

The CECOP answer to the European Commission consultation on a draft General Block Exemption Regulation on state aid measures

Brussels, February 2014

CECOP – CICOPA Europe is the European confederation, grouping national organisations in 16 countries, which in turn affiliate over 50.000 cooperative and participative enterprises active in industry and services. The vast majority are SMEs and they employ 1.4 million workers across Europe. Among the main sectors of activity, we find metal and mechanical industries, construction and public work, social services, environmental activities, white goods, transport, education and culture, etc. Most of them are characterised by the fact that the employees in their majority are member-owners. Furthermore, several thousands of those enterprises are specialised in the reintegration of disadvantaged and marginalised workers (disabled, long-term unemployed, ex-prisoners, addicts, etc.). More than a thousand worker cooperatives in the CECOP network were created as business transfers to employees of conventional enterprises in crisis or without heirs.

CECOP thanks the European Commission for giving a second opportunity to react on the draft General Block Exemption Regulation on state aid measures. We especially welcome the enlargement of the scope and the inclusion of new categories of exempted aid.

SECTION 1 - REGIONAL AID

Regional investment aid (Article 14)

Concerning the provision in Art. 14 (6) "In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment."

- on the use of the term "former employees": prior to the business succession, the employees are not former employees but the current ones that still have a work contract with the enterprise. We thus request the **deletion of the term "former"**, which would mean that only ex-employees having resigned, having been laid off or being retired could be eligible for this provision, which is certainly not the sense of it.

- on the fact that the acquisition of shares would not constitute initial investment: the rationale for this last sentence is difficult to understand. In the case of the employees, the amounts of share capital which they invest in order to purchase the business does constitute the initial investment. Indeed, by changing hands and being restructured, generally under the form of a cooperative, the legal personality of the venture is also changing. On the other hand, this share capital usually represents the very first financial contribution in the acquisition process, eventually to be matched by other contributions, often in proportion to this initial investment (eg. one to one), from financial institutions

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(such as the solidarity funds of the cooperative system), and then, possibly, by public financial institutions as well.

We also ask the Commission to consider the provision being extended to medium enterprises as well.

See also our comments on Article 40.

SECTION 3 - AID FOR ACCESS TO FINANCE FOR SMEs

Aid for start-ups (Article 21)

Concerning the eligibility criteria described in the Art. 21 (2) "(...) undertakings shall be unlisted enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger":

In order to provide a level-playing field for different enterprise business models, special features of cooperatives, like the **distribution of results based on the principle of mutuality** (namely distribution exclusively to the members-owners) and on the basis of the **transactions between the members and the cooperative** (third cooperative principle "member economic participation", enshrined in art 3 and annex of ILO Recommendation 193/2002 on the Promotion of Cooperatives approved by all 28 EU member states) should be taken into account.

The non-distribution of profits to shareholders foreseen by Art. 21 (2) can be justified for non-cooperative enterprises. In turn, it is **not grounded when it comes to cooperative enterprises** which are precisely characterized by the mutual nature of the distribution of results which is granted exclusively to their members and according to the transactions with the cooperative, namely another distribution principle than the remuneration of capital: in the case of cooperative members who are the employees, such distribution of profits is based on each employee's work (remuneration levels and hours worked) and should be seen as a wage supplement (on which the employee will pay income tax).

Therefore, it seems appropriate to **specify the non-applicability of the aforementioned provision to the share of results granted to cooperatives' members**. The distribution of results based on the principle of mutuality has to be considered as a return to members and has to be understood in accordance with the definition given by Article 66 of Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE): "the statutes may provide for the payment of a return to members in proportion to their transactions with the SCE, or the services they have performed for it." The latter provision which applies to European cooperatives and is enshrined in a European instrument, is the European transposition of the corresponding provision in the 3rd cooperative principle enshrined in above mentioned ILO R 193/2002 (approved one year prior to the SCE Regulation and corresponding to standards previously agreed upon within the international cooperative representation system coordinated by the International Cooperative Alliance).

SECTION 4 – AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

Innovation aid for SMEs (Article 27)

CECOP welcomes the new provision for innovation aid for SMEs. However, we ask the Commission to **include SMEs** as well in the list of entities from which personnel can be

seconded (Article 27 (2) (b)). Furthermore, we are in favour of an increased aid intensity of the eligible costs.

SECTION 6 - AID FOR DISADVANTAGED WORKERS AND FOR WORKERS WITH DISABILITIES

Aid for the recruitment of disadvantaged workers and workers with disabilities in the form of wage subsidies (Article 31 & 32)

Several thousands of cooperatives from the CECOP 50,000-strong cooperative enterprise network have as a core mission the professional and social integration of disabled and disadvantaged workers (long-term unemployed, migrants, (ex) offenders, drug addicts, etc). These are presently above 30,000 across the EU and the figures are increasing rapidly. In addition, a very strong effort is being displayed so that these jobs are secure ones and records show that they are, to a very large extent. The fact that these cooperative enterprises have the integration of disadvantaged persons as their core mission is probably the main reason behind this success. In fact, cooperatives have a long tradition and sound expertise in sustainable reintegration of those who are usually excluded from the labour market.

Based on decades of experience and experimentation, CECOP calls for specific exemptions for enterprises having the professional and social integration of disadvantaged and disabled workers **as their core mission**. Due to the particular situation of their employees, those enterprises have to manage the reduced productivity of their workers, the need for dedicated and highly-specialized technical assistance staff (tutors, psychologists, ergotherapists etc) and the training of the workers (whether disadvantaged or not). Having to face substantial additional costs compared with other companies due to their social dimension, they need aid from public authorities in order to effectively compete on the market while complying with their social mission. This is nothing else than a specific application of the level-playing field principle.

