



European
Commission



eState aid WIKI - Guidance Note

**Questions & Answers
on section 16 of the GBER:
'Aid involved in financial products
supported by the InvestEU Fund'**

March 2024

Competition

Public funding that fulfils the conditions of **State aid** as defined in Article 107(1) of the Treaty of the Functioning of the European Union ("TFEU"), **must**, in general, **be notified** to the Commission and approved before it is put into effect. The **General Block Exemption Regulation**¹ ('GBER' or 'the Regulation') **exempts** Member States' aid-granting authorities **from this notification obligation**, if all GBER criteria are fulfilled.

On 23 July 2021, the European Commission adopted an **extension** of the **scope** of the **GBER**² which allows Member States to implement certain aid measures without prior Commission scrutiny, including State aid granted for projects funded via certain EU centrally managed programmes, notably the **InvestEU Fund**. The aim of the InvestEU Fund is to provide an EU budgetary guarantee to support financing and investment operations in order to address specific market failures and mobilise additional private and public investment in support of the Union's internal policies.

Member States may **contribute their resources** (national funds, Recovery and Resilience Facility ("RRF")³ or funds under shared management⁴) to the EU guarantee under the **Member State Compartment** and/or to finance financial products via **national promotional banks** or other public finance institutions ('NPBIs') with the support of the InvestEU Fund under the Member State Compartment or the **EU Compartment**. Since such public contributions can be **imputable** to a Member State and may constitute State aid within the meaning of Article 107(1) TFEU, the purpose of **Section 16 of the GBER** is to declare State aid involved in financial products supported by the InvestEU Fund **compatible** with the internal market under certain limited conditions, which in turn relieves Member States from the notification obligation.

Member States have requested more guidance on the application of State aid control for operations supported by the InvestEU Fund. The present **note aims** to provide more clarity to the most-asked questions on aid under Section 16 of the GBER and to **facilitate**, overall, the **understanding of InvestEU implementing partners of State aid rules**.

This document is a **working paper** prepared by Directorate General for Competition (DG COMP) and **is not binding** on the European Commission as an institution nor it expresses the views and opinions of the European Commission. It follows the structure of the GBER and all references to Articles and recitals relate to the GBER unless otherwise stated.

This Q&A document is available in the **eState aid WIKI**, the IT-tool of DG COMP that facilitates informal exchanges on general State aid matters between the Commission's services and the Member States and EFTA countries (including the ESA). The eState aid WIKI does not encompass the exchange of information regarding specific cases for which other formal channels are in place. Access to the eState aid WIKI is open to a limited number of users only, as controlled by DG COMP.

1 Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187/1, 17.06.2014), as amended.

2 Commission Regulation (EU) No 2021/452 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270/39, 23.07.2021).

3 Regulation (EU) No 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57/17, 18.2.2021).

4 Regulation (EU) No 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231/159, 24.06.2021).

Table of Contents

GBER - CHAPTER III – SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID	5
SECTION 16	5
AID INVOLVED IN FINANCIAL PRODUCTS SUPPORTED BY THE INVESTEU FUND	5
I. Q&As on the applicability and scope of section 16 of the GBER.....	5
(1) When does Section 16 of the GBER apply?	5
II. Q&As on notification thresholds.....	6
(2) How should the notification thresholds for aid under Articles 56e and 56f of Section 16 of the GBER apply?.....	6
III. Q&As on cumulation	7
(3) Could you provide an overview of the applicable cumulation rules when aid under Section 16 is involved?	7
(4) Could you clarify the rules on cumulation for the combination of InvestEU funding with identifiable eligible costs with other funding involving State Aid with identifiable eligible costs for the same project?	9
(5) Should the specific thresholds established for each article be calculated at the level of the single entity or at group level?.....	10
(6) Would aid granted under the sub-points (a), (b) and (c) of Art 56e (10) be cumulated amongst each other without any restrictions?	10
(7) Considering the provision of Article 56f, would the maximum amount of financing be considered solely for transactions entered by the final beneficiary with the same commercial financial intermediary or with all financial intermediaries combined?.....	10
(8) As regards Article 56f, are there any additional conditions as regards the 20% minimum risk exposure that the commercial financial intermediary must retain?.....	10
(9) Is there a limit for aid granted to the same beneficiary under Article 56e(5)(a)(ii), Article 56e(8)(a), Article 56e(10)(a) and Article 56f?	10
(10) Is there a limit for what InvestEU funding a large company can receive under Articles 56e(8)(c), 56e(9)(b) and 56f?.....	10
(11) How can a risk finance measure under Article 21 be cumulated with InvestEU aid?	11
(12) What are the applicable rules when aid under Article 56e(10)(a)(iii) is combined with other InvestEU supported aid?.....	11
(13) In case InvestEU financial products are implemented under specific GBER Articles of Section 16 (e.g., Articles 56f and 56e (10)), would other past or present aid received by the final beneficiary outside the above-mentioned GBER Articles (i.e., EU Compartment, de minimis, temporary framework, grants etc.) be considered for the calculation of the maximum cumulation thresholds?	11
(14) How is InvestEU funding cumulated with aid granted under the temporary frameworks TF, TCF and TCTF?	12
(15) How is aid under the GBER (including under Section 16) cumulated with de minimis aid? Can for example aid under Articles 56e (10) and 56f be cumulated with de minimis aid?.....	12
IV. Q&As on reporting and transparency requirements	13
(16) Could you clarify the obligation for Member States to transmit to the Commission a summary information sheet (Article 11 (a)) for aid under Section 16?	13

