General Block Exemption Regulation

By Tim London

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Introduction

On the 7 July 2008, the European Commission (EC) formally adopted a new General Block Exemption Regulation (the GBER). This will replace a number of existing block exemption regulations (those relating to training, SMEs, regional aid and employment) and expand significantly the types of funding measures available to public bodies that benefit from the state aid safe harbour (automatic approval process) provided by a state aid block exemption. As a result, the GBER is likely to ease significantly the administrative burden on public authorities in terms of the application of funding in a state aid-compliant manner.

Whilst the GBER expands upon the number and nature of measures that are block exempted, it also provides for limitations not found within the current group of block exemption regulations. By way of example, regional aid uplifts available in relation to aid for SMEs, training and employment no longer apply.

As a result, the GBER means that public bodies within the UK need to reconsider the basis on which their existing funding schemes operate and what new funding schemes and measures can be put in place.

The GBER will come into force on the 29 August, this being the twentieth day following its publication in the Official Journal of the European Union, C Series (OJC) on 9 August 2008. It will apply until 31 December 2013.

Summary

Areas of coverage

The GBER covers measures relating to aid for:

- regional investment and employment
- newly formed small enterprises
- SME investment and employment
- female entrepreneurship
- environmental protection
- consultancy in favour of SMEs and SME participation in trade fairs
- risk capital
- research and development and innovation
- training
- disadvantaged and disabled workers.

Details of general rules applicable to all such categories of aid, as well as specific rules applicable to each category, are set out within the various sections of this briefing note. This note is, however, general in nature and not a detailed piece of advice in respect of the GBER.

Summary of aid intensity and notification threshold levels

<table>
<thead>
<tr>
<th>Aid measure</th>
<th>Maximum % aid intensity levels for large enterprises (depending on applicable regional aid cap for area in question)</th>
<th>Maximum % aid intensity levels for small (SE) and medium-sized (ME) enterprises</th>
<th>Notification thresholds (aid sums over) (per undertaking per project unless otherwise stated) (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGIONAL AID</td>
<td>15-25%</td>
<td>+10% MEs +20% SEs</td>
<td>Sum greater than 75% of maximum allowable grant sum in respect of eligible costs of 100m in area in</td>
</tr>
<tr>
<td>Regional investment and employment See UK regional aid map¹</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ N673/2006.
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AID FOR SME INVESTMENT AND EMPLOYMENT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sme investment and employment</td>
<td>N/A</td>
<td>10% ME 20% SE</td>
</tr>
<tr>
<td>For entities operating within agricultural sector</td>
<td></td>
<td>40% for all SMEs</td>
</tr>
<tr>
<td><strong>AID FOR FEMALE ENTREPRENEURS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small enterprises newly created by female entrepreneurs</td>
<td>N/A</td>
<td>15%</td>
</tr>
<tr>
<td><strong>ENVIRONMENTAL AID MEASURES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment to go beyond community standards for environmental protection</td>
<td>35%</td>
<td>45% ME 55% SE</td>
</tr>
<tr>
<td>Acquisition of transport vehicles that go beyond community environmental protection standards</td>
<td>35%</td>
<td>45% ME 55% SE</td>
</tr>
<tr>
<td>Early adaptation to future environmental standards for SMEs</td>
<td>N/A</td>
<td>10% ME 15% SE 10% (available for SEs only) where implementation of measures in question take place between 1 and 3 years before the mandatory date for entry into force of relevant standards</td>
</tr>
<tr>
<td>Investment in energy saving measures</td>
<td>60% (if net of operating benefits)</td>
<td>70% ME 80% SE</td>
</tr>
<tr>
<td></td>
<td>20% (if not net of operating benefits)</td>
<td>30% ME 40% SE (if not net of operating benefits)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Investment in high efficiency cogeneration</td>
<td>45%</td>
<td>55% ME 65% SE</td>
</tr>
<tr>
<td>Investment in the promotion of energy from renewable energy</td>
<td>45%</td>
<td>55% ME 65% SE</td>
</tr>
<tr>
<td>Environmental studies</td>
<td>50%</td>
<td>60% ME 70% SE</td>
</tr>
<tr>
<td>Environment aid, in the form of tax reductions</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**AID FOR CONSULTANCY IN FAVOUR OF SMES AND SME PARTICIPATION IN FAIRS**
- Consultancy in favour of SMEs: N/A 50% 2m
- SME participation in fairs: N/A 50% (one time only per fair) 2m per fair

**AID IN THE FORM OF RISK CAPITAL MEASURES**
- Aid in the form of risk capital: N/A No less than 50% of total fund investment must come from private sector sources (reducing to 30% if the fund targets SMEs located exclusively within regional aid-assisted areas) Fund may not invest more than 1.5m per 12-month period per target SME (Not on a per project basis)

**AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION**
- Investment in research and development projects:
  - 100% - Fundamental Research (FR)
  - 50% - Industrial Research (IR)
  - 25% - Experimental Development (ED)
  - Bonus for collaborative projects
- Technical feasibility studies: 65% IR 40% ED
- Industrial property rights costs for: N/A
- Link to applicable type of: 5m
- 100% FR 60-70% IR 35-45% ED Bonus for collaborative projects
- 20m FR 10m IR 7.5m ED

