil protection services or agencies.

215. Can we consider damage caused by exceptional snowfalls within the definition of avalanches?

The list provided in the GBER is comprehensive and includes all types of natural disaster for which aid can be exempted from the notification obligation. Exceptional snowfalls are not included in that list and cannot be considered as avalanches. Therefore, compensation measures for damage caused by heavy or exceptional snowfall would need to be assessed on a case by case basis following notification.

Article 52:

216. How is the funding gap approach to be implemented under the new GBER given that in past decision-making practice the costs to be taken into consideration (investment costs only or investments plus operating costs) were considered differently?

Article 52 of the GBER defines as eligible costs only the investment costs.

If a Member State would like to use a funding gap approach, it would still need to ensure that only investment costs are financed. A funding gap should therefore be calculated as follows: either (i) as investment costs - revenue = funding gap ; or (ii) if the Member State wishes to include operating costs in the formula, which is only possible if the operating costs do not exceed the revenues: investment costs + operating costs – revenue = funding gap (provided it is ensured that operating costs < revenues).

217. Can Article 52 be interpreted in the sense that economic funding gaps can also be considered as investment costs eligible for State aid? Can the aid be submitted in the form of a grant and is it limited to the amount of the gap or can it be higher?

Provided that all conditions of Article 52 are met (see also the preceding question and answer), the calculation of the aid to investment costs as the "economic funding gaps" is possible. It can be granted in the form of a grant. However, the aid has to be limited to the minimum and has to be established on the basis of an open tendering procedure.

218. Can one apply the Broadband Guidelines by analogy? Does this also include the application of the access criteria?

Article 52(4) of the GBER requires that the network operator grants fair and non-discriminatory access to the network and as widely as possible (i.e. passive and active). Where appropriate, Article 52 of the GBER should be read consistently with the relevant provision of the Broadband Guidelines. The Broadband Guidelines, in particular points 42, 78(g) and (h) and point 80 specify in more detail the requirements which need to be met to fulfil the access criterion. These requirements therefore have to be applied as well to State aid granted for broadband networks under the GBER.

219. Can the Commission confirm that the active elements of a broadband network (optical systems, WDMA equipment, routers, etc.) are eligible on the basis of Article 52(2)(c) and (d)?

We agree with the proposed interpretation. Investment costs for the deployment of basic broadband or next generation access (NGA) networks can include costs relating to passive and active elements of a broadband network.

220. Can the Commission confirm that granting aid for the active elements in case of upgrading a basic broadband infrastructure to an NGA network is also allowed on the basis of Article 52(3)?

The upgrade of a basic broadband infrastructure to an NGA network can be eligible for State aid under Article 52 of the GBER provided that the area of intervention is NGA white, as required under Article 52(3) of the GBER – and also respecting the other conditions described in the GBER – in particular with regard to full and effective unbundling.

221. Could the GBER be used to provide aid directed at broadband infrastructure built in white intervention areas under certain compatibility or threshold conditions? The Commission has indicated that the duct access obligation that must be met for NGA deployments must be met on an "open access" basis i.e. the duct infrastructure in the white NGA intervention area must be available by the supplier for any wholesale communications service regardless of whether it is for the purpose of delivering NGA or business connectivity services.

For aid granted under the GBER, the network operator must offer the widest possible active and passive wholesale access, under fair and non-discriminatory conditions. The network operator should therefore ensure access to the passive infrastructure – duct access in your question – for any wholesale communications service, regardless of whether it is for the purpose of delivering NGA, or business connectivity services.

222. What are the applicable tender rules and procedure?

The requirement to observe a "competitive selection process" in granting State aid in accordance with the provisions of the GBER should be interpreted consistently with the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks. As stated in Article 52(4), the selection process has to respect the principle of technology neutrality.

