During the application of the GBER (the Regulation) at national level, the following questions regarding the provisions of Art. 5 emerged. They are not interpreted in the FAQ and ECN-ET.

Art. 5, par. 1 of the GBER stipulates that the Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment ("transparent aid").

Art. 5, par. 2 indicates the types of instruments (categories/forms of aid), which are considered to be transparent, but does not state explicitly that the list is exhaustive.

Therefore, we would like to receive the following clarifications:

Can we assume that if we apply an instrument of assistance which is different from those referred to in paragraph 2, for which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment, this instrument is eligible under the GBER?  
or  
it should be assumed that Art. 5, par. 2 contains the definitive (exhaustive) list of those forms (instruments) of aid which exclusively and solely are considered transparent for the purposes of the application of the GBER?

Practical example:

Regarding the application of a regional investment aid measure under the GBER, it is planned that the form of the aid will be a provision of a (real) estate/real estate right at lower prices than the market ones.

Before proceeding to the approval of an investment project it is planned that an assessment of the real estate or limited real (estate) right by a licensed appraiser to be carried out for estimating its market value. The assessment will be carried out in compliance with the following requirements, which do not contain an element of risk assessment.

1. In order to form a market price based on the generally accepted market indicators and standards for assessments, an evaluation/assessment by an independent appraiser, with at least 3 years professional experience for evaluation/assessment of real estates, will be carried out.
2. When granting a property/a (real estate) right at a price, lower than the market price, the difference to the market value (price) /the market price gap/, determined by the independent appraiser, will represent the gross grant equivalent of the aid to meet the requirements for the granting of a regional investment aid.

A similar approach for the determination of the difference to the market value (price) /the market price gap/, will also be applied for the cases where the measure is a rental at prices lower than the market ones.

In addition, in case the Commission services do not consider this approach as a compliant with Art. 5, par. 1 of the GBER, please let’s indicate the reason why.

COMP reply:

The list in Article 5(2) GBER is not exhaustive and it is possible that other forms of aid can also be considered transparent aid. In any event, if in parallel to the sale of a piece of land at market value (and thus free of aid) the public authority provides a grant to the buyer, that aid measure constitutes transparent aid within the meaning of Article 5(2) GBER.