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**EVERSHEDS**

4
<table>
<thead>
<tr>
<th>Smes</th>
<th>Research that led to intellectual property (IP) right in question</th>
<th>100%</th>
<th>100%</th>
<th>7.5m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and development in the agricultural and fisheries sectors</td>
<td>100%</td>
<td>100%</td>
<td>7.5m</td>
<td></td>
</tr>
<tr>
<td>Young innovative enterprises</td>
<td>N/A</td>
<td>N/A</td>
<td>1m increasing to 1.35m if enterprise in an Article 87(3)(c) regional aid-assisted area and 1.5m if enterprise in an Article 87(3)(a) regional aid-assisted area (Not on a per project basis)</td>
<td></td>
</tr>
<tr>
<td>Innovation advisory services and for innovation support services</td>
<td>N/A</td>
<td>N/A</td>
<td>200k over 3-year cumulative (but reduced to 75% of that figure if service provider used for services does not have applicable national or European certification) (Not on a per project basis)</td>
<td></td>
</tr>
<tr>
<td>The loan of highly qualified personnel</td>
<td>N/A</td>
<td>50%</td>
<td>Costs incurred over maximum period of funding of 3 years per undertaking and per person borrowed (Not on a per project basis)</td>
<td></td>
</tr>
</tbody>
</table>

**TRAINING AID MEASURES**

<table>
<thead>
<tr>
<th>Training</th>
<th>25% Specific 60% General</th>
<th>35% ME, 45% SE 70% ME, 80% SE</th>
<th>2m</th>
</tr>
</thead>
</table>

**AID FOR DISADVANTAGED AND DISABLED WORKERS**

<table>
<thead>
<tr>
<th>Recruitment of disadvantaged workers in the form of wage subsidies</th>
<th>50%</th>
<th>50%</th>
<th>5m (Not on a per project basis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment of disabled workers in the form of wage subsidies</td>
<td>75%</td>
<td>75%</td>
<td>10m (Not on a per project basis)</td>
</tr>
<tr>
<td>Compensating the additional costs of employing disabled workers</td>
<td>100%</td>
<td>100%</td>
<td>10m (Not on a per project basis)</td>
</tr>
</tbody>
</table>
**Generally applicable provisions**

Measures covered by the GBER are subject to a number of common principles and/or provisions. These must be complied with in granting any aid that can benefit from the protection offered by the GBER. Failure to comply will result in the relevant measure falling outside the protection offered by the GBER.

**Incentive effect**

Only measures that can be demonstrated to have an incentive effect will be exempted under the GBER. All measures involving SMEs shall (subject to work on the project or activity having not started before the date of the measure) be presumed to have the necessary incentive effect.

In addition, an incentive effect is presumed for measures relating to the provision of environmental aid tax reduction, risk capital, compensation for the additional costs of employing disabled workers and recruitment of disadvantaged workers, and covered by the GBER (see sections 4, 6 and 9 respectively).

For all other measures, there is no assumed incentive effect. There is, therefore, an express requirement on member states to obtain documentation from the intended beneficiary to demonstrate one or more of the following, as a result of the measure in question:

- a material increase in the size of the project/activity funded
- a material increase in the scope of the project/activity funded
- a material increase in the total amount spent by the beneficiary on the project/activity to be funded
- a material increase in the speed of completion of the project/activity concerned
- where the measure amounts to regional investment aid (see Section 1 below), the project would not have been carried out as such in the assisted area concerned.

Such information should be part of the assessment criteria for any aid measure covered by the GBER that involves large enterprises.

**Transparency of aid**

Measures will not be covered by the GBER unless they can be demonstrated to be transparent in nature.

The following types are not viewed (for the purpose of the GBER) as being transparent:

- aid comprising capital injections and risk capital measures, with the exception of specific measures referred to within the GBER (see Section 6 below)
- aid where the gross grant equivalent has not been or cannot be calculated on the basis of the reference rate prevailing at the time of the grant
- guarantee schemes where (in the case of large enterprises) a methodology to calculate the gross grant equivalent has not been notified to, and approved in advance by, the EC or (in the case of SMEs) the gross grant equivalent has not been calculated in accordance with the requirements of the 'Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees'

On the basis of the above, as a general rule, if the level of aid to be granted under an aid measure cannot be definitively calculated at the time of application of the measure, such an aid measure is not covered by the GBER.

**Funding to large enterprises**

Funding for ad hoc measures to large enterprises (other than in very limited circumstances, as set out in Section 1 relating to regional investment and regional competitive advantage aid, and as set out in Article 13(3) of the Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees).
employment aid) is not covered by the GBER. As such, ad hoc funding to large enterprises (to be covered by the GBER) must, as a general rule, be granted on the basis of a scheme compliant with the terms of the GBER.

**Excluded sectors/entities**

Due to the competitive environment within certain sectors, the GBER does not apply to the following sectors:

- coal (other than aid measures in the field of research, development and innovation (‘R&D&I’), in training aid and environmental aid)
- primary production of agricultural (Annex 1 of the EC Treaty) products (other than aid measures in the field of research and development – but not innovation), risk capital, environmental aid, training and assisting disadvantaged and disabled workers)
- fisheries and aquaculture (other than aid measures in the field of R&D&I, risk capital, training and assisting disadvantaged and disabled workers).

In addition (and as with other state aid measures), measures under GBER cannot be applied to firms in difficulty or to entities that are the subject of an outstanding recovery order regarding aid declared to be illegal and incompatible.

**Cumulation of aid**

In determining whether the applicable thresholds (in terms of aid intensity levels as a percentage of eligible cost or total aid in monetary terms as against eligible costs) are adhered to, all public support measures (including those from community sources, eg cohesion funds) must be cumulated with aid to be provided under the GBER (where applied to the same eligible cost).

As a result, it will be necessary to specifically identify, in all cases, details of the cost to which funding is applied under the GBER, to avoid (if such costs are different) the need for cumulation of such costs with funding under other measures.

Specific cumulation rules apply to risk capital measures and measures to support young innovative enterprises and these are covered within sections 6 and 7 of this briefing note.

