

GBER and Interreg

Final report

June 2023

This factsheet gathers State aid management practices which were presented by the Interreg 2 Seas, Baltic Sea Region, and North-West Europe Programmes at the online event on the 10th of September 2020 organised by Interact. The current version of this document was revised after the amendment of the General Block Exemption Regulation was published at the end of July 2021¹ after the Q&A document from Interact online event on State aid on 26 October 2021 was published and finally after the Commission formally adopted a targeted 2023 amendment to the GBER on 23 June 2023

List of abbreviations

Abbreviation	Meaning
BSR	Baltic Sea Region
CBC	Cross-border cooperation
DG Comp	Directorate-General for Competition
EC	European Commission
EFTA	European Free Trade Association
ERDF	European Regional Development Fund
ETC	European Territorial Cooperation
EUR	Euro
GBER	General Block Exemption Regulation
MA	Managing Authority
MS	Member State
NACE	Nomenclature statistique des activités économiques dans la Communauté européenne Statistical classification of economic activities in the European Community
NWE	North West Europe
SANI	State Aid Notification Interactive
RDI	Research Development Innovation
SARI	State Aid Reporting Interactive
SME	Small and Medium Sized Enterprise
TAM	Transparency Award Module

¹ Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), as last amended by Regulation (EU) 2021/1237 of 23 July 2021

TN	Transnational
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The application of the General Block Exemption Regulation has been one of the approaches to deal with State aid relevant projects in Interreg during the 2014-2020 programming period. As the current GBER was extended to 31 December 2026 it also constitutes the regulatory basis for the 2021-2027 generation of programmes granting State aids.

How to start?

To take advantage of GBER the programme or the Member State should inform the Commission that specific article(s) will be possibly used and that projects will be exempted from State aid provisions (e.g. the notification requirement). The requirements of GBER in general (eg. exclusions in Article 1.2 to 1.5 of GBER) and the ones specified in each of the articles (also called objectives) will be applied. In the programming period 2014-2020, the majority of programmes prepared the schemes covering various GBER objectives beforehand.

However, after the GBER amendment in July 2021 and the revision of Article 20 and the introduction of Article 20a, it is highly recommended to use for programmes 2021-2027 only these two articles created especially for Interreg and resort to other ones in case of necessity eg. when the level of EUR 2,2 million in Article 20 is exceeded or the project meets the requirements of other articles and the level of maximum intensity could be higher (e.g. when applying Article 25).

The amendment makes Article 20 convenient for the programmes due to the following points:

- Article 20 is open for all undertakings: large, medium-sized, and small enterprises while before it was directed at SMEs only.
- The eligibility catalogue in this article is the same as the eligibility catalogue in Regulation 481/2014 and the the eligibility in Art 39 - 44 of Interreg Regulation 2021/1059². The costs can be calculated based on Simplified Cost Options.
- Maximum aid intensity for Article 20 is optimised with the maximum co-financing rate in the Common Provisions Regulation (maximum 80%).
- Article 20 and 20a belong to the categories of aid that are not required to have or shall be deemed to have an incentive effect.

The amendment, with the addition of the new Article 20a, also introduced the concept of partial amounts of aid which are limited to 22 000 EUR per undertaking per project. Such aids can cover voucher schemes, training, and other low-value activities that

² With one exception of recoverable VAT. Amended Article 7.1 states that the value added tax charged on eligible costs or expenses that is refundable under the applicable national tax law shall not be taken into account for calculating aid intensity and eligible costs, in other words, refundable VAT is completely ineligible under GBER.

meet the criteria of being State aids. In the case of Article 20a, typical GBER reporting obligations do not apply, also the provisions on keeping the detailed records with supporting documentation for 10 years were removed however, normal provisions on keeping documentation apply³.

In Annex I you will find a sample of programmes and the objectives covered in the schemes in 2014-2020 period. Even though at the moment of registration many articles were selected, in practice only some of them were used i.e. the project content was covered by a specific block exemption.

What is a GBER scheme?

The GBER scheme is composed of two documents:

- the full text of the aid measure, which is normally published on the programme's website and,
- the summary information which is also called a block exemption sheet (the example is specified in Annex II to GBER) which is published on the DG Comp website.

The procedure of informing the Commission is also called SANI2 notification. Full text of the measure and the block exemption sheet must be available no later than **20 working days** following the entry into force the support measure (Article 11 (a) of GBER). This requirement does not apply to aid granted under Article 20a.

