



5 June 2007

STATE AID Draft General Block Exemption Regulation

Executive Summary

A modernised state aid policy for growth and jobs

- BUSINESSEUROPE supports the Member States redirecting aid towards horizontal objectives of common interest, such as aid for research and development and aid in the form of risk capital, and targeting it to identified market failures.
- BUSINESSEUROPE supports the putting into place of a general block exemption regulation to exempt more state aid from the notification obligation and minimise bureaucracy.
- Increased flexibility to grant aid for commonly agreed politically desirable objectives should be accompanied by a tightening of the rules in other, more harmful, state aid areas and a strengthening of control of these more distortive types of aid.

The draft general block exemption regulation

- Overall, BUSINESSEUROPE supports the draft regulation. It endorses the simplification of and increase in the individual notification thresholds and welcomes the proposed scope of the regulation.
- BUSINESSEUROPE welcomes the regulation only applying to transparent aid and supports the provisions on cumulation.
- BUSINESSEUROPE is worried that requirements regarding an incentive effect will give rise to legal uncertainty and increase administrative burdens.
- Increased transparency and monitoring are essential to counterbalance the risks of decentralisation.
- BUSINESSEUROPE supports the integration of the rules on regional aid, environmental aid, training aid, investment and employment aid, and aid in the form of risk capital in the general block exemption regulation.
- With respect to aid for research and development, BUSINESSEUROPE is very pleased that it is proposed to also let large firms benefit from exemption although it rejects the use of the linear innovation model for assessing R&D projects.



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STATE AID Draft General Block Exemption Regulation

1. INTRODUCTION

BUSINESSEUROPE is pleased that a draft proposal for a general block exemption regulation has been published allowing stakeholders to express their views at an early stage. The purpose of the general block exemption regulation is to exempt more state aid from the notification obligation and to harmonise requirements as regards transparency, monitoring and an incentive effect. The result is to make it easier for Member States to grant state aid since they would no longer have to notify aid measures and await Commission approval before the aid can be awarded. This should minimise bureaucracy for the Member States and the Commission.

The draft forms part of the implementation of the State Aid Action Plan, which outlines the guiding principles for a comprehensive reform of the state aid rules. In particular, the Commission intends to use the state aid rules to encourage Member States to contribute to the Lisbon strategy by focusing on commonly agreed, politically desirable objectives. In addition, the Commission wants to rationalise and streamline procedures so that the rules are clearer and attention is focused on more distortive types of aid.

Considering that block-exempted aid in the draft regulation would relate to subsidies which fulfil horizontal objectives in line with the EU's growth and jobs objectives (such as aid for research and development and aid in the form of risk capital) which, in turn, would enable the Commission to focus its resources more effectively and efficiently on more harmful types of aid, BUSINESSEUROPE is pleased to note that the draft general block exemption regulation in effect matches the objectives of the Action Plan.

By and large, BUSINESSEUROPE thus supports the draft regulation and it appreciates the contribution that the draft could make to the objective of better targeted aid. Having said this, BUSINESSEUROPE is concerned that the other objective of less state aid may suffer if the Member States have more flexibility to grant aid. Also, BUSINESSEUROPE has concerns about further decentralisation of state aid control. Decentralisation requires Member States to police their own activities and this would amplify the risk of legal uncertainty and differing interpretations emerging across the EU.

It is therefore important that new rules are clear, that all relevant information is accessible about block-exempted aid schemes, and that the Commission carefully monitors their implementation. The Commission should also tighten the rules in



other, more harmful, state aid areas and strengthen control of these more distortive types of aid.

Considering that BUSINESSEUROPE, in its response to the State Aid Action Plan, also endorsed plans to address problems related to enforcement in the state aid area and to make better use of national courts, it suggests that the Commission should also elaborate further on the role of national judges with respect to the application of block exemption regulations. This could counterbalance the mentioned risks of further decentralisation. BUSINESSEUROPE thus urges the Commission to publish a vademecum which clarifies to which national courts companies can go and what they can claim, etc.

BUSINESSEUROPE welcomes taking part in discussions on what policy to follow in this area and its views and recommendations are set out below. Considering that the draft sets out what the criteria for a new block exemption regulation may be, BUSINESSEUROPE's views are preliminary. It will complement its views when the final proposal is available. With respect to the section on aid for environmental protection, BUSINESSEUROPE will comment later when commenting on the new draft guidelines.

