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General block exemption Regulation (Reg. 651/2014) – working document

Aid for access to finance for SMEs

First the general conditions of application of the GBER should be checked (12 conditions / Articles 1 -12) AND then the conditions with regard to aid for access to finance for SMEs.

A. General conditions of application.

GENERAL COMPATIBILITY CONDITIONS	COMPLIANCE CHECK (OK?)
<p>Article 1 - Exclusion of certain activities (§2)</p> <p>Shall not apply to:</p> <ul style="list-style-type: none">• Aid schemes for access to finance for SMEs with average annual State aid budget exceeding EUR 150 million from six months after their entry into force (this Regulation may continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force);• any alterations of schemes referred above other than modifications which cannot affect the compatibility of the aid scheme under this Regulation or cannot significantly affect the content of the approved evaluation plan• Aid to export related activities• Aid contingent upon use of domestic over imported goods.	
<p>Article 1 - Exclusion of certain sectors (§3)</p> <ul style="list-style-type: none">• Fishery and aquaculture* (as in Reg 1379/2013) except for aid for SMEs' access to finance;• Primary production of agricultural products* except for risk finance aid;• The processing and marketing of agricultural products* if the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or when the aid is conditional on being partly or entirely passed on to primary producers;• Aid to facilitate the closure of uncompetitive coal mines (Council decision 2010/787); <p><i>* If undertaking active also in sectors within the scope of the this Regulation, the Regulation applies to aid granted in respect of these sectors provided that MS ensures that the activities in the excluded sectors do not benefit from the aid</i></p>	

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Article 1 - Exclusion of companies concerned by the Deggendorf rule (§4)	
Shall not apply to aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to outstanding recovery order following a previous Com. Dec. declaring an aid illegal/incompatible and shall not apply to ad hoc aid to such an undertaking	
Article 1 - Exclusion of companies in difficulty (§4)	
Shall not apply to aid to undertakings in difficulty	
Article 1 - Exclusion of aid measures violating Union Law (§5)	
Shall not apply to State aid measures, which entail a non-severable violation of Union law, in particular: (a) obligation for the beneficiary to have its headquarters or to be predominantly established in the relevant Member State. Requirement for an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed. (b) obligation to use nationally produced goods or national services; (c) restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.	
Article 4 - Individual notification thresholds	
Shall not apply to aid which exceeds: <ul style="list-style-type: none">• Risk finance: EUR 15 million per eligible undertaking under any finance measure (Article 21(9));• Start-ups: the amounts laid down per undertaking in Article 22(3), (4) and (5) The thresholds shall not be circumvented by artificially splitting up the aid schemes .	
Article 5 – Transparency of aid	
Shall apply only to transparent aid and shall be considered as transparent: <ul style="list-style-type: none">• Grants and interest rate subsidies• Loans (where gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant)• Guarantees (gross grant equivalent calculated on the safe-harbour premiums laid down in a Commission Notice or	

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<p>gross grant equivalent accepted before implementation on the basis of the Com Notice on Guarantees and the approved calculation methodology explicitly addresses the type of the guarantee and the type of the underlying transaction at stake in the context of the application of the GBER)</p> <ul style="list-style-type: none">• Tax advantages (when cap to ensure that threshold is not exceeded)•• Aid comprised in risk finance measures (if the conditions laid down in Article 21 are fulfilled)• Aid for start-ups (if the conditions laid down in Article 22 are fulfilled)	
Article 6 - Incentive effect	
<p>Aid can only be exempted if incentive effect:</p> <ul style="list-style-type: none">• Beneficiary submitted aid application to MS, before work on the project or activity starts, with at least the following information:<ol style="list-style-type: none">a) undertaking's name and size;b) description of the project, including its start and end dates;c) location of the project;d) list of project costs;e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project <p>→Exceptions</p> <ul style="list-style-type: none">• Tax advantages if:<ol style="list-style-type: none">a) the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; andb) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantage• Aid for access to finance for SMEs is deemed to have incentive effect if the relevant conditions laid down in Articles 21 and 22 are fulfilled	
Article 7 - Eligible costs (Only relevant for Aid for scouting costs)	
<p>For the purposes of calculating the aid intensity</p> <ul style="list-style-type: none">• Figures before any deduction of tax or other charge;	