**Reporting and monitoring requirements**

As per the majority of the previous block exemption regulations, details of the aid schemes and ad hoc aid under the GBER must be notified to the EC within 20 working days of the entry into force of the scheme or the award of the ad hoc aid. Details are required to be provided in electronic form, with the applicable form set out in an annex to the GBER.

The GBER also requires that, before entry into force of an aid scheme or the award of ad hoc aid, the member state must publish on the internet full details of the measure in question. Such details must remain on line for as long as the aid measure/scheme is in force.

Additional reporting requirements apply to individual aid granted under an aid scheme for research and development projects (otherwise covered by the GBER) where the individual aid in question exceeds €3m and for individual regional investment aid where funding is for large investment projects (over €50m), which are otherwise still covered by the GBER (see notification threshold details in the summary table above and in Section 1 below). The form to be submitted to the EC in such circumstances is set out in an annex to the GBER.

The EC has the right to withdraw the safe harbour offered by the GBER in respect of some or all of the measures covered by the GBER for a particular member state if it transpires that there have been significant failures by that member state in complying with the reporting requirement detailed above.

As was the case under the previous block exemptions, measures covered by the GBER are subject to the annual reporting requirements for each member state.
Transitional provisions

Under the transitional provisions of the GBER, aid granted before 31 December 2008 is still permissible even if it does not fulfil the requirements of the GBER, if such aid fulfils the requirements of the block exemption regulations (eg SME, training, regional aid and employment) that expire upon the entry into force of the GBER.

Upon expiry of the GBER, aid schemes exempted under the GBER will remain block exempted during an adjustment period of six months after such expiry, with the exception of regional aid schemes. Regional aid schemes will only remain in force until the date of expiry of the applicable approved regional aid map for the member state in question.

Specific aid measures covered by the GBER

Details of specific rules applicable to certain types of aid measures covered by the GBER can be found within the following sections of this briefing note:

Section 1
Regional and employment aid
Aid for newly formed small enterprises

Section 2
SME investment and employment aid

Section 3
Aid for female entrepreneurship

Section 4
Aid for environmental protection measures

Section 5
Aid for consulting in favour of SMEs and SME participation on fairs

Section 6
Aid in the form of risk capital

Section 7
Aid for research and development and innovation

Section 8
Training aid

Section 9
Aid relating to the employment of disadvantaged and disabled workers

Section 1
Regional investment and employment aid

Impact on previous position

This measure replaces those contained within the Regional Aid Block Exemption\(^3\) and to an extent the Employment Aid Block Exemption\(^4\).

Excluded sectors

Aid under this measure shall not be applied to entities operating in the following sectors:

- steel
- shipbuilding
- synthetic fibres
- coal
- primary production of agricultural products
- fisheries and aquaculture.

Scope

The measures under this section of the GBER allow for funding of costs linked to initial investments where such investments take place in areas that fall within the

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current UK regional aid map. The exemption applies to both large enterprises and SMEs. It only generally provides a safe harbour in relation to measures covered by schemes (rather than ad hoc aid measures except in limited circumstances) that are consistent with the requirements of the GBER.

The only circumstances where ad hoc aid is allowed are where it can be shown to be supplemental to aid granted on the basis of a regional investment and employment aid scheme (covered by the GBER) and where such additional ad hoc aid does not exceed 50 per cent of the total aid to be granted for the investment.

**Eligible costs**

Funding may be provided towards the cost of initial investments made in respect of tangible (eg land and buildings) or intangible (eg intellectual property) assets or wage costs (for a period of up to two years from the date of the applicable initial investment) in respect of jobs directly created as a result of an initial investment.

Funding can also be provided on the basis of a combination of the above detailed calculations (as was previously the case), provided that in all circumstances the aid intensity level does not exceed the most favourable amount resulting from the application of either of the above detailed calculations.

**Aid intensity levels**

<table>
<thead>
<tr>
<th></th>
<th>Large enterprise</th>
<th>Medium-sized enterprise</th>
<th>Small enterprise</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum aid intensity level</strong></td>
<td>Applicable regional aid limit for area where initial investment made</td>
<td>Regional aid limit plus 10%</td>
<td>Regional aid limit plus 20%</td>
</tr>
</tbody>
</table>

**Additional conditions**

All assets purchased or jobs created that are funded (in part) under the measure must be retained for a minimum period of five years (in the case of large enterprises) and three years (in the case of SMEs) from the date of completion of the investment or creation of the jobs in question.

In all circumstances, the applicant must contribute at least 25 per cent of the eligible costs (even where the maximum aid intensity level, including uplifts, in theory exceeds that figure).

Where the relevant assets are acquired under lease (other than for land and buildings), it is a requirement that the lease takes the form of a finance lease and contains an obligation to purchase the asset at the expiry of the term of that lease.

**Notification threshold**

The safe harbour provided by the GBER does not apply to regional investment and employment aid where the total amount of the gross grant funding exceeds 75 per cent of the amount of aid permissible for an eligible cost of €100m based on the applicable aid intensity level for the region in question (eg in an area eligible for 10 per cent regional aid, the threshold will be €7.5m). Funding over this threshold is required to be notified to and approved by the EC before its grant.

**Aid for newly created small enterprises**

**Impact of previous position**

This is a new measure.

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5 As per the definition set out in the Commission Recommendation 2003/361/EC.

6 As per footnote 5.
**Scope**

This measure allows for aid to be provided, on the basis of schemes only, to entities that are new small enterprises located in regional aid-assisted areas.

**Excluded sectors**

Aid under this measure shall not be applied to entities operating in the following sectors:

- steel
- shipbuilding
- synthetic fibres
- coal
- primary production of agricultural products
- fisheries and aquaculture.