The EC attributes a case number to each scheme which is later used for reporting. It is recommended to put this number in afterward as well as in the full text of the measure to allow better linkage between the Commission's case register, the information sheet, and the full text.

In a scheme you need to inform DG Comp among others about the following facts:

- Name of the granting authority
- Purpose (which GBER article(s) will be used?)
- Duration (from when to when the aid will be granted?)
- Planned budget (how much it is planned to grant?)
- A statement that State aid rules will be observed.

³ The managing authority shall ensure that all supporting documents related to an operation supported by the Funds are kept at the appropriate level for a 5-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made .

(Article 82.1 of CPR).

In the footnote you can find the link to a model scheme prepared by Central Europe Programme for 2021-2027 and the corresponding summary which was published in the DG Comp cases database⁴.

Preparation of the scheme and the registration of the scheme

In the past, a set of articles to be covered by the scheme was chosen by the programme sometimes in cooperation with experts and is based on the priorities of the programme⁵. As mentioned above, in the current programming period it is recommended to use mainly Article 20 and 20a. If additional articles are chosen, the selection should reflect the necessity to add other articles, the Programme priorities but more specifically the ones in which there would be likely a higher State aid risk based on the possible types of projects and cooperation excepted. The set of articles and the overall approach is then presented to the national experts representing Member States and/or the Monitoring Committee to obtain a go / no go decision.

There are different approaches to sectoral and geographical coverage of the schemes. There were many programmes which covered several GBER articles in 2014-2020 period. There were programmes that registered one or more schemes which covered one or several articles, for example, BSR Programme made a thematic division and registered three schemes covering different sections of GBER. In the case of 2 Seas and NWE Programmes, as they are located in France which, as a Member State, submitted a scheme using Article 20 and covering all programme areas managed by France. They then submitted separate schemes covering various articles, apart from Article 20. The State aid context of the Member State in which the Managing Authority is based should therefore be studied beforehand.

The scheme is usually prepared by the programme and submitted to the EC via the Permanent Representation of the MS submitting the scheme in SANI2. Usually, a national institution responsible for State aid assists in preparing and submitting the scheme. If the scheme covers also EFTA countries a corresponding notification should be submitted to the EFTA Surveillance Authority which has its own register⁶. The persons responsible for performing the afore-mentioned tasks should therefore be identified in time.

What needs to be considered when using GBER?

Above all, the exclusions specified in Article 1 of GBER must be taken into account.

⁴ <https://www.interreg-central.eu/wp-content/uploads/2022/12/Interreg-CENTRAL-EUROPE-2021-2027-aid-scheme-1.zip>

⁵ As Article 20 in its initial version was limited to SMEs only and the maximum intensity rate was set at the level of 50%, the programmes needed to take advantage of other GBER articles as well. The GBER amendment from 2021 opened the article for large enterprises and increased the maximum intensity level.

⁶ <https://www.eftasurv.int/state-aid/state-aid-register>

With the GBER amendment of July 2021 the aid under Article 20 and 20 a can be granted to the fishery and aquaculture sector and the primary agricultural production sector⁷. Nevertheless, all the other exclusions must be respected.

Also, the fact that the undertaking in difficulty is ineligible should be duly checked since such undertakings are not only ineligible under GBER⁸, but this prohibition also results from Article 3(3)(d) ERDF Regulation 1301/2013 and Article 7(1)(d) of Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund.

The undertaking for which there is an outstanding recovery order issued (according to the Deggendorf rule) is also not eligible (but such a check is usually a simple one since the DG Comp publishes and updates on its website a list of companies with open recovery orders⁹

The regional or national match-funding (when meeting the State aid conditions) should also be included in the calculation of maximum intensity. For every project, there should be information in the Application Form on additional public sources and all the institutions granting such funding. In the project implementation phase, such information should be followed up. Also, when the programme allows for calculating the maximum intensity on the activity level and not on the partner level the complexity of the project monitoring should be considered.

Aid granted under GBER needs to have an incentive effect. Such incentive effect is present if the beneficiary has submitted a written application for the aid to the Member State concerned before **work on the project** or **activity** starts. It should be therefore carefully checked at the application phase¹⁰.