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<ul style="list-style-type: none">• Aid granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid• Aid payable in several instalments shall be discounted to its value when granting (same for eligible costs and with interest rates of the moment of granting);• Tranches of aid in tax advantages shall be discounted on the basis of the discount rates applicable at the moment the tax advantages take effect; <p>Eligible costs & documentation</p> <ul style="list-style-type: none">• Eligible costs supported by clear, specific and contemporary documents.	
Article 8 – Cumulation	
<ul style="list-style-type: none">• Total amount of aid shall be taken into account for thresholds and maximum aid intensities (§1);• If Union funding (not under the control of the Member State) is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law (§2);• Exempted aid may be cumulated with any other State aid if different identifiable costs (§3a);• No cumulation of exempted aid with any other aid on the same eligible costs, partly or fully overlapping, if the result would exceed the highest aid intensity/amount applicable to this aid (§3b);• Aid without identifiable eligible costs exempted under Articles 21 (Risk finance aid), 22 (Aid for start-ups) and 23 (Aid to alternative trading platforms specialised in SMEs) of this Regulation 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 (§4);• State aid exempted the GBER shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of the GBER (§5)	

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Article 9 – Publication and information	
<ul style="list-style-type: none">• Publication on a comprehensive State aid website, at national or regional level of the following (§1):<ul style="list-style-type: none">a. the summary information (see Article 11) or a link providing access to it;b. the full text of each aid measure (see Article 11) or a link providing access to the full text;c. the information on each individual aid award exceeding EUR 500 000 (see Annex III). <p>As regards aid granted to European Territorial Cooperation projects, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.</p> <ul style="list-style-type: none">• For schemes in the form of tax advantages, and for schemes covered by Article 16 and 21 (except for SMEs which have not carried out any commercial sale in any market) the conditions set out in paragraph 1(c) of this Article shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million (§2):<ul style="list-style-type: none">- 0,5-1;- 1-2;- 2-5;- 5-10;- 10-30; and- 30 and more.• The information referred to in paragraph 1(c) shall be organised and accessible in a standardised manner, (see Annex III), and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be published within 6 months from the date the aid was granted, or for aid in the form of tax advantage, within 1 year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted (§4).• Member States shall comply with the provisions of this Article at the latest within two years	

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after the entry into force of this Regulation (i.e. 01/07/2016) (§6).	
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For definitions on concepts: article 2 (pay attention to the new definition of undertaking in difficulty and the definitions for aid for access to finance for SMEs)

Reporting: article 11

Monitoring: article 12

Withdrawal of the benefit of the block exemption: article 10

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B. Specific conditions for Aid for access to finance for SMEs

ARTICLE 21 RISK FINANCE AID	COMPLIANCE CHECK (OK?)
<ul style="list-style-type: none"> Compatible and exempted from notification if General compatibility conditions and conditions of this Article apply (§1) 	
Forms of aid	
<ul style="list-style-type: none"> At the level of financial intermediaries: forms of risk finance aid to independent private investors (§2): <ol style="list-style-type: none"> equity or quasi-equity, or financial endowment to provide risk finance investments to eligible undertakings; loans to provide risk finance investments to eligible undertakings ; guarantees to cover losses from risk finance investments to eligible undertakings. Independent private investors: risk finance aid in the same forms as mentioned above, or as tax incentives to private investors who are natural persons providing risk finance to eligible undertakings (§3). Forms of aid to eligible undertakings: risk finance aid in the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof (§4). 	
Eligible undertakings & operations	
<ul style="list-style-type: none"> Eligible undertakings: at the time of the <u>initial</u> risk finance investment are unlisted SMEs and fulfil at least one of the following conditions (§5): <ol style="list-style-type: none"> they have not been operating in any market; they have been operating in any market for less than 7 years following their first commercial sale; they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years. The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7 year following their first commercial sale; cumulative conditions (§6) : 	

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<ul style="list-style-type: none">- the total amount of risk finance not to exceed EUR 15 million under any risk finance measure (see (§9))- the possibility of follow-on investments was foreseen in the original business plan;- the undertaking receiving follow-on investments has not become linked (Article 3(3) of Annex I) with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.• Replacement capital: for equity and quasi-equity investments in eligible undertakings: risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least 50 % of each investment round into the eligible undertakings (§7).• For equity and quasi-equity investments as referred to in §2(a), no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes (§8)	
Risk finance measure ceiling & minimum private participation	
<ul style="list-style-type: none">• Total amount of risk finance to eligible undertakings (see §4) not to exceed EUR 15 million per eligible undertaking under any risk finance measure (§9)• Risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds (§10):<ul style="list-style-type: none">a) 10 % of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;b) 40 % of the risk finance provided to the eligible undertakings referred to in paragraph 5(b) of this Article;c) 60 % of the risk finance for investment provided to eligible undertakings mentioned in paragraph 5(c) and for follow-on investments in eligible undertakings after the 7-year period mentioned in paragraph 5(b).	