**Eligible costs**

Legal, advisory, consultancy and administrative costs directly relating to the creation of the new small enterprise are eligible.

The following further costs (subject to them being incurred within the first five years of the creation of the relevant undertaking) are also eligible:

- interest on external finance and a dividend on own capital employed not exceeding the applicable reference rate
- fees for renting production facilities/equipment
- utility costs, taxes (other than VAT and corporate tax on business income) and administrative charges
- depreciation, fees for leasing production facilities/equipment as well as wage costs providing that the underlying investment or job creation and recruitment measures have not benefitted from other forms of aid (i.e. SME investment and employment aid).

**Maximum aid levels**

<table>
<thead>
<tr>
<th></th>
<th>Article 87(3)(a) area</th>
<th>Article 87(3)(c) area</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum aid intensity</strong></td>
<td>35% of eligible expenditure in first 3 years after creation and 25% in the 2 years thereafter</td>
<td>25% of eligible expenditure incurred in the first 3 years after creation of the enterprise in question and 15% in the 2 years thereafter</td>
</tr>
<tr>
<td><strong>Maximum total amount of aid (C)</strong></td>
<td>2m per small enterprise</td>
<td>1m per small enterprise</td>
</tr>
</tbody>
</table>

In all circumstances, the amount of aid per undertaking must not exceed 33 per cent of the applicable maximum total amount of aid (referred to in the table above) in any one year.

**Notification threshold**

Aid exceeding the maximum aid levels set out above must be notified to the EC for approval prior to its grant.

**Section 2**

**SME investment and employment aid**

**Impact of previous position**

Measures covered by this section replace those linked to funding of initial investment costs previously covered by the SME Block Exemption\(^7\) and, in part, the Employment Aid Block Exemption.

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\(^7\) Commission Regulations (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises (OJL 10 13.01.01 P.33) (as amended).
Maximum aid levels have been increased from those previously available under the SME Block Exemption, but there are no uplifts for SMEs located in regional aid-assisted areas (as was previously the case under the SME Block Exemption). As a result, if the regional aid uplift is to be applied in relation to investment and employment aid to SMEs, it must be compliant with the specific rules relating to 'regional investment and employment aid'. In particular, these require that funding is only applied on the basis of schemes rather than on an ad hoc basis.

**Excluded sectors**

Aid under this measure shall not be applied to entities operating in the following sectors:

- coal
- primary production of agricultural products
- fisheries and aquaculture.

**Scope**

Funding permissible under this measure is limited to entities that fall within the definition of an SME. It is permitted to provide ad hoc aid as well as aid under schemes under this measure.

**Eligible costs**

Funding may be provided towards the cost of initial investments made in respect of tangible (e.g. land and buildings) or intangible (e.g. intellectual property) assets or wage costs (for a period of up to two years from the date of the applicable initial investment) in respect of jobs directly created as a result of an initial investment.

Funding can also be provided on the basis of a combination of the above detailed calculations, provided that, in all circumstances, the aid intensity level does not exceed the most favourable amount resulting from the application of either of the above detailed calculations.

**Maximum aid levels**

<table>
<thead>
<tr>
<th></th>
<th>Medium-sized enterprise</th>
<th>Small enterprise</th>
<th>Investment by SME concerning processing and marketing of agricultural products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum aid level</td>
<td>10%</td>
<td>20%</td>
<td>40% (increasing to 50% if investment made in an Article 87(3)(a) assisted area).</td>
</tr>
</tbody>
</table>

**Notification threshold**

Individual aid measures must not exceed €7.5m per undertaking per project.

**Section 3**

Aid for female entrepreneurship

**Impact of previous position**

This is a new measure.

**Excluded sectors**

Aid under this measure shall not be applied to entities operating in the following sectors:

- coal
- primary production of agricultural products
fisheries and aquaculture.

**Scope**

This measure allows for aid to be provided, under schemes only, to small enterprises (as per the EU definition referred to in Section 2 above) newly created by female entrepreneurs (51 per cent or more of the capital is owned by one or more women or a woman is in charge of the management of the enterprise in question). Unlike the position as set out in Section 1 for newly created small enterprises, funding under this measure is not limited to regional aid-assisted areas. As a result, funding to small enterprises newly created by female entrepreneurs can be applied countrywide.

**Eligible costs**

Legal, advisory, consultancy and administrative costs directly relating to the creation of the new small enterprise are eligible.

The following further costs (subject to them being incurred within the first five years of the creation of the relevant undertaking) are also eligible:

- interest on external finance and a dividend on own capital employed not exceeding the applicable reference rate
- fees for renting production facilities/equipment
- utility costs, taxes (other than VAT and corporate tax on business income) and administrative charges
- depreciation, fees for leasing production facilities/equipment as well as wage costs providing that the underlying investment or job creation and recruitment measures have not benefited from other forms of aid (the SME investment and employment aid).

**Maximum aid levels**

A maximum amount of aid is permissible under this measure, subject always to such a sum not exceeding 15 per cent of the eligible costs incurred within the first five years after creation of the undertaking in question. In addition, annual amounts of aid provided to an applicable undertaking must in no event exceed 33 per cent of the above maximum figure.

**Notification threshold**

Aid exceeding the maximum aid levels detailed above must be notified to the EC for approval prior to its grant.

**Section 4**

**Aid for environmental protection**

**Impact on previous position**

This part of the GBER extends block exemption coverage to a number of measures previously requiring formal notification to the EC.

**Excluded sectors**

Fisheries and aquaculture are excluded.