In accordance with the judgement in the Eesti Pagar Case,¹¹ there is no incentive effect where the beneficiary enters into an unconditional and legally binding commitment (purchase, leasing etc.) before the submission of the application to the relevant authority and the company's contractual commitment are the conclusive proof of the beginning of a project.

⁷ Article 1.3(a) and Article 1.3(b) of GBER

⁸ Article 1.4(a) of GBER. There are however exceptions for the difficulties stemming from COVID-19. The definition of an undertaking in difficulty can be found in Article 2(18) of GBER. The definition of undertaking in difficulty will probably slightly change due to the changes in this article introduced in the Targeted review of the GBER: revised rules for State aid promoting the green and digital transition. The consultation was closed on 8 December 2021, the amendment is due to be published. More about the public consultation under the following link https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en.

⁹ Article 1.4(c) of GBER. The information on recovery of unlawful aid can be found under the following link http://ec.europa.eu/competition/state_aid/studies_reports/recovery_statistics.xlsx

¹⁰ Especially the preparatory costs

¹¹ Judgement of the Court of 5 March 2019 (Case C-349/17)

However, aid for undertakings participating in European Territorial Cooperation projects is deemed to have an incentive effect, if the relevant conditions in Article 20 or Article 20a are fulfilled.

Also when the aid under certain article is available for SMEs only or there is a special SME bonus, the status of the undertaking must be carefully checked. In this case, a self-declaration of the beneficiary (or self-filled in Excel sheets) is not sufficient. EC auditors in cooperation with Audit Authorities prepared a paper on how to check SME status with instructions and recommendations on how such check should be performed¹².

Also, some of the articles are only eligible for the beneficiaries or investments located in assisted areas¹³. Other articles may offer a bonus in the form of an increased maximum intensity percentage, therefore if such articles are applied the exact location of beneficiaries / investments must be verified at the application stage.

Reporting

Once the institutions and contacts responsible for the final transfer of data to the systems are identified the reporting on GBER is easy. There are two data transfer systems: **Transparency Award Module (TAM)** and **State Aid Reporting Interactive (SARI)**.

Reporting in the TAM is done in case the individual award exceeds 100 000 EUR. Under Article 9 of GBER information, the TAM report shall be published within 6 months from the date the aid was granted. Aids over EUR 10 000 needs to be reported if beneficiary is active in primary agricultural sector or in the fishery and aquaculture sector. However, these two obligations to report do not apply to Article 20 and Article 20a and there is one single threshold of 100 000 EUR for all beneficiaries applying these articles.

The set of data to be presented in the TAM¹⁴ as well as an example report are presented in Annex I and II respectively of the current document. The reporting is done when the aid is granted to beneficiaries and most of the information is predefined as

¹² This document is available on Interact Community on State aid

¹³ Assisted areas are territories in economic decline where due to the disadvantaged economic conditions the maximum intensity can be increased. Member States identify such areas in regional aid maps which are further on approved by the EC. Areas eligible for regional aid under Article 107(3)(a) of the Treaty, commonly referred to as 'a' areas, tend to be the more disadvantaged within the Union in terms of economic development. Areas eligible under Article 107(3)(c) of the Treaty, referred to as 'c' areas, also tend to be disadvantaged but to a lesser extent. Under current regional State aid rules the following division of assisted areas was made: 1) 'a' area, 2) sparsely populated 'c' area, 3) other 'c' area.

¹⁴ Presented data sets are relevant for all EU Member States and Iceland. For Liechtenstein, and Norway different data is required, and these two countries have their own registries (publicly accessible). More information and links can be found here: <https://www.eftasurv.int/state-aid/transparency>.

drop-down lists. Both the NWE and the 2 Seas Programmes have direct access to TAM, which was granted by the national authority. The BSR Programme reports via the regional ministry.

Another cumulative report is presented annually to the DG Comp in the SARI system. Usually, the national institution requests the cumulative data from the programmes and submits the report in SARI. The programmes do not have direct access to SARI. The data usually requested is presented in Annex III and the screenshot with an example report is shown in Annex IV.