For reference, among the relevant provisions of the Broadband Guidelines, more notably point 78(c) of the Broadband Guidelines specifies that: "Competitive selection process: Whenever the granting authorities select a third-party operator to deploy and operate the subsidised infrastructure, the selection process shall be conducted in line with the spirit and the principles of the EU Public Procurement Directives . It ensures that there is transparency for all investors wishing to bid for the implementation and/or management of the subsidised project. Equal and non-discriminatory treatment of all bidders and objective evaluation criteria are indispensable conditions. The competitive tender is a method to reduce budgetary costs, to minimise the potential State aid involved and at the same time reduces the selective nature of the measure insofar as the choice of the beneficiary is not known in advance. Member States shall ensure a transparent process and a competitive outcome and shall use a dedicated central website at the national level to publish all on-going tender procedures on broadband State aid measures."

223. Is it possible to provide aid for implementation of projects involving the upgrade of NGA network to the standard of high-speed networks with parameters of at least 100 Mbps to the end user?

The question concerns whether Article 52(3) of the GBER, which states that investment aid for broadband networks is possible for investments located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years, should be interpreted as allowing aid under the GBER for the deployment of an "ultra-fast" NGA network in an area where regular NGA infrastructure exists.

The GBER is silent as regards "ultra-fast" NGA networks, and a literal reading of the GBER would exclude a legal basis to accept such an interpretation. Article 2(138) of the GBER describes NGA networks as advanced networks which have certain characteristics including very high speed (but without providing any figure in terms of Mbps). The GBER further sets out that at the current stage of market and technological development, NGA networks are: (a) fibre-based access networks (FTTx), (b) advanced upgraded cable networks and (c) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber. "Ultra-fast" NGA networks would fall under these categories. In this case, the GBER makes no distinction between "ultra-fast" NGA networks and regular NGA networks, and thus Article 52(3) could not be used as a legal basis to allow aid for investment into "ultra-fast" NGA networks where there exists regular NGA infrastructure.

Moreover, the GBER should cover only those cases where the aid is not expected to significantly distort competition. In the case of upgrading of regular NGA infrastructure to "ultra-fast" NGA, there may be a risk that incumbents are favoured because they can use the GBER aid to upgrade their infrastructure. For these reasons the GBER would not be adequate.

224. Do the costs of purchase, lease or rent of existing (new or used) infrastructure (in particular the long-term lease on the basis of IRU agreement) shall be considered as eligible costs within the meaning of Article 52(2) of the GBER?

Such costs shall be considered as eligible costs and therefore falling within the scope of Article 52(2) of the GBER since the list of eligible costs as defined in this Article include all investment costs which refer to the deployment of basic broadband networks, next generation access networks and a passive broadband infrastructure. Please note however that such investment shall take place in areas which are either "basic white" or "NGA white", as required under Article 52(3) of the GBER.

Article 53:

225. What is meant by "cultural and natural heritage"?

The formal recognition as cultural or natural heritage by the competent public authorities constitutes a condition for granting aid under Article 53(2)(c) . The GBER does not define such recognition procedure as this does not fall within the remit of the European institutions. Therefore, it is for the concerned Member State

to decide which projects or activities can be declared as cultural or natural heritage. As soon as that project or activity is formally recognized as cultural or natural heritage by a competent public authority of this Member State, the condition for application of Article 53 would be deemed to be fulfilled.

226. Is it possible to apply the provisions of this Regulation on the aid for culture and heritage conservation concerning zoos?

In light of the obligations imposed on zoos by Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, and the recognised importance of natural habits and species (as evidenced e.g. by the Habitats Directive (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora)) we consider that zoos can qualify as natural heritage, provided they are formally recognised as such by the relevant public authorities.

227. Is it possible to provide support under this Article to an international summer academy for culture and arts at an university?

An international summer academy for culture and arts taught at a university could a priori be considered as a cultural and artistic education activity in the meaning of Article 53(2)(e) of the GBER. Aid granted to support such academy could therefore be considered compatible with the internal market and exempted from the notification requirement of Article 108(3) TFEU, provided that it fulfils all the other conditions of Article 53 and of Chapter I of the GBER. In particular, teaching related to fashion and design, pursuant to Recital 72 of the GBER, cannot be considered as cultural.