2. DRAFT GENERAL BLOCK EXEMPTION REGULATION

Scope

Overall, BUSINESSEUROPE supports the proposed scope of the draft. It is especially pleased about the express exclusion from the scope of the regulation of aid measures which involve the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order regarding illegal aid although it suggests that it is clarified, possibly in a memorandum to the regulation, in which legislative act the exclusion should be made explicit (e.g. implementing legislation or in the law which establishes the aid).

BUSINESSEUROPE notes that it appears from Article 1 para 3 (e) that the draft regulation will only apply to aid granted to undertakings active in the steel sector when training aid and aid for disadvantaged and disabled workers is involved. This would amount to a change of policy since the Multisectoral Framework states that steel companies will not be eligible for regional investment aid; and rescue and restructuring aid is banned by a specific Communication on this subject. In respect of R&D and environment aid however, steel is subject to the same rules as other sectors in accordance with the respective framework and guidelines. BUSINESSEUROPE sees thus no logic in treating steel differently from other sectors in respect of R&D and environmental aid.

BUSINESSEUROPE also suggests that a more precise definition is given of those 'specific sectors of economic activity within manufacturing or services' to which the draft shall not apply (Article 1 para 4).



Definitions

Although it is understandable that at the beginning of the draft, in Article 2, common definitions of standard concepts are listed whilst more specific definitions for different types of state aid (such as aid for environmental protection, research and development) are outlined later, under the sections which deal with those different types of aid, it may be more practical if the definitions of those concepts which are also mentioned earlier in the draft (and not only under their specific sections) are also explained in Article 2.

With respect to the definition of tourism activities, BUSINESSEUROPE suggests that it is clarified whether other forms of accommodation (such as B&B, camping, tourist village, spas) are included.

Transparency of aid

BUSINESSEUROPE welcomes the general block exemption regulation only applying to transparent aid. It suggests also mentioning the obviously transparent grant as another example under Article 3 para 1. For the sake of clarity and consistency with Article 19, BUSINESSEUROPE also suggests to specify at para 3 (c) that energy tax rebates can be given without a cap. Additionally, with respect to fiscal measures, it should be clarified that measures consisting in a reduction of social contributions on labour are also covered.

Individual notification thresholds

BUSINESSEUROPE supports the simplification of and increase in the individual notification thresholds as set out in Article 6 of the draft.

Cumulation

BUSINESSEUROPE in principle also supports the provisions on cumulation as set out in Article 7 of the draft, although they could be difficult for national and local authorities to apply (especially in relation to the wording “partly or fully overlapping” and the different wording in the *de minimis* regulation). BUSINESSEUROPE therefore suggests that the exact working in practice of these provisions is clarified, with concrete examples, in a memorandum to the regulation.

Incentive effect

It is proposed in the draft to require specific proof of an incentive effect for aid to be block-exempted. In the past, in the context of R&D aid, BUSINESSEUROPE warned that the Commission should not be too strict when requesting evidence in relation to the requirement that aid has a clear incentive effect and leads to activities in addition to a firm’s normal day-to-day operations. In practice it is very difficult to prove that certain activities or projects would not have been carried out in the absence of the aid. BUSINESSEUROPE is worried that requirements regarding an incentive effect will give rise to legal uncertainty. They place companies in a situation where they cannot be certain whether the documentation



provided to the authorities is sufficient. Extending these requirements to other aid measures than R&D aid would also lead to an increase in burdens which is difficult to reconcile with better regulation objectives. Having said this, BUSINESSEUROPE regrets that the criteria related to increased speed and increased total aid-related spending generally (and not only on the project or activity in question) that feature in the Framework for Research, Development, and Innovation are not included in the draft.

Transparency and monitoring

BUSINESSEUROPE is pleased that the issue of transparency and monitoring is emphasised in the draft. Enhanced monitoring and increased transparency are important tools to counterbalance some of the risk of more decentralisation. BUSINESSEUROPE especially supports the proposal to make express reference to the Commission identification number a condition for exemption.

To further enhance transparency and monitoring, BUSINESSEUROPE suggests that the national annual reports on the application of the general block exemption regulation are published on the internet and that Article 9 para 8 is strengthened by making notification of future aid measures mandatory in case a Member States does not provide the necessary information to monitor application of the regulation.