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<ul style="list-style-type: none">• Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in paragraph 10 and does not provide for private capital participation at the level of the eligible undertakings the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraph 10 (§11).	
No discrimination principle	
<ul style="list-style-type: none">• A risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfil predefined criteria objectively justified by the nature of the investments (§12).	
Conditions relating to financial intermediaries & maximum State exposure	
<ul style="list-style-type: none">• A risk finance measure shall fulfil the following conditions (§13):<ol style="list-style-type: none">a) it shall be implemented via one or more financial intermediaries, except for tax incentives to private investors in respect of their direct investments into eligible undertakings;b) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;c) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;d) in the case of guarantees falling under point 2(c), the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio	

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<p>can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.</p>	
Profit driven measures & commercially managed intermediaries	
<ul style="list-style-type: none">• Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled (§14) :<ol style="list-style-type: none">a) financial intermediaries shall be established according to the applicable laws.b) the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;c) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing <i>ex-ante</i> financial viability;d) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.• Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions (§15):<ol style="list-style-type: none">a) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;b) their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;c) they shall receive a remuneration linked to performance, or shall share part of	

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<p>the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;</p> <p>d) they shall set out an investment strategy, criteria and the proposed timing of investments;</p> <p>e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.</p>	
Conditions for risk finance measures in form of loans or guarantees	
<ul style="list-style-type: none">• A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions (§16):<ul style="list-style-type: none">a) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;b) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9;c) in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9. The guarantee shall not exceed 80 % of the underlying loan.	
<ul style="list-style-type: none">• A Member State may assign the implementation of a risk finance measure to an entrusted entity (§17).• Risk finance aid for SMEs that do not fulfil the conditions laid down in paragraph 5 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that (§18):<ul style="list-style-type: none">a) at the level of the SMEs, the aid fulfils the conditions laid down in Regulation (EU) No 1407/2013; andb) all the conditions laid down in the present Article, with the exception of those	

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<p>set out in paragraphs 5, 6, 9, 10, and 11, are fulfilled; and</p> <p>c) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60 % of the risk finance provided to the SMEs.</p>	
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<p style="text-align: center;">ARTICLE 22 AID FOR START-UPS</p>	<p style="text-align: center;">COMPLIANCE CHECK (OK?)</p>
<ul style="list-style-type: none"> • Compatible and exempted from notification if General compatibility conditions and conditions of this Article apply (§1); • Eligible undertakings: unlisted small enterprises up to five years following their registration; not yet distributed profits; not been formed through a merger. Eligible undertakings not subject to registration: five years eligibility as of the start of its economic activity or the moment when liable to tax for its economic activity (§2) • Form of Start-up aid (§3): <ul style="list-style-type: none"> - loans; interest rates not conform with market conditions; duration of 10 years; maximum nominal amount of EUR 1 million; EUR 1,5 million for undertakings in areas under Article 107(3)(c) TFEU; EUR 2 million for undertakings in areas under Article 107(3)(a) TFEU. For loans with a duration comprised between 5 and 10 years; maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. Loans with a duration of less than 5 years; maximum amount the same as for loans with a duration of 5 years; - guarantees with premiums not conform with market conditions; duration of 10 years; maximum EUR 1,5 million of amount guaranteed; EUR 2,25 million for undertakings in areas under Article 107(3)(c) TFEU; EUR 3 million for undertakings in areas under Article 107(3)(a) TFEU. For guarantees with a duration comprised between 5 and 10 years; maximum 	

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<p>amount guaranteed amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. Guarantees with duration of less than 5 years; maximum amount guaranteed same as for guarantees with duration of 5 years. The guarantee not to exceed 80 % of the loan.</p> <ul style="list-style-type: none"> - grants (including equity or quasi equity investment); interests rate and guarantee premium reductions up to EUR 0,4 million gross grant equivalent; EUR 0,6 million for undertakings in areas under Article 107(3)(c) TFEU; EUR 0,8 million for undertakings in areas under Article 107(3)(a) TFEU. • A beneficiary can receive support through a mix of the aid instruments referred to in paragraph 3 of this Article, provided that the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument (§4) • For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled (§5) 	
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<p style="text-align: center;">ARTICLE 23 AID TO ALTERNATIVE TRADING PLATFORMS SPECIALISED IN SMES</p>	<p style="text-align: center;">COMPLIANCE CHECK (OK?)</p>
<ul style="list-style-type: none"> • Compatible and exempted from notification if General compatibility conditions and conditions of this Article apply (§1) • Where the platform operator is a small enterprise, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 22 shall apply (§2) • The aid measure may take the form of tax incentives to independent private investors that are natural persons in respect of their risk finance investments made through an alternative trading platform into undertakings eligible under 	

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the conditions laid down in Article 21.	
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ARTICLE 24 AID FOR SCOUTING COSTS	COMPLIANCE CHECK (OK?)
<ul style="list-style-type: none">• Compatible and exempted from notification if General compatibility conditions and conditions of this Article apply (§1)• The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 21 and 22 (§2).• The aid intensity shall not exceed 50 % of the eligible costs (§3)	