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STATE AID Revised Draft General Block Exemption Regulation

1. INTRODUCTION

BUSINESSEUROPE welcomes the publication of a revised draft proposal for a general block exemption regulation. It is pleased that some of its suggestions on the first draft have been included in the new draft. Unfortunately, there are still points which in BUSINESSEUROPE's view would improve the regulation if they were to be adopted. These points are set out below.

2. REVISED DRAFT GENERAL BLOCK EXEMPTION REGULATION

Scope

BUSINESSEUROPE notes that it appears now from Article 1 para 3 (e) that the draft regulation will also apply to aid granted to undertakings active in the steel sector when environmental aid is involved. This is an improvement considering that steel is not currently treated differently from other sectors in respect of all types of aid other than regional aid and rescue and restructuring aid. By the same token, however, R&D aid should be added to the list of exceptions in Article 1 para 3 (e).

Definitions

BUSINESSEUROPE believes that the changes to the definitions render the regulation more clear although it still believes that it should be clarified with respect to the definition of tourism activities whether other forms of accommodation (such as B&B, camping, tourist village, spas) are included.

Transparency of aid

As stated before, BUSINESSEUROPE welcomes the general block exemption regulation only applying to transparent aid. In the current draft, however, Article 5 para 1 lists certain types of aid which shall be considered to be transparent, while para 2 lists types of aid that shall not be considered to be transparent. This leaves a grey area in respect of types of aid listed in either of these paragraphs. Given the need for maximum clarity in a block exemption regulation, BUSINESSEUROPE proposes that Article 5 para 1 should contain an exhaustive list of examples of transparent aid, while para 2 should be removed. Such a change would remove uncertainty and ensure that the regulation was applied uniformly by Member States thus reducing some of the risks inherent to decentralisation of state aid control. In

this case, the obviously transparent grant should also be mentioned as another example. 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 still supports the simplification of and increase in the individual notification thresholds as set out in Article 6 of the new draft.

Cumulation

BUSINESSEUROPE in principle also supports the provisions on cumulation as set out in Article 7 of the draft, although they could still 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 repeats its suggestion that the exact working in practice of these provisions is clarified, with concrete examples, in a memorandum to the regulation.

Incentive effect

BUSINESSEUROPE notes that DG Competition is re-assessing the proposed criteria regarding the requirement that specific proof is given of an incentive effect for aid to be block-exempted (Article 8 para 3). As stated before, BUSINESSEUROPE is worried that these requirements 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. In any case, if the requirements were nevertheless to be upheld, BUSINESSEUROPE believes 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 should be included.

Transparency and monitoring

BUSINESSEUROPE is pleased that the issue of transparency and monitoring is still emphasised in the new 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 even though it notes that all aid taking the form of a fiscal measure is now excepted.

To further enhance transparency and monitoring, BUSINESSEUROPE would like to repeat its suggestions 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 still supports the integration of the block exemption for regional investment in the general block exemption regulation and it suggests again 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.

Investment and employment aid

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

Environmental aid

BUSINESSEUROPE still supports inclusion of environmental aid in the general block exemption regulation and it particularly welcomes the deletion of the word 'new' in Article 19 para 1.

Risk capital

BUSINESSEUROPE also still supports exemptions for aid in the form of risk capital in the regulation on conditions which mirror those in the risk capital guidelines. It also supports the proposed additional safeguards including the limitation as to the duration of the period during which a fund may decide to start investing into target companies.

Training aid

With respect to training aid, BUSINESSEUROPE still supports the increase to €2 million of the applicable notification threshold and the clarification of definitions although it still believes that the distinction between general and specific training should be clarified by means of more examples.

BUSINESSEUROPE also would like to repeat the suggestion 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 still proposed also to let large firms benefit from exemption. BUSINESSEUROPE welcomes the reference to prototypes and pilot projects under 'experimental development' but repeats that it has strong reservations about the linear innovation model which is used for assessing R&D aid projects. These reservations 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 would like to repeat its suggestion 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, BUSINESSEUROPE still believes that 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 again that it is clarified how to resolve the problem that the definition of 'experimental development' is covered by the definition of 'innovation' (see section 1.5 of the Framework for R&D&I) whilst the enabling Regulation 99/98 does not specifically mention innovation.

Better regulation

As stated before, BUSINESSEUROPE still 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.

Enforcement of general block exemption regulation

BUSINESSEUROPE suggests that the Commission elaborates further on the role of national judges with respect to the application of the general block exemption regulation in a vademecum.