Considering the nature of the activities described in your question (educational activities), we would also like to remind you that State aid rules, in the meaning of Article 107(1) TFUE, do not apply to measures concerning non-economic activities. Public education, i.e. education supervised and predominantly funded by the State, may be considered as a non-economic activity. The fact that students have to pay tuition or enrolment fees would not change the non-economic nature of public education, provided that the service remains predominantly funded by the State. This also concerns universities.

228. Which authorities could qualify as "competent public authorities" in the meaning of Article 53(2)(b)?

Public authorities of a Member State can qualify as "competent authorities" within the meaning of Article 53(2)(b), provided national rules entrust them with the responsibilities to decide on the status of an activity as cultural and/or natural heritage.

229. Does Article 6(5)(h) of the GBER apply to all aid for culture and heritage conservation covered by the GBER or does it only apply to Article 53 (aid for culture and heritage conservation)?

Article 6(5)(h) applies to aid for culture and heritage conservation as defined in Article 53. It specifically refers to this Article only and does not apply to Article 54.

230. What is the best way to determine the fulfilment of the conditions referred to in Article 53 (4)(a)?

The wording of Article 53(4)(a) of the GBER indicates that space and time capacity are alternative indicators of the eligible costs of the infrastructure, not cumulative ones. Indeed, the provision states that:

For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

(a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes.

It follows from this wording that the costs listed in point (a) will be eligible either if 80% or more of the infrastructure's surface is used for cultural purposes (space capacity) or if during 80% or more of its total number of opening hours per year, the funded infrastructure is used for cultural activities (time capacity).

Taking the example of a museum with a souvenir shop and a café, the space capacity would be the relevant indicator, given that there are, inside one infrastructure, different spaces dedicated to cultural and non-cultural activities. The time capacity would be used if the same infrastructure is used at different points in time for cultural and non-cultural purposes (e.g. a concert hall is rented out for conferences).

231. Does the provision in the last sentence of Article 53(6) only apply if the creator/owner of cultural infrastructure is also the operator of the infrastructure?

Article 53(6) solely relates to investment aid to the creator/owner of cultural infrastructure and to the limitation of the aid amount that the creator/owner can maximally receive. Where the creator/owner of cultural infrastructure and the operator of that infrastructure are different entities Article 53(6) must be read as relating only to the creator/owner. The reference to "operating profit of the investment" in Article 53(6) would accordingly relate to the revenue generated by the creator/owner of the infrastructure (e.g. by renting the infrastructure to the separate operator). Likewise, where the creator/owner of cultural infrastructure is different from the operator of that infrastructure, it would be the creator/owner who would constitute the "operator" in the sense of the last sentence of Article 53(6) and who is allowed to keep a reasonable profit.

Where the creator/owner of cultural infrastructure and the operator of that infrastructure are different entities, it may be the case that investment aid to the creator/owner leads to operating aid being granted to the operator. If the separate operator receives operating aid, that operating aid would be subject to Article 53(7) and the operator would be allowed to keep at most a reasonable profit under that provision. However, investment aid to the creator/owner does not lead to operating aid to the separate operator if the operator has been chosen in an open, transparent and non-discriminatory tender procedure.

232. When is the formal recognition considered to be met?

A body of evidence consisting of factual circumstances and acts adopted by a local authority in an administrative or civil law context (such as a contract, a grant decision, or a donation act which specifies the objective of conserving natural heritage) should be sufficient. It is not required to have a formal recognition act adopted at national central level.

233. Regarding Article 53(6) and Article 55(10), are the two points cumulative or alternative?

The methods are alternative. Either the Member State operates an ex-ante deduction of future operating profit based on reasonable estimates or, when this is not possible, through the setting up of a clawback mechanism ex post.