**Scope**

Environmental measures permissible under the GBER broadly reflect those within the environmental aid guidelines (issued earlier this year), with the notable absence of measures linked to waste management. The GBER also does not allow for the 100 per cent maximum aid intensity levels permitted under the environmental aid guidelines where a measure is linked to an open and competitive procurement exercise.

Unlike the environmental aid guidelines, for the most part aid for costs is not calculated net of any operating benefits resulting from investments funded by any

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aid measures covered by this section. Under the aid for energy saving measure only, there is the ability to pick whether or not aid is to be calculated with the deduction of operating benefits resulting from the aided measure (if such a deduction is applied, the maximum aid intensity level applicable rises from 20 per cent to 60 per cent).

No uplifts are available for aid provided in regional aid-assisted areas. Measures applicable for large enterprises must operate on the basis of a scheme rather than on an ad hoc basis.

**Eligible costs and aid intensity levels**

There is a range of aid measures, set out with the eligible costs and aid intensity levels in the table below.

<table>
<thead>
<tr>
<th>Aid measure</th>
<th>Eligible cost</th>
<th>Aid intensity caps for large enterprises</th>
<th>Aid intensity caps for small (SE) and medium-sized (ME) enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment to go beyond community standards for environmental protection</td>
<td>Tangible and intangible assets – additional costs of going beyond existing community standards or an increase in the level of environmental protection in the absence of community standards</td>
<td>35%</td>
<td>45% ME 55% SE</td>
</tr>
<tr>
<td></td>
<td>Reference investment (i.e the base standard beyond which the measure in question goes) is either the applicable existing legal standard required to be met or a counterfactual position established as being the standard that an entity would be normally expected to apply.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment through the acquisition of transport vehicles that go beyond community environmental protection standards</td>
<td>Cost of acquiring transport vehicles for road, rail, waterway and sea that go beyond existing community standards or increase the level of environmental protection in the absence of community standards (includes where vehicle acquired before)</td>
<td>35%</td>
<td>45% ME 55% SE</td>
</tr>
</tbody>
</table>
applicable, mandatory, community standard comes into force, so long as such standards do not apply retrospectively to already purchased vehicles)

Cost of retrofitting existing transport vehicles with environmental protection measure, subject to such upgrades relating to community standards that are not yet in force (at date of entry into operation of such vehicles) or where the means of transport in question are not subject to any environmental standards.

Investment must result in increase in level of environmental protection

<table>
<thead>
<tr>
<th>Investment in early adaptation to future environmental standards for smes</th>
<th>Investment cost linked to additional costs of adapting to community standards more than three years before such standards come into force Where implementation of measures in question takes place between one and 3 years before the mandatory date for entry into force of relevant standards</th>
<th>NO</th>
<th>10% ME 15% SE 10% (available to SEs only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in energy saving measures</td>
<td>Where costs certified by external auditor and net of benefits (during first 3 years of life of investment for SMEs or 4 years for large enterprises not part of EU CO2 emissions trading</td>
<td>60%</td>
<td>70% ME 80% SE 30% ME 40% SE</td>
</tr>
<tr>
<td>Scheme or 5 years for large enterprise that is part of scheme (NB These periods can be reduced to 3 years if can show depreciation time of investment is no more than 3 years)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where costs not net of operating benefits resulting from the investment in an energy saving measure beyond the level required by community standards</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investment in high-efficiency cogeneration</th>
<th>Extra investment costs necessary to realise creation of high-efficiency cogeneration plant as against reference investment or conversion of power generating unit into cogeneration unit. Must result in primary energy savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>45%</td>
<td>55% ME 65% SE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investment in the promotion of energy from renewable energy</th>
<th>Extra costs of investment in production of energy from renewable energy sources as against that of conventional power plant or with a conventional heating system. Aid for investments linked to biofuels is only available if it relates to sustainable biofuels</th>
</tr>
</thead>
<tbody>
<tr>
<td>45%</td>
<td>55% ME 65% SE</td>
</tr>
</tbody>
</table>

| Environmental studies | Cost of studies relating to investments linked to:  
- going beyond existing community standards  
- energy savings  
- promotion |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>60% ME 70% SE</td>
</tr>
</tbody>
</table>
Notification thresholds

For environmental investment aid, measures providing funding over €7.5m are not covered by the GBER and must be notified to the EC for approval in advance of grant.

For measures linked to environmental studies, there is, under the GBER, somewhat surprisingly, no notification threshold (unlike studies linked to research and development). Environmental tax reduction measures are also not subject to a notification threshold.

Section 5
Aid for consultancy in favour of SMEs and SME participation in fairs

Impact on previous position

This measure replaces and replicates the consultancy and trade fair aid measures previously set out in SME Block Exemption.

Excluded sectors

Aid under this measure shall not be applied to entities operating in the following sectors:

- coal
- primary production of agricultural products
- fisheries and aquaculture.

Scope

Funding is limited to SMEs and may be provided on an ad hoc basis or under a compliant scheme.

Eligible costs

Eligible costs include one-off, non-routine consultancy services provided to the recipient entity by external consultants and costs incurred for renting, setting up and running a stand for the first participation of a relevant entity in any particular fair or exhibition.

Maximum aid intensity levels

<table>
<thead>
<tr>
<th>Maximum aid intensity level</th>
<th>Consultancy costs</th>
<th>Costs of attending trade fair</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Notification threshold

Aid exceeding €2m per undertaking per project must be notified to the EC for approval prior to its grant.

Section 6
Aid for risk capital measures

Impact on previous position
This part of the GBER extends block exemption coverage to measures that previously required formal notification to the EC.

**Excluded sectors**

Aid under this measure shall not be applied to entities operating in the following sectors:

- coal
- fisheries and aquaculture.