(17) Could you clarify the obligation for reporting of annual expenditures (Article 11(1)(b) of GBER) for aid under Section 16?	13
V. Q&As on other issues	14
(18) Follow-on investments – would it be possible to provide follow-on investments under Article 56e(10)(a)(iii) of GBER into companies that were eligible at the time of the initial investment but evolved over time (e.g., either the temporal limit of the particular support lapsed, or the company grew into a bigger category)?.....	14
(19) Recovery of aid – what process should be put in place by implementing partners for aid under Section 16?	14
(20) Budget – could you clarify the application of Art 1(2) of GBER in relation to Section 16?	14
(21) How is the evaluation threshold in Article 1(2)(a) GBER calculated for the Member State contributions that correspond to multiple years of implementation of the supported Member State Compartment financial products?	14
(22) What is the definition of small mid-caps applicable to section 16 of the GBER?	15
ANNEX I.....	16

SECTION 16

AID INVOLVED IN FINANCIAL PRODUCTS SUPPORTED BY THE INVESTEU FUND

I. Q&As on the applicability and scope of section 16 of the GBER

(1) When does Section 16 of the GBER apply?

Section 16 of the GBER only applies to situations in which **State aid**, in the meaning of Article 107(1) TFEU, **is involved in financial products supported by the InvestEU Fund** that provide aid to implementing partners, financial intermediaries or final beneficiaries⁵. For this to be the case, the following criteria must be fulfilled cumulatively:

1. The support is financed through Member State resources (national funds, RRF or Funds under shared management) and is imputable to a Member State. The latter is the case if the Member State concerned has discretion as to the use of the resources involved. In the context of the InvestEU Fund, imputability and State resources may be present in the following situations:
 - When NPBIs are involved directly as implementing partners and/or indirectly as financial intermediaries of other implementing partners, which can be international financial institutions (“IFIs”), under the EU or Member State Compartment of the InvestEU Fund.
 - When a Member State contributes its resources to the Member State Compartment for implementing a financial product, with the following specific exception:
 - Where a Member State wants to contribute Member State resources under the Member State Compartment to ‘top-up’⁶ existing InvestEU financial products, designed by the Commission with implementing partners that are IFIs and implemented under the EU compartment, meaning that the contributing Member State exercises no discretion as regards the design and the implementation of the selected financial product⁷, such a contribution does not entail State aid⁸. Taking into account that products under Invest EU must be consistent with State aid rules, such contribution would normally be exempted from the notification obligation.
2. The support provides an advantage (i.e., it is not granted on market terms).
3. The support is selective (i.e., only available for certain categories of beneficiaries).

⁵ Section 16, therefore, does not apply to aid given in the form of grants or aid given in the form of financial products which are not supported by the InvestEU Fund.

⁶ Section 2.8, point a) of Commission Delegated Regulation (EU) 2021/1078 of 14 April 2021 supplementing Regulation (EU) 2021/523 of the European Parliament and of the Council by setting out the investment guidelines for the InvestEU Fund.