234. What are the eligible costs for the purpose of the aid for culture and heritage conservation?

The GBER foresees alternative calculation methodologies as regards operating aid for culture and heritage conservation. A Member State can therefore choose to apply either Article 53(7) (i.e. amount of aid capped to operating losses and a reasonable profit over the relevant period) or Article 53(8) (maximum amount of aid capped at 80% of the eligible costs, if the aid does not exceed EUR 1 million) depending on the specifics of the situation at hand.

The authorities of a Member State are free to design their schemes under the GBER, provided that they comply with all the relevant requirements (general and specific conditions of the GBER). Therefore, Member States may choose to limit the type of eligible costs covered by operating aid in the context of a particular scheme.

235. How should the reasonable profit be determined according to Article 2(142)?

According to Article 2(142), the reasonable profit shall be determined with respect to the typical profit for the sector concerned. Such definition grants certain flexibility to Member States for the determination of the reasonable profit. Therefore, any of the different indicators mentioned in the SGEI package (rate of return on capital, return on capital employed, return on equity, return on assets or return on sales) can be used. However, regardless of the choice of the indicator, this needs to be justified by a benchmarking against the typical profits in the sector concerned.

For example, for museums and other cultural institutions, rate of return on sales may be easier to use. In this case, it should be ensured that the beneficiary does not achieve, after having received the aid, a return on sales that is higher than the typical return on sales achieved by purely commercial operators in the sector concerned.

In addition, the definition of reasonable profit in Article 2(142) also includes a safe harbour, defined as a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points. In the absence of other profit indicators benchmarked against the typical profits of the sector, this safe harbour will in any event be considered to be reasonable.

236. How is the reasonable profit based on the swap rate (Article 2(142)) calculated correctly? Does one take the swap rate which is valid at the moment when the contract starts for the whole approved period and does one leave this rate at that level? Or would one adapt the swap rate after each change by the Commission respectively with effect for the future? (Alternatively, is there a choice?)

Article 2(142) reads as follows: "'reasonable profit' shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable."

Article 2(142) makes clear that a reasonable profit is normally dependent on the sector concerned and hence does not have to be limited to the swap rate plus a premium of 100 basis points. However, it also contains the safe harbour provision that a profit of not more than the relevant swap rate plus 100 basis points is in any event reasonable. If the latter approach is chosen to determine a reasonable profit, the swap rate will depend on the compensation mechanism:

- if the compensation is determined ex ante, on the basis of reasonable projections, the swap rate that is valid at that moment (i.e. when the aid is granted) is to be used and can be kept at that level for the whole period.

- if the compensation is however determined ex post, on the basis of the actual incurred costs, the swap rates for each relevant period have to be applied (rather than one constant rate).

- likewise, if a clawback mechanism is used (and hence an ex post calculation is performed based on the actual figures), the swap rates for each relevant period have to be applied.

237. Is this provision applicable to the promotion of measures for energy-saving and energy-efficiency measures in cultural institutions?

As a general rule Articles 38 and/or 39 of the GBER (on energy efficiency) are the relevant articles to address investment aid for the promotion of energy-saving and energy-efficiency measures.

Where energy efficiency measures are carried out for the benefit of cultural institutions, they may also be covered by Article 53 (investment aid for upgrade of the cultural infrastructure). If the measures were to be considered as cultural aid in the meaning of Article 53, they would need to fulfil all the conditions of Article 53 and of Chapter I of the GBER in order to be considered compatible with the internal market and to be exempted from the notification requirement of Article 108(3) TFEU.

Article 54:

238. How much of the eligible costs can be covered?

Article 54 lists the specific compatibility criteria applicable to aid schemes for audiovisual works. Its paragraph 7 clarifies that aid intensities of more than 50% of the eligible costs are possible for difficult audiovisual works. Article 2(140) defines "difficult audiovisual works" as works identified as such by Member States on the basis of pre-defined criteria. These may include works whose sole original version is in a language of a Member State with a small territory or population or in a language that is only used in part of a Member State or only by a part of the population of a Member State.

239. Is it envisioned that audiovisual works, as covered by Article 54 of the GBER, can include aid to video game companies for products which are judged to meet the culture test as set out by the national tax scheme?