**Scope**

The measures under this section of the GBER to a great extent replicate the existing provisions within the ‘Community guidelines on state aid to promote risk capital investment in small and medium-sized enterprises’ (‘SARC’). As such, the investee beneficiaries can only be SMEs. This, of course, does not preclude the involvement of large enterprises as co-investors. Measures under this section of the GBER can only be applied by ways of schemes.

The risk capital measures under the GBER, like those under SARC, do not apply to measures that require a detailed assessment in that:

- the size of the investment tranches per target SME per annum is too large
- they cover measures allowing for finance for the expansion stage of medium-sized enterprises in non-regional aid-assisted areas
- they cover measures providing for follow-up investments to target companies that have already received aided capital injections to fund subsequent financing rounds even beyond the general safe harbour threshold and the companies’ early growth financing
- they cover measures providing for participation by private investors of below 50 per cent in non-assisted areas or below 30 per cent in regional aid-assisted areas, or
- they involve risk capital measures where less than 70 per cent of the total budget is in the form of equity and/or quasi equity investment into target SMEs
- it cannot be demonstrated that investment decisions operate on a profit-driven basis.

**Forms of aid**

Investment measures under this section of the GBER are limited to risk capital measures in the form of participation by the state into a profit-driven private equity investment fund, managed on a commercial basis.

**Additional conditions**

The following additional conditions apply in relation to risk capital measures under the GBER:

- The maximum level of investment made by the investment fund per target undertaking over any period of 12 months is €1.5m.
- The investment fund must provide that no less than 70 per cent of its total budget invested into target SMEs is in the form of equity or quasi equity (as opposed to debt).
- No less than 50 per cent of the funding into the investment fund must be provided by private investors, with this figure reducing to 30 per cent where the fund operates on a basis whereby it targets exclusively SMEs located in regional aid-assisted areas.
- Risk capital measures shall be restricted to providing seed capital, start-up capital and/or expansion capital, with expansion capital only

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9 Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises (OJC 194 18.08.2006).
available to small enterprises or medium-sized enterprises located within regional aid-assisted areas.

A key requirement for risk capital measures covered by the GBER is that they must operate on a profit-driven basis. This must be demonstrated for each investment through the existence of:

- a business plan
- a clear and realistic exit strategy.

In addition, to ensure that the fund is managed on a commercial basis, there is a requirement that risk capital measures comply with the following criteria:

- There must be in place an agreement between the professional fund manager and participants in the fund, setting out the objectives of the fund and the timing of investments as well as details of the managers remuneration, with such remuneration being linked to performance.
- Private investors must be represented in the decision-making process, such as through an investors committee or advisory committee.
- It must be demonstrated that best practice and regulatory supervision is applied to management of the fund.

Definitions of terms referred to above including ‘equity’, ‘quasi equity’, ‘private equity’, ‘seed capital’, ‘start-up capital’, ‘expansion capital’, ‘exit strategy’ and ‘target undertaking’ are set out within Article 28 of the GBER.

**Additional conditions: cumulation**

Under the GBER, where an entity benefits from risk capital measures covered by the GBER, it is only entitled to funding at 50 per cent of the normal maximum aid intensity level under other state aid measures (be they covered by the GBER or other regulations, frameworks or guidelines issued by the EC relating to state aid).

It should, however, be noted that this rule only applies for the first three years after the risk capital investment received by the entity in question (and is reduced to 20 per cent in respect of target undertakings located in assisted areas). In addition, any reduction shall not operate on a basis whereby it exceeds the total amount of risk capital received by the target enterprise (ie never more than €1.5m). It does not apply to aid measures relating to research, development and innovation exempted under the GBER and referred to within Section 7 below.

**Section 7**

**Research and development and innovation**

**Impact on previous position**

This part of the GBER extends block exemption coverage for research and development (‘R&D’) activities to large enterprises and also incorporates a number of innovation measures within the ‘Community Framework for State aid for Research and Development and Innovation’10 (‘the R&D&I Guidelines’), which were previously required to be notified to the EC.

**Excluded sectors**

The primary production of agricultural products, for innovation measures only, is excluded.

**Scope**

Funding can be applied on an ad hoc or scheme basis to SMEs and on a scheme basis only for large enterprises.

The R&D measures covered by the GBER refer to the same stages of R&D as those previously set out within the SME Aid Block Exemption and the R&D&I

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Guidelines, these being fundamental research, industrial research and experimental development.

Innovation measures are limited to SMEs, and in the case of aid for young innovative enterprises are limited to small enterprises only.

**R&D eligible costs**

Costs to which funding can be applied under the GBER R&D measures are limited to the following:

- personnel costs – to the extent that such personnel are employed on the relevant research project
- costs of instruments and equipment – to the extent and for the period that they are used for the relevant research project
- costs of buildings and land – for as long as they are used for the relevant research project
- costs of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, as well as the cost of consultancy and equivalent services used exclusively for the relevant research activity
- additional overheads incurred directly as a result of the applicable research project
- other operating expenses, including costs of material, supplies and similar products incurred directly as a result of the relevant research activity.

It should be noted that it is a requirement that all eligible costs need to be allocated to a specific category of research and development (eg fundamental research, industrial research or experimental development).

Where instruments and equipment (as well as buildings and land) are not used for their full life for the purposes of the relevant research project only, eligible costs for such items are limited to the depreciation costs corresponding to the life of the research project itself. (Such depreciation costs are calculated on the basis of good accounting practices.)

In addition to costs relating to a specific R&D project, funding is also available to cover the costs of technical feasibility studies relating to preparatory work linked to industrial or experimental development activities. Eligible costs are limited to the actual cost of the study.