3. BLOCK EXEMPTED AID MEASURES

Regional aid

BUSINESSEUROPE supports the integration of the block exemption for regional investment in the general block exemption regulation although it suggests in the context of Article 11 para 7 that the requirement that assets acquired shall be new applies to all enterprises and that in, the context of Article 11 para 2, a single term of 4 or 5 years is fixed for all enterprises.

In addition, BUSINESSEUROPE suggests that it is clarified in Article 11 para 5 that the estimated wage costs relate to the entire amount foreseen for two years.

Lastly, with respect to Article 11 para 5 (b), BUSINESSEUROPE believes that the 750 employees threshold should be reduced for enterprises involved in the processing and marketing of agricultural products.

Investment and employment aid

With respect to investment and employment aid for SMEs, BUSINESSEUROPE supports the increase of the applicable basic aid intensity to 20% for small enterprises and 10% for medium-sized enterprises.



Environmental aid

Although, as said above, we will comment later on the section on environmental aid, BUSINESSEUROPE supports inclusion of this type of aid in the general block exemption regulation.

Risk capital

BUSINESSEUROPE also supports exemptions for aid in the form of risk capital in the regulation on conditions which mirror those in the risk capital guidelines although it suggests to clarify in Article 23 para 4 that risk capital measures should be available for small enterprises wherever they are located.

Training aid

With respect to training aid, BUSINESSEUROPE supports the increase to €2 million of the applicable notification threshold and the clarification of definitions although it believes that the distinction between general and specific training should be clarified by means of more examples and should not be dependent on any recognition, certification or validation by public authorities or bodies.

BUSINESSEUROPE also suggests that it is clarified in the regulation, possibly in the recitals or a memorandum, under what conditions training measures are general measures which do not constitute state aid, in line with recital 6 of the existing block exemption on training aid. Such clarification would be very useful as guidance to determining whether training measures do not fall within the scope of Article 87 (1).

Research and development aid

With respect to aid for research and development, BUSINESSEUROPE is very pleased that it is proposed also to let large firms benefit from exemption.

BUSINESSEUROPE's views about the linear innovation model which is used for assessing R&D aid projects are set out in its comments of 30 May 2006 on the DG Competition staff paper on the draft Framework for Research, Development and Innovation.

With respect to state aid for a R&D project being carried out in collaboration between research organisations and undertakings (Article 25 (3) last sentence), BUSINESSEUROPE suggests to complement the condition that the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from research organisations to that project, may not exceed the applicable aid intensities for each benefiting undertaking, with the conditions under which contributions from research organisations to a collaborative R&D project with undertakings constitute aid, in line with section 3.2 of the



Framework for Research, Development, and Innovation. In addition, some clarification, e.g. through clear operational guidelines in a memorandum, to determine the combined aid intensity from direct government support and indirect aid through the contributions from research organisations, would facilitate application of the provision.

Lastly, BUSINESSEUROPE suggests that it is clarified how to resolve the problem that the definition of ‘experimental development’ is covered by the definition of ‘innovation’ whilst the enabling Regulation 99/98 does not specifically mention innovation.

Transitional provisions

It follows from article 35 in the draft General Block exemption Regulation, that the regulation shall apply to aid granted before its entry into force.

BUSINESSEUROPE notes that the problems with a retroactive effect have been emphasized by at least two advocate generals in relation to *de minimis* aid. It was questioned whether there was a legal basis for giving the *de minimis* rule retroactive effect because of the fact that *de minimis aid* schemes derogate from the obligations under Article 88 (3) of the Treaty. This argumentation can be used analogously in the context of block exempted aid, because such aid is also exempted from the obligations under Article 88 (3). BUSINESSEUROPE suggests that the Commission clarifies how to resolve this issue.

Better regulation

The draft regulation, when adopted, will simplify and consolidate state aid rules and reduce bureaucracy for the Member States and companies (notwithstanding the introduction of new burdens in the context of the incentive effect). In this respect, BUSINESSEUROPE welcomes the contribution of the project to the Commission’s better regulation agenda. Having said this, BUSINESSEUROPE believes that an impact assessment carried out in accordance with the Commission’s impact assessment guidelines could provide valuable insights into the practical functioning of the block exemption regulation and provide the Commission in addition with an opportunity to assess and quantify any reductions in administrative burdens which will result from the new policy.