⁷ This contribution will not be deemed as imputable to a Member State where a Member State only selects the amount and the product, which the additional Member State Compartment funds will top-up, without any other say over the use of the funds (for example with regard to the type of products, investment period and categories of eligible final recipients) other than territorial earmarking to the contribution.

⁸ This exception is without prejudice to the obligation of Union financial instruments and budgetary guarantees to not distort competition in the internal market and be consistent with State aid rules pursuant to Article 209(2)(c) of the Financial Regulation.

4. The support is provided to undertakings, i.e., any entity carrying out an economic activity (e.g., this would exclude support to public education).
5. The support distorts or threatens to distort competition and affects trade between Member States.

Guidance and clarifications relating to the above criteria can be found in the "Notice on the Notion of Aid"⁹.

When all above criteria are fulfilled and the measure qualifies as a State aid in accordance with Article 107(1) of the TFEU, such aid shall be compatible with the internal market within the meaning of Article 107(3) of the TFEU and shall be exempted from the notification requirement of Article 108(3) of the TFEU, provided that the conditions laid down in Chapter I, Chapter II and Section 16 of Chapter III of the GBER are fulfilled¹⁰.

Member States may, however, apply another legal basis (e.g., another Article of the GBER or an approved State aid scheme), if applicable, to establish that aid involved in financial products supported under the InvestEU Fund is compatible with the internal market.

II. Q&As on notification thresholds

- (2) How should the notification thresholds for aid under Articles 56e and 56f of Section 16 of the GBER apply?

For aid involved in financial products supported by the InvestEU Fund, the threshold above which the GBER does not apply¹¹ is set by the amounts laid down in Section 16 of Chapter III, in accordance with Article 4 (gg) of the GBER (see Annex). These thresholds must not be circumvented by artificially splitting up the aid schemes or aid projects (Article 4(2) GBER).

Under Section 16, the aid element does not need to be quantified. This is relevant because the thresholds contained in Section 16 have a different scope than the notification thresholds included in Article 4 which are generally expressed as a maximum aid amount¹² (calculating, where relevant, the Gross Grant Equivalent ('GGE'))¹³. This difference relates to the fact that the InvestEU Programme is built on safeguards relevant for competition policy, which are already embedded in the rules of the InvestEU Fund, and that the Commission pre-approves the financial products' design and guarantee agreements. In addition, financing backed by the InvestEU Fund sometimes combines State aid with European funds, which makes the quantification of the State aid component more complex. To facilitate the implementation of the financial products backed by the InvestEU

⁹ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262/01, 19.7.2016, p. 1-50, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC.

See also Staff Working Document Guidance on State aid in European Structural and Investment (ESI) Funds Financial instruments in the 2014-2020 programming period, https://ec.europa.eu/regional_policy/information-sources/legislation-and-guidance/guidance_en

¹⁰ Such aid shall also comply with all applicable conditions laid down in Regulation (EU) 2021/523 and the InvestEU Investment Guidelines laid down in the Annex to Commission Delegated Regulation (EU) 2021/1078.

¹¹ If the GBER does not apply, the aid measure shall not be exempted from the notification requirement of Article 108(3) of the Treaty, but it can be declared compatible under another legal basis than the GBER and upon notification to the Commission. The measure can also comply with the De Minimis Regulation.

¹² Certain Articles express the threshold as total cost (e.g., aid for ports) or as total financing (e.g., risk finance).

¹³ Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid (Article 7(2) of the GBER).

Fund, the Commission has considered that it is **not necessary to quantify the aid element** of the public financing received.

Considering the above, Articles 56e and 56f of Section 16 of the GBER set thresholds (which at the same time are the relevant notification thresholds) in terms of maximum amounts of financing, *insofar as* the financing in question *contains State aid* (see for more details on this, the question on the application of the GBER below).

These maximum amounts correspond to the **total amount of financing received** by the final recipient from a financial instrument supported by the InvestEU Fund (see Article 56d (4)).

Article 56d (4) provides that the maximum thresholds laid down in Articles 56e and 56f shall apply to the **total outstanding financing**. This means that in case a beneficiary receives, for example, several loans backed by InvestEU and has already repaid parts of the first loan, at the moment of the second loan and the assessment of whether or not the second loan would exceed the maximum thresholds laid down in Section 16, only the amount of the first loan that is still outstanding (i.e. not yet repaid) has to be taken into account.