Eligible costs in terms of aid measures relating to industrial property rights for SMEs are limited to the following:

- all costs preceding the grant of the right in the first jurisdiction, including costs relating to the preparation, filing and prosecution of the application, as well as costs incurred in renewing the application before the right has been granted
- translation and other costs incurred to obtain the granting or validation of the rights in other legal jurisdictions
- costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right in question is granted.

**Maximum aid intensity levels and notification thresholds**

<table>
<thead>
<tr>
<th></th>
<th>Maximum % aid intensity level for large enterprises</th>
<th>Maximum % aid intensity level for medium-sized enterprises</th>
<th>Maximum % aid intensity level for small enterprises</th>
<th>Notification threshold (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fundamental research (FR)</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>20m</td>
</tr>
<tr>
<td>Industrial research (IR)</td>
<td>50%</td>
<td>60%</td>
<td>70%</td>
<td>10m</td>
</tr>
<tr>
<td>Experimental development</td>
<td>25%</td>
<td>35%</td>
<td>45%</td>
<td>7.5m</td>
</tr>
<tr>
<td></td>
<td>IR</td>
<td>ED</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td>----</td>
<td>----</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical feasibility studies</td>
<td>65%</td>
<td>75%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collaboration uplifts*</td>
<td>+15%</td>
<td>+15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aid for industrial property rights costs for SMEs**</td>
<td>N/A</td>
<td>100%</td>
<td>60%</td>
<td>35%</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>70%</td>
<td>45%</td>
<td></td>
</tr>
<tr>
<td>Research and development in the agricultural and fisheries sectors***</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

* See below regarding specific rules relating to collaborative research.

** The relevant maximum aid intensity levels are linked to the type of research that led to the industrial property rights concerned. Therefore, if the IP rights result from a fundamental research project, the aid intensity level in respect of eligible costs would be 100 per cent.

*** Funding is only permissible where it can be demonstrated that the R&D in question is of interest to all operators in the particular sector or sub-sector concerned. Factual details confirming that the research will be carried out and facts about the research goals must be published on the internet before the research starts, with details of the date of the expected result and the place of publication also being set out within such a publication. Access to such results must be at no cost and this must be expressly stated within the publication. Results of the research must be made available on the internet (at the place of publication mentioned before the research starts) for a period of not less than five years and must be made available on the internet no later than the time when it was made available to members of any particular organisation.

**Collaborative research**

As referred to above, an uplift to the normal maximum aid intensity level can be applied where it can be demonstrated that the funded R&D project involves effective collaboration between at least two undertakings that are independent of each other. Such an uplift is, however, subject to the following conditions:

- no single undertaking may bear more than 70 per cent of the eligible costs of the applicable collaborative project
- collaboration must involve at least one SME or be carried out between entities operating in at least two EU member states.

Alternatively, where the collaboration is between an undertaking and a research organisation (as per the definition within the R&D&I framework), the uplift is permissible subject to fulfilment of the following conditions:

- the research organisation bears at least 10 per cent of the eligible project costs, and
- the research organisation is given the right to publish the results of the research project in so far as they stem from research implemented by that organisation, or
- in cases of industrial research, results of the project can be widely disseminated through technical and scientific conferences, through publication in scientific or technical journals or in open access repositories, or through free or open source software.

It should be noted that in no circumstances will sub-contracting in relation to an R&D project be viewed as collaboration and thus be eligible for the collaboration uplift.

**Innovation measures: aid for young innovative enterprises**
Beneficiaries under this measure are limited to small enterprises\(^\text{11}\) that have been in existence for less than six years at the time the aid under this measure is granted and have spent at least 15 per cent of their total operating expenditure in at least one of the three years preceding the grant for R&D. There are no specified eligible costs under this measure. However, due to cumulation rules under the GBER, it is likely to be necessary, under any grant funding agreement relating to the grant aid under this measure, to specify to what costs the funding is to be applied.

### Maximum aid levels

<table>
<thead>
<tr>
<th></th>
<th>Small enterprise in non-assisted area</th>
<th>Small enterprise in Article 87(3)(c) area</th>
<th>Small enterprise in Article 87(3)(a) area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum aid levels (€)</td>
<td>1m</td>
<td>1.25m</td>
<td>1.5m</td>
</tr>
</tbody>
</table>

Enterprises eligible for funding under this measure can only receive the funding on a one time only basis.

### Notification thresholds

Aid exceeding the maximum aid levels detailed above must be notified to the EC for approval prior to its grant.

### Additional conditions: cumulation

Entities that receive funding under this measure may not apply other aid exempted under the GBER to the same costs as those covered by this measure, with the exception of aid measures exempted under the GBER relating to the research and development innovation as well as risk capital measures.

### Innovation measures: aid for innovation advisory services and for innovation support services

Beneficiaries are limited to SMEs, with aid under this measure being capped at a maximum of €200,000 per beneficiary within any rolling three-year period.

### Eligible costs

Eligible costs are limited to the following:

- innovation advisory services – management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, acquisition protection and trade in intellectual property rights and for licensing agreements, consultancy on the use of standards
- innovation support services – office space, data banks, technical libraries, market research, use of laboratories, quality labelling, testing and certification.

It is considered that (on the basis of the above detailed eligible costs) it may be possible to apply funding under this measure towards occupation costs relating to incubation facilities. It should be noted that funding towards capital costs relating to incubation facilities (as currently set out within the R&D&I framework) are not covered by the GBER and thus remain subject to the usual notification requirements.

### Maximum aid levels

The maximum aid level is €200,000 per beneficiary within any rolling three-year period.

### Notification threshold

\(^{11}\) See footnote 5.
Aid exceeding the maximum aid levels detailed above must be notified to the EC for approval prior to its grant.