This concept of enterprises having the professional and social integration of disadvantaged or disabled workers as a core mission already has a precedent in EU law, namely in the Article 17 (reserved contracts) of the new Directive on public procurement approved by the European Parliament on 15 January 2014, which applies to "economic operators whose main aim [our underlining] is the social and professional integration of disabled and disadvantaged workers". According to CECOP, it is important **not to make the distinction** between the duration of compatible aid for employment of disadvantaged workers (12 months), severely disadvantaged workers (24 months) and disabled workers (unlimited). The eligible wage costs should be extended to the **whole period of employment or until the disadvantaged persons are diagnosed nationally as being fully rehabilitated** in the case of enterprises having the employment and inclusion of disadvantaged and disabled workers as their **core mission**. Indeed, very often disadvantaged and disabled workers stay longer than a year in such enterprises before they are relocated by these enterprises to other enterprises, or before they can be considered as fully rehabilitated while continuing to work within the enterprise which is responsible for their social and professional integration.

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SECTION 11 - AID FOR CULTURE AND HERITAGE CONSERVATION

Aid for culture and heritage conservation (Article 47)

We welcome the enlargement of the GBER scope notably to new categories such as culture and heritage conservation. Hereby we suggest to extend the aid for the activities described under Article 47 3 (b) as tangible heritage including all forms of movable or immovable cultural heritage, in particular activities linked to the **conservation of active industrial**

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heritage (craft production, local skills etc). We also suggest enlarging the scope to tourist transport, linked to these activities.

ANNEX I - DEFINITIONS

10 - Disadvantaged worker

The definition still remains too restrictive according to us and we suggest to enlarge it to:

- "other persons in a situation of serious social exclusion as defined by the public authorities of the various Member States and according to their legislation" (e.g. homeless persons, ex-offenders, drug addicts etc.);

- "workers suffering from the consequences of economic crises, under the decisions which the public authorities of the various Member States would take in this respect". A new category of disadvantaged workers has appeared with the crisis: employed persons but within poor working conditions (precarious short-term contracts, etc.). This could allow Members States to adapt this category to the situation they are facing and to adapt it to their needs.

Indeed, defining who is in a situation of serious social exclusion or who is suffering from the consequences of economic crises falls within the scope of national regulation.

27 - Sheltered employment

CECOP welcomes the decrease of the threshold from 50% to 30%, which is in line with the above-mentioned Directive on public procurement (Article 17 on reserved contracts) approved on 15 January 2014, which also decreased the threshold in the same proportion. Nevertheless we regret that the category of beneficiaries is still limited only to disabled workers. We suggest **extending the latter to disadvantaged workers** as well, like the above-mentioned Directive on public procurement does. This would increase the coherence between various EU legal instruments and create less confusion between "sheltered employment" and "sheltered workshop".

40 - Initial investment in favour of new economic activity

We do not agree, nor do we understand this strong focus on the activity being the same or different from what it was under the previous owner, at least as far as transformation into a cooperative is concerned. Transformation into a cooperative is tantamount to re-establishing the enterprise under a completely new organizational basis and under specific legislation. This transformation requires investments and organizational changes like those needed for a new activity. The focus should thus be on **organizational change** rather than change in the activities.

On the point regarding the investor being unrelated to the seller, we can only agree if the waiver foreseen in Article 14 for family members or employees is modified according to our request (namely to delete the term "former" before employees).

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55 - Tourism activity

We suggest enlarging the definition to following NACE codes:

NACE 49: Land transport and transport via pipelines

NACE 50: Water transport

NACE 82.3: Organisation of conventions and trade shows

66 - Equity investment

Partial and nominal ownership also applies to cooperative members: each member, through his/her own share, has a portion of the ownership of the enterprise. In spite of this, ownership in a cooperative is common: a cooperative is characterized by **joint ownership and democratic control** [our underlining], according to the internationally agreed definition (above-mentioned ILO Recommendation 193/2002, Art. 2).

Although various cooperative laws allow for investment by external investors, the latter always have minority aggregate ownership and control over the cooperative. Otherwise the above "joint ownership and democratic control" provision would not be abided by. These minority external investors may indeed share the undertaking's profits, and this usually takes place according to the amount of the capital invested, like in non-cooperative enterprises. As far as the members are concerned, in turn, distribution of returns on the enterprise results is done, as mentioned above, according to the amount of transactions between the members and the cooperative (purchase in consumers/users' cooperatives, sales in producers' cooperatives, or remuneration in cooperatives among enterprise staff), and **not** in function of the capital which each member invested in the cooperative.

74 - Independent private investor

As we saw above, external investors (be they private or public) in a cooperative may exist under some national laws, but they always have **aggregate minority ownership and control** over the business. Nevertheless, such minority private investors in a cooperative cannot be considered as being "independent from that company", because the key cooperative provision of "joint ownership and democratic control" applies to the cooperative as a whole, including the portion of assets invested by independent private investors.

Concerning the idea that investment by public financial intermediaries should be considered as independent private investment if the state does not exercise control over these intermediaries, we consider the statement surprising, and even dangerous, as it could be interpreted as legitimizing a scenario which is actually unacceptable from the very definition of the state in the EU: how could it be acceptable that a public financial intermediary not be controlled by the public authorities themselves? How could any public entity or service not be controlled (de jure and de facto) by the state? How would the role of the state be defined in such a scenario?