The maximum thresholds shall apply:

- a) **per project** in the case of aid **with identifiable** eligible costs covered by Article 56e (2), (3) and (4), Article 56e (5), point (a)(i), Article 56e (6), (7), (8) and (9).
- b) **per final beneficiary** in the case of aid **without identifiable** eligible costs covered by Article 56e (5), points (a)(ii), (iii) and (iv), Article 56e (10) and Article 56f.

The thresholds apply per project or per final beneficiary *irrespective of the source* of financing (to the extent that financing contains aid) and of the *financial intermediary*.

These thresholds also cover any follow-on investments made to final beneficiaries under Article 56e (10)(a)(i) and (iii).

Finally, in accordance with Article 8(1), to determine whether the notification thresholds are respected the total amount of State aid for the aided activity or project, or undertaking shall be considered.

III. Q&As on cumulation

- (3) Could you provide an overview of the applicable cumulation rules when aid under Section 16 is involved?

In accordance with Article 8(1), in determining whether the maximum aid intensities in Chapter III (including Section 16) are respected, the **total amount of State aid** for the aided activity or project or undertaking shall be considered.

Article 8 paragraphs (3) and (4) provide the cumulation rules for respectively aid **with** and **without** identifiable eligible costs.

For measures under section 16, the distinction between aid with or without identifiable eligible costs can be made based on Article 56d (4):

- aid listed in Article 56d(4)(a) constitutes aid with identifiable eligible costs,
- aid listed in Article 56d(4)(b) constitutes aid without identifiable eligible costs.

The following table explains the cumulation rules when aid under Section 16 is involved.

Combination			Applicable Result/Rule	
1	Any aid without identifiable eligible costs exempted under: Article 56(e) paragraphs (5)(a)(ii), (5)(a)(iii) or (5)(a)(iv), (10)	&	Any aid with identifiable eligible costs under: <ul style="list-style-type: none"> • Article 56e paragraphs (2), (3) and (4), (5)(a)(i), (6), (7), (8) and (9); • under other Articles of the GBER (outside of Section 16); • under other legal basis, such as another block exemption regulation or decision adopted by the Commission. 	Allowed without any limitations. [Based on Article 8(4) first sentence]
2	or Article 56f	&	any other State aid without identifiable eligible costs under: <ul style="list-style-type: none"> • other Sections (outside of Section 16) of the GBER, (i.e., Articles 19b, 20a, 21, 21a, 22 and 23 of GBER); or, • other legal basis (such as another block exemption regulation or decision adopted by the Commission). 	Up to the highest relevant total financing threshold fixed in the specific circumstances of each case. [Based on Article 8(4) second sentence]
3		&	other aid without identifiable eligible costs exempted under: <ul style="list-style-type: none"> • Article 56e paragraphs (5)(a)(ii), (5)(a)(iii) or (5)(a)(iv), 56e (10) or Article 56f; and • aid without identifiable eligible costs to remedy a serious disturbance in the economy of a Member State under Article 107(3)(b) TFEU; this concerns for example aid approved under the temporary frameworks TF, TCF and TCTF. 	Allowed without any limitations. <i>(with the exception of aid under Articles 56e paragraph (10)(a)(i), (10)(a)(ii) and (10)(a)(iii) that cannot be cumulated amongst themselves beyond the foreseen amount of EUR 16.5 million).</i> [Based on Article 8(4) third and fourth sentences]
4	Any aid with identifiable eligible costs covered by:	&	any other aid with different identifiable eligible costs	allowed without any limitations. [Based on Article 8(3)(a)]
5	Article 56 (e) paragraphs (2), (3), (4), (5)(a)(i), (6), (7), (8) and (9)	&	other aid with the same eligible costs , partly or fully overlapping.	Up to the highest aid intensity or aid amount applicable to this aid, as per the explanations provided in question 3 below. [Based on Article 8(3)(b)]

- (4) Could you clarify the rules on cumulation for the combination of InvestEU funding with identifiable eligible costs with other funding involving State Aid with identifiable eligible costs for the same project?

When cumulating aid with identifiable eligible costs received under InvestEU with other aid with the same identifiable eligible costs, the maximum aid intensity and aid amount is calculated in accordance with the second and fourth sub-paragraph of Article 8(3)(b).