No, Article 54 of the GBER (aid schemes for audiovisual works) does not apply to aid for video games. Recital 72 of the GBER clearly states that " […] In general, activities which, although they may present a cultural aspect, have a predominantly commercial character because of the higher potential for competition distortions, such as press and magazines (written or electronic), should not be covered. Furthermore, the list of eligible cultural purposes and activities should not include commercial activities such as fashion, design or video games."

240. Article 54(4) lists conditions with regard to territorial spending obligations. Reference is made to the "minimum level of production activity in the territory". Does this refer to local expenses or to the percentage of film shooting taking place in that territory?

Territorial conditions requiring a minimum level of production activity in the territory of the Member State or part of it can be imposed in various ways:

- A film fund may require a certain level of local spending (direct territorial conditions).
- A film fund may also impose territorial spending conditions in an indirect way, for example by requiring a certain part of the film shooting to take place in the territory of the Member State or part of it.

Both types of territorial conditions are covered by the "minimum level of production activity". The minimum level of production activity is always expressed as a percentage of the overall production budget of the film – therefore, any film shooting activity requirement must be "translated" into the corresponding share of the film's overall production budget.

When setting territorial requirements (in particular indirect ones), Member States must ensure that this does not mean that the aid is reserved for specific production activities or individual parts of the production value chain (Art. 54(9) of the GBER). For instance, whereas the Commission's services generally accept the requirement for a certain part of the film shooting to take place in the territory of the Member State or part of it, it is not possible to link the aid to the requirement that specific post-production activities take place in the territory or that specific studio infrastructures are used.

Article 55:

241. Can aid for sport and multifunctional recreational infrastructures (marinas) be granted under the GBER?

Marinas are useable for sports such as amateur sailing and could also provide for other recreational activities (tourism, culture).

Article 55 of the GBER allows investment aid sport and multifunctional recreational infrastructures (except for hotels and leisure parks).

Under Article 55(10) of the GBER the aid amount may cover the funding gap so that the aid intensity would normally be higher than under the applicable regional aid rules.

Article 55(12) of the GBER also provides for an alternative (optional) method for calculating maximum amount of aid (80% of eligible costs in case of aid not exceeding EUR 1 million) but in that case the remaining 20% of financing has to be aid free.

242. Does the GBER also cover investments in sport infrastructure in the form of creating possibilities for accommodation of athletes and their accompanying personnel, sauna, gym, massage rooms as well as seminar rooms and cafeterias?

This type of investment would be covered by Article 55 provided that it is directly linked to the sports infrastructure and that it fulfills the conditions specified in the GBER (Article 55 and the general requirements).

243. Is it possible to use rules for operating aid for sport and multifunctional recreational infrastructure to finance the operation of existing sport infrastructure (e.g. swimming pool, stadium)?

It is possible to use the provisions on operating aid of Article 55 of the GBER to finance the operation of existing sport infrastructure, provided it complies with that Article and the general requirements set out in the GBER. In this respect, particular attention is drawn to the fact that Article 6 of the GBER (and in particular its paragraph 2) must be complied with. If the beneficiary is a large enterprise, the condition laid down in Article 6(3)(b) of the GBER applies.

244. Is it possible to provide operating aid for sport infrastructure to an entity which has the infrastructure in its lease? If so, is it possible that the period of the lease of the infrastructure is shorter than a year?

It is possible to provide operating aid for sport infrastructure to an entity which leases the sport infrastructure. According to Article 55(9) of the GBER: "For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as […] rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid". On this basis, rent costs are accepted as eligible operating costs. Please note that the maximum allowed under Article 4(1)(bb) of the GBER amounts to EUR 2 million per infrastructure per year. It is possible that the period of lease of the infrastructure is shorter than a year but the overall aid granted to the infrastructure must always remain below EUR 2 million and therefore must be adapted pro rata.

Article 56:

245. Is this article applicable to the construction of water management infrastructure where the subsequent operation of the infrastructure is carried out by the aid recipient (the investor) without delegating operation to a third party? Could both public entities (such as municipalities) and private entities be aid beneficiaries?