Annex I

The set of data needed to generate a Transparency Award Module report

Monitoring System terminology	Transparency Award Module terminology
Title of the Scheme	Aid Measure Title
Scheme number	State aid number
Partner Country (Nuts 0)	Another Beneficiary Member State
Partner ID	National ID
	Beneficiary National ID Type
Name of partner organisation / Name of organisation in original language	Name of the beneficiary
Subtype of partner	Beneficiary Type
Region (Nuts 3)	Region
Sector of Activity at NACE group level	Sector (NACE) There is a standard list of NACE v.2 sectors
Aid Instrument (Direct grant/ Interest rate subsidy in Interreg)	Aid Instrument (Direct grant/ Interest rate subsidy in Interreg)
GBER Article (objective)	Objectives of the Aid
Date of Granting	Date of Granting
ERDF Or ERDF and other sources which are declared as GBER State aid (eg. national or regional funds)	Aid element, expressed as full amount
MA Name	Granting Authority Name
	Co-finance (checkbox yes / no)

Annex II

An example of a filled-in TAM sheet



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View Aid Award
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Country	France
Language	FR
Aid Measure Title	Interreg North West Europe Programme aid for research and development and innovation, training aid and aid for environmental protection Framework scheme 2014-2020
SA.Number	SA.45348
Ref-no.	TM-10116623
Another Beneficiary Member State	Netherlands
National ID	NL808705842B01
Beneficiary National ID Type	KvK nummer
Name of the beneficiary	Smart Fibersorting B.V. en
Beneficiary Type	Small and medium-sized enterprises
Region	Groot-Amsterdam
Sector (NACE)	Materials recovery
Aid Instrument	Direct grant/ Interest rate subsidy
Objectives of the Aid	Experimental development (Art. 25(2)(c))
Date of Granting	07/12/2016
Aid element, expressed as full amount	651,783.06 EUR
Granting Authority Name	Conseil régional Hauts-de-France en
Co-finance	<input checked="" type="checkbox"/>
Entrusted Entity	
Financial Intermediaries	

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Annex IV

A screenshot from the SARI system

SARI-Front-Office – Angaben zum Fall - SA.44437

Beihilfefall			
Beihilfenr.: SA.44437	Fall-Suchtool: SA.44437	Beginn der Laufzeit: 01.01.2014	Ende der Laufzeit: 31.12.2021
Verfahrenskode: X	Status: Eingegangen	Gesamtmittelausstattung: 15 mio EUR	Jährliche Mittelausstattung:
Originaltitel: Interreg Baltic Sea Region research and development and innovation aid scheme 2014-2020 (Interreg Ostseeraum Beihilferegelung für Forschung, Entwicklung und Innovation 2014-2020)	Verweis auf verbundene Beihilfen:	Gesamtbeihilfebetrags: 0 mio	Jährlicher Gesamtbeihilfebetrags:
Arbeitstitel: Interreg Baltic Sea Region research and development and innovation aid scheme 2014-2020 (Interreg Ostseeraum Beihilferegelung für Forschung, Entwicklung und Innovation 2014-2020)	MS-Kennziffer: Schleswig-Holstein	GD: COMP	Dezentrale Erfassung der Ausgaben erlauben: Nein
Art der Beihilfe: Regelung	Jahr des Beschlusses: 2016		
Kofinanziert: Nein	Ausgelaufen: Nein		
Dauerhafte Anmerkungen des Mitgliedstaats:			
Dauerhafte Anmerkungen der Europäischen Kommission:			
Kategorie:			

Ausgabenzeilen des Falls						
Ref	Beihilfeinstrument	Hauptziel	Ziel	Gebiet	Fördergebiet(e) nach Art. 107 Absatz 3	Wirtschaftszweig
1	Direct grant/ Interest rate subsidy		Fundamental research (Art. 25(2)(a))			
Ausgaben						
	Jahr	Währung	Nominalbetrag (in Mio. Währung)	Beihilfeelement (in Mio. Währung)	Art der Daten	Letzte Anmerkung
	2016	EUR				
	2015	EUR				
	2014	EUR				
	2013	EUR				
	2012	EUR				
	2011	EUR				
	SUMME	EUR		0		
2	Direct grant/ Interest rate subsidy		Industrial research (Art. 25(2)(b))			
Ausgaben						
	Jahr	Währung	Nominalbetrag (in Mio. Währung)	Beihilfeelement (in Mio. Währung)	Art der Daten	Letzte Anmerkung
	2016	EUR				
	2015	EUR				
	2014	EUR				
	2013	EUR				
	2012	EUR				
	2011	EUR				
	SUMME	EUR		0		