**Innovation measures: aid for the loan of highly qualified personnel**

**Scope**

Entities eligible under this measure are limited to SMEs, with the relevant personnel being loaned by either a large enterprise or a research organisation.

The measure is only permissible if:

- the seconded personnel do not replace other personnel already employed in a newly created function within the beneficiary enterprise, and the seconded personnel have also been in the employment of the loaning organisation for at least two years before their secondment to the SME;
- the seconded personnel must work on R&D&I activities only within the beneficiary SME.

**Eligible costs**

Eligible costs are limited to personal costs relating to the borrowing and employing of highly qualified personnel, including the cost of using a recruitment agency, as well as a mobility allowance for the seconded personnel.

**Maximum aid levels**

Aid must in no circumstances exceed 50 per cent of the above detailed eligible costs and is limited to costs incurred over a maximum period of three years.

**Notification threshold**

Aid exceeding the maximum aid levels detailed above must be notified to the EC for approval prior to its grant.

### Section 8

**Training aid**

**Impact on previous position**

This measure replaces those contained within the Training Aid Block Exemption\(^\text{12}\), and allows for higher aid levels but removes the previously available uplifted where training aid was applied in regionally assisted areas.

**Excluded sector**

No sectors are excluded.

**Scope**

Measures covered under this section of the GBER reflect those previously covered within the Training Aid Block Exemption in terms of eligible costs and the definitions of ‘general’ and ‘specific’ training. As most of the elements relating to training aid under the GBER reflect those within the Training Aid Block Exemption (eg the various definitions and details of eligible costs), this note does not repeat such information.

Funding may be provided on an ad hoc or scheme basis for SMEs or on a scheme basis for large enterprises.

**Maximum aid intensity levels**

<table>
<thead>
<tr>
<th>Enterprise Type</th>
<th>Large enterprise</th>
<th>Medium-sized enterprise</th>
<th>Small enterprise</th>
<th>Enterprise operating in the</th>
<th>Uplifts for training</th>
</tr>
</thead>
</table>

Other than for enterprises operating within the maritime sectors, in no circumstances is funding in excess of 80 per cent of eligible costs permitted under this measure.

**Notification threshold**

In each case, the notification threshold is €2m per undertaking per project. Aid exceeding this maximum level must be notified to the EC for approval prior to its grant.

**Section 9**

**Aid for disabled and disadvantaged workers**

**Impact on previous position**

This measure replaces those relating to disabled and disadvantaged workers set out within the Employment Aid Block Exemption.

Whilst the definition of disabled workers within the GBER remains the same as that set out in the Employment Aid Block Exemption, the definition of disadvantaged workers has been significantly altered. The definition is now as follows:

- any person who has not been in regular paid employment for the previous six months
- any person who has not attained an upper secondary education or vocational qualification (ISCED 3)
- any person over the age of 50
- any person living as a single adult with one or more dependants
- any person working in a sector or profession where the gender imbalance in the sector or profession concerns is at least 25 per cent higher than the average gender imbalance across all economic sectors in the member state concerned and who belongs to that underrepresented gender group
- any person who is a member of an ethnic minority within a member state and who requires development of his or her linguistic, vocational, training or work experience profile to enhance prospects of gaining access to stable employment.

In addition, the GBER introduces a new term in the form of ‘severely disadvantaged workers’, which refers to individuals who have been unemployed for 24 months or more.

**Excluded sectors**

The coal sector is excluded.

**Scope**

Aid measures covered by this section within the GBER can only be applied on a scheme basis.

**Aid for the recruitment of disadvantaged workers in the form of wage subsidies**

Eligible costs relate to wage costs over a maximum period of 12 months following recruitment of the disadvantaged worker. This period can be increased to 24 months where the recruited worker is ‘severely disadvantaged’.

Aid is generally only permissible where the recruitment results in a net increase in worker numbers other than where the relevant posts have fallen vacant following

<table>
<thead>
<tr>
<th>General training</th>
<th>60%</th>
<th>70%</th>
<th>80%</th>
<th>100%</th>
<th>+10%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific training</td>
<td>25%</td>
<td>35%</td>
<td>45%</td>
<td>100%</td>
<td>+10%</td>
</tr>
</tbody>
</table>
voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct (not as a result of redundancy).

Aid for the employment of disabled workers in the form of wage subsidies

Eligible costs relate to wage costs for the full duration during which the disabled worker is employed.

Other than the details as to aid intensity levels and eligible costs, the conditions applicable to aid in relation to disadvantaged workers (detailed above) equally apply to aid under this measure.

Aid for compensating additional costs of employing disabled workers

Eligible costs relate to the additional costs incurred by an employer as a direct result of employing a disabled rather than able-bodied worker, and cover the following costs linked to the same:

- cost of adapting premises
- cost of employing staff for time spent solely on the assistance of disabled workers
- cost of adapting or acquiring equipment or acquiring and validating software for use by disabled workers, including adapted or assisted technology facilities, which were additional to those that the beneficiary would have incurred if employing able-bodied workers
- where disabled employees form at least 50 per cent of the beneficiary's workforce, the cost of constructing, installing or expanding the establishment concerned, and any costs of administration and transport that directly result from the employment of disabled workers.

Maximum aid levels

<table>
<thead>
<tr>
<th>Aid for the recruitment of disadvantaged workers</th>
<th>Aid for the employment of disabled workers</th>
<th>Aid for the additional costs of employing disabled workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum aid levels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50%</td>
<td>75%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Notification thresholds

The notification thresholds are as follows:

- aid for recruiting disadvantaged workers – €5m per undertaking per year
- aid for employing disabled workers – €10m per undertaking per year
- aid for compensating additional costs of employing disabled workers – €10m per undertaking per year.

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