The provisions of Article 56 cover only the granting of investment aid to the infrastructure owner. Therefore, an "in house" operator benefitting from the aid must comply with the provisions of Article 56(3). The conditions of Article 56(4) apply only when the owner of a given infrastructure entrusts its operations to "a third party".

246. Can this article be applied to the construction of business incubators for SMEs which provide favourable conditions for renting office space and advice for budding entrepreneurs?

The Article block-exempts the aid granted to the infrastructure owner. We understand that by referring to "favourable conditions", you refer to State aid that might be granted to SMEs renting such office spaces at conditions that are not market conform. Any State aid involved in the granting of favourable conditions to entrepreneurs (e.g. start-up aid) will have to comply with the relevant GBER provisions or be notified. Please note that this should not be a bespoke investment.

In addition, please note that Article 56 only applies if no other provision of the GBER applies, such as specific provisions for infrastructure funding.

247. Can the Commission define the relationship between Article 56 and Decision SA.36346 (2013/N), which found that the development of land on industrial sites does not involve State aid?

The existence of State aid in a particular situation is outside the scope of the GBER, as the latter only concerns compatibility requirements for investments that are aid. Only when State aid cannot be excluded at the level of the infrastructure owner could the provisions of the GBER be applicable if all the other requirements are met.

In the case SA.36346, the Commission concluded that no aid was involved on the basis of the following characteristics of the measure. Firstly, the financial transfers from the federal level to the communes is considered an intrastate transfer and therefore outside the scope of Article 107(1) TFEU. In addition, activities that fall within the public remit are not considered economic activities and again outside the scope of Article 107(1) TFEU. In case the operator (in the case of the GRW decision, the "developer") is chosen via a tender procedure, it does not benefit of any aid either. Last but not least, as regards bodies implementing the measure that were not municipalities, they have a legal obligation to pass on/refund any advantage derived from the sale of the land.

In these circumstances, the Commission concluded that that particular measure did not constitute State aid. In other cases, aid may be involved but it can be considered compatible provided the conditions of the GBER provision are met.

248. Is this provision applicable to investment in the rehabilitation/modernisation of old rails station buildings? If yes, can it be applied in cases where the buildings are owned by private transport operators?

Yes, this article should be applicable if State aid is involved at the level of the infrastructure owner, independent of whether this is a public or private owner.

249. Is this provision applicable to infrastructure investment aid relating to the construction of normal rental housing?

Yes, provided that all the conditions regarding the operators and users of the infrastructure are met and that the thresholds are not exceeded.

250. Are the users of the infrastructure covered by the GBER exemption from notification?

Infrastructure users that pay a market price are not considered aid beneficiaries. The market price can be determined via a tender procedure (rather seldom on the user level) or via benchmarking consisting on a comparison of charges across a sufficient number of suitable comparable infrastructures or via the incremental cost approach.

In principle a scheme for aid granted to municipalities and other public institutions for preparation of industrial zones and related to technical infrastructure (buying, preparation and revitalization of land, ensuring its connection to utilities, construction and modernization of transport infrastructure and buildings) would indeed be a scheme that, if involving State aid, would seem to be covered by Article 56 of the GBER. Please note, however, that Article 56 only applies if no other more specific provision of the GBER applies, such as Article 48 relating to energy infrastructure. Also note that all the requirements of Article 56 should be met, including the prohibition as regards dedicated infrastructure and the total investment cost of maximum EUR 20 million (eligible cost also is capped at EUR 10 million).

251. Is this provision applicable to financing of building or modernization of water management infrastructures, like sewage treatment plants, sewerage system and water pipelines?

As long as the investment is not covered by other provisions of the GBER (e.g. Article 47 regarding waste management), Article 56 could be applicable. However, the modernisation of the infrastructure implies that the operator should also pay proportionately more for being allowed to use and operate the new/modernised infrastructure. If there is no new procurement procedure, there is a risk that the operator receives an advantage as it would not pay "market-conform" operating fees in accordance with the upgraded infrastructure. If the payment of a "market-conform" price cannot be ensured, the operator would receive operating aid which would in principle not fall under the GBER.

