

# Article 20a – Interpretations

June 2023

## Final Report

### The objective

This report presents the outcome of discussions with Interreg programmes on the practical implementation of Article 20a of General Block Exemption Regulation (GBER), during and following the State aid online working group on 4 November 2020. The document serves as a basis for further discussion with the EC on the implementation details. It first states the legal basis before sharing the interpretation of the Interact working group. The report was revised after the GBER amendment was published on 29 July 2021, after Q&A session on 26 October 2021 and finally after the Commission formally adopted a targeted 2023 amendment to the GBER on 23 June 2023.

The legal basis is 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 on 23 June 2023.

With the 2021 amendment, the new Article 1(1)(o) was introduced in the GBER for European Territorial Cooperation projects covering Article 20 and 20a. The amendment also made the fishery and aquaculture sector and the primary agricultural production sector eligible for Article 20 and 20a (Scope – Article 1 of GBER).

The current notification threshold for aid under Article 20a is the amount laid down in Article 20a(2) per undertaking, per project, which is EUR 22 000 (Notification threshold - Article 4 of GBER).

Aid to undertakings for their participation in European Territorial Cooperation projects under Article 20a is transparent, where it provides for a cap ensuring that the applicable threshold laid down in Article 20a is not exceeded (Transparency of Aid – Article 5 of GBER).

Aid for undertakings participating in European Territorial Cooperation projects under Article 20 and 20a is not required to have, or shall be deemed to have, an incentive effect, if the relevant conditions in Article 20 or Article 20a are fulfilled; (Incentive effect – Article 6 of GBER).

The use of Simplified Costs Options to charge costs is eligible provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision. (Eligible costs – Article 7 of GBER). Interreg and Common Provisions Regulations allow for the use of SCOs and Article 20 and 20a do not forbid using SCOs therefore both conditions are met.

State aid without identifiable eligible costs is exempt under Article 20a and may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission (Cumulation – Article 8 of GBER). Identifiable eligible costs are understood as costs with strictly pre-defined purpose (e.g. participation in a training, buying machinery, renovation of a building, voucher for technological innovation). Also Simplified Cost Options (SCOs) belong to this category as they are predefined and it is known beforehand what they will finance. Usually, aid under article Regional investment aid (Article 14 of GBER), Aid for research and development projects (Article 25 of GBER) and the most importantly- Aid for costs incurred by undertakings participating in European Territorial Cooperation project (Article 20 of GBER) and Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (Article 20a of GBER) have predefined identifiable costs. In general Interreg projects in 99,9% will have identifiable eligible costs.

On the other hand, aid without identifiable eligible costs can be described as aid in which eligible costs are not predefined. This is typically the case of risk finance type of aid for SMEs, granted as Risk finance aid (Article 21 of GBER) and as Aid for start-ups (Article 22 of GBER) which has a form of equity and semi-equity investments, guarantees or loans.

State aid under 20a in principle do not have to be mentioned either in the full text of aid measure nor in the info sheet on DG Comp website. Also, TAM<sup>1</sup> reporting is excluded as they do not reach the threshold. For projects referred to in Article 20a the publication obligations laid down in the GBER shall not apply (Publication and information – Article 9).

According to Article 11(1), reporting on aid granted under Article 20a is not mandatory. Reporting on such aid is, therefore, merely optional. SARI<sup>2</sup> report may therefore include Article 20a aids, but it is not mandatory (Reporting – Article 11).

The obligation to keep documents for 10 years does not apply as Article 12 shall not apply in respect of aid granted to European Territorial Cooperation projects referred to in Article 20a (Monitoring – Article 12). Nevertheless, the usual provisions on the keeping project documentation apply i.e., 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 Regulation 2021/1060).

## The Interact State aid Working Group interpretation

### The understanding of the notion “per project”

Art 20a states that the total amount of aid under this Article granted to an undertaking per project shall not exceed EUR 22 000.

Project in the context of State aid means something completely different than the usual understanding of project in Interreg. The project for State aid purposes is the project of undertaking, not a full Interreg

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<sup>1</sup> Transparency Award Module, public search page which gives access to state aid individual award data provided by Member States in compliance with the European transparency requirements for State aid.

<sup>2</sup> State Aid Reporting Interactive, the system of DG Comp where the data on aids granted within GBER is collected.

project. In practical terms it means that within one Interreg project several undertakings can receive up to EUR 22 000 each for their own “projects” e.g. trainings, services etc.

### **For direct and indirect aids**

Article 20a covers above all indirect beneficiaries (undertakings outside the formal partnership), but it might be applicable as well as to direct beneficiaries (project partners).

### **Ex ante amount**

The provisions of Article 5 GBER applies only to aid in respect of which it is possible to precisely calculate the gross grant equivalent of the aid ex ante, without any need to undertake a risk assessment ('transparent aid').

The fact that the MA does not know the exact amount of the indirect aid at the moment of the approval of the project (and the signature of the financing agreement) is not an issue *per se* on transparency. The interpretation of 'ex ante' means 'before granting the aid', as such, in case of indirect aid, the 'date of granting of the aid' is not the date of granting of the aid to the partner, but later. For example, if the indirect aid consists of consultancy services provided free of charge by the partner to some undertakings, the 'date of granting of the aid' is the moment/day when the consultancy agreement is signed. In that moment, the partner, and the indirect beneficiary (undertaking) knows the amount of the aid (it means the cost of the consultancy for each undertaking), so the aid is transparent. The verification of the threshold is done ex ante, i.e. before granting the aid.

Aid under Article 20a is considered to be transparent, where it provides for a cap, ensuring that the applicable threshold laid down in Article 20a is not exceeded. If the EUR 22 000 threshold is nevertheless exceeded MA / the partner responsible should propose for the concerned support an alternative assessment, typically under Article 20. The cap would also apply if the aid is granted in other form than grant.

Indirect aids in Interreg usually have a form of grants, and as such they are expressly mentioned as transparent in Article 5(2).

The purpose of the Article 5 is to prevent any circumvention of the applicable thresholds in the GBER by ensuring that only aid for which it is possible *ex ante* to precisely calculate the gross grant equivalent without any need to undertake a risk assessment can be granted.

### **Who is responsible for granting the aid?**

The ETC regulation, combined with Articles 72-74 of Regulation 2021/1060, identifies State aid controls as being the responsibility of the managing authorities. This reasoning is valid for direct or indirect aid, if any, as State aid rules are applicable to both levels.

However, an MA using a mandate (e.g. by signing the Subsidy contract) can transfer the performance of the task to the Lead Partners or Partners.

The partner responsible would have to make sure that the aid is under EUR 22 000 (precise calculation in the convincing methodology after the global project approval) and therefore meet the requirements of Article 20a as well would have to respect the cumulation rule.

The ones exceeding EUR 22 000 can still apply de minimis or Article 20, provided that the cumulation rules laid down in the De minimis Regulation and the GBER are complied with.

### **Publication and information**

Even though article 9 excludes the reporting, we were informed that Members States **should adjust their schemes** if they wish to benefit from the new possibilities and **submit the updated info sheet within 20 days from the adjustment**. Otherwise, the schemes currently covered by the GBER (without the new possibilities therefore) are valid for 6 months after the amendment of the GBER in accordance with Article 58(5) of the GBER.

### **Reporting**

According with Article 11 it is not mandatory to report aid granted in SARI, but it is optional. However, it should be considered that the partners responsible may need to collect the lists of aid granted and keep them for audit trail.