252. Can the electric car charging stations (on a highway) be financed under the provision of local infrastructure?

Electric car charging infrastructures cannot be considered as energy infrastructures within the meaning of GBER (Article 2(130) of the GBER defines what constitutes an energy infrastructure). Therefore Article 48 of the GBER, investment aid for energy infrastructure, does not apply. Article 56, investment aid for local infrastructure, may be applicable for such investments as long as the requirements of that Article and GBER Section 1 are respected.

253. Is it correct that for merely the sale of a building and the grant of a guarantee the local authority is not obliged to organize an open, transparent and non-discriminatory procedure? If this is not correct could you please indicate the conditions for this procedure?

The documents mentioned above address different scenarios. In the Commission Communication on State aid elements in the sales of land and buildings by public authorities as well as the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, the Commissions shares its assessment of conditions that should be met in order for a measure not to involve State aid. The GBER sets out criteria to be met by measures which are State aid in order to be found compatible.

Therefore, if the conditions of the two documents mentioned in the previous paragraph are fulfilled, the Commission considers that there is no State aid involved in the measure. Furthermore, Article 56 refers to the situation where infrastructure is being constructed or upgraded (and not to the simple sale of land).

254. Could a project regarding the realization of a park & ride provision for railway travellers be considered a local infrastructure?

Provided that the measure entails the granting of State aid for the owner of that infrastructure, the referenced type of infrastructure could be covered by Article 56 of the GBER.

255. Please confirm that for the purpose of calculating the eligible cost under paragraph 6, it is possible to use the method identified by the European Commission in the context of the Structural Funds for revenue-generating projects.

In line with other measures concerning investment aid to an infrastructure project, in order to be covered by the GBER, the eligible costs shall be calculated in accordance with the following methodology: Total investment costs less operating profit (as defined in Article 2(39) of the GBER). That difference may be subsidised with State aid. As stated in Article 2(39), only a positive operating profit is taken into account. If the operating profit of the investment over its lifetime is equal to zero (operating cost=operating benefit), the entire investment cost may be subsidised. If the operating profit is negative (operating cost > operating benefit), only the total investment costs may be subsidised.

In line with previous practice for cases co-financed by structural funds, the Commission can accept, for the calculation of operating profit for the purpose of Article 56 GBER, a discount rate of 4%.

4. Chapter IV – FINAL PROVISIONS

Article 58:

256. How should this provision be read in conjunction with the "applicability provisions" of various Frameworks and Guidelines, which typically specify that "unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was granted"?

According to the provisions of Article 58(1), the GBER will apply to any individual aid granted before 1 July 2014 (being generally more generous than the previous GBER). The GBER is a higher ranking legal instrument, having precedence over specific Guidelines. Therefore, only for cases which cannot be covered by the current GBER, the Commission services would apply the Guidelines in force at the time of the granting of the aid (such Guidelines should still be more favourable for the Member States than the new Guidelines, which are generally stricter).

257. What are the provisions for the transitional period?

The GBER entered in force on 1 July 2014. Its entry into force was immediate, without a transitional period. According to its Article 58(1), it can be applied for individual aid measures also before its entry into force, provided that the measures in question fulfil all its conditions.

258. Do individual aids granted before the entry into force of this Regulation need to fulfil the obligation of communication laid down in Article 11(a)?

According to Article 3, the GBER applies to aid that fulfils all the conditions of its Chapters I and III. As regards the individual aid granted before its entry into force, Article 58(1) would derogate from this application of Chapters I and III only with regard to the application of Article 9 (publication and information obligations). However, we would stress that this interpretation is only for the benefit of the application of the GBER to a particular individual aid. As regards new aid measures, the Member States should also comply with Chapter II of the Regulation to be able to effectively monitor how the GBER conditions are complied with.