In more detail, Article 8(3)(b) includes two alternative options how to cumulate the aid received from the two sources:

- i. The applicable GBER maximum aid amounts are calculated by applying the allowed aid intensity to the eligible costs after deducting the InvestEU financing.

Example 1: An audiovisual work investment requires an investment of EUR 100 million. The total eligible costs amount to EUR 90 million. InvestEU will provide loan financing of EUR 30 million and the Member State a grant of EUR 30 million. The remainder of the financing is not covered by public sources.

Are the GBER aid intensity and maximum aid amount thresholds respected?

According to Article 8(3), point (b), in such a situation, first, the nominal amount of financing received under InvestEU, here EUR 30 million, is deducted from the total eligible costs (here EUR 90 million), to calculate the total remaining eligible costs. In a second step, the maximum aid intensity is applied to these total remaining eligible costs.

In the case at hand, this means that a maximum aid intensity of 50% provided for in Article 54 (aid for audiovisual works) is applied to the amount of eligible costs not financed by InvestEU, i.e., EUR (90-30) 60 million. Thus, the Member State grant should not exceed EUR 30 million. The grant of the Member State is within the applicable GBER threshold for aid intensity and maximum aid amount in accordance with the second sub-paragraph of Article 8(3)(b).

- ii. For aid in the form of senior loans or guarantees on senior loans, Member States can, alternatively, assess compliance with the maximum aid intensity and amount by calculating the gross grant equivalent ("GGE") for the final beneficiary of the InvestEU support. Once the GGE of the InvestEU support is calculated, the Member State shall ensure that the total aid, i.e., the sum of the GGE for the InvestEU support and the other aid, does not exceed the highest aid intensity or aid amount applicable under GBER.

Example 2: An audiovisual work investment requires an investment of EUR 100 million. The total eligible costs amount to EUR 90 million. InvestEU will provide senior loan financing of EUR 30 million. The GGE comprised in this loan amounts to EUR 10 million. In addition, the Member State will provide a grant of EUR 30 million. The remainder of the financing is not covered by public sources.

Are the GBER aid intensity and maximum aid amount thresholds respected?

*If the Member State chooses to calculate the GGE of the senior loan, the maximum aid intensity of 50% provided for in Article 54 is applied to the total amount of eligible costs, i.e., EUR (90*50%) 45 million. The total aid amount equals EUR 10 million from Invest EU (GGE of the loan) and EUR 30 million from the Member State's grant, i.e., EUR 40 million in total. The applicable GBER threshold for aid intensity and maximum aid amount is thus respected in accordance with the fourth sub-paragraph of Article 8(3)(b).*

- (5) Should the specific thresholds established for each article be calculated at the level of the single entity or at group level?

In line with the general approach in State aid law and for consistency with the notification thresholds of the GBER (Article 4), "final beneficiary" in Article 56d (4) GBER has the same meaning as "undertaking" in the rest of GBER and thus refer to the group level.

- (6) Would aid granted under the sub-points (a), (b) and (c) of Art 56e (10) be cumulated amongst each other without any restrictions?

That is correct. For example, an SME fulfilling the conditions of all sub-points (a), (b) and (c) may obtain financing up to EUR 35.2 million: EUR 16.5 million under 56e(10)(a) + EUR 16.5 million under 56e(10)(b) + EUR 2.2 million under 56e(10)(c). However, aid under Articles 56e (10)(a)(i), (ii) and (iii) cannot be cumulated amongst themselves beyond the foreseen amount of EUR 16.5 million.

- (7) Considering the provision of Article 56f, would the maximum amount of financing be considered solely for transactions entered by the final beneficiary with the same commercial financial intermediary or with all financial intermediaries combined?

The maximum amount of financing applies per financial beneficiary, i.e., a beneficiary can receive maximum EUR 8.25 million in total from all financial intermediaries combined.

- (8) As regards Article 56f, are there any additional conditions as regards the 20% minimum risk exposure that the commercial financial intermediary must retain?

According to Article 56f GBER, the commercial financial intermediary must retain a minimum risk exposure of 20% of the financing transaction but not necessarily *pari passu* with the State support. Therefore, it is acceptable if the financial intermediary takes for example a collateral on the 20% of a loan granted to the final beneficiary.

- (9) Is there a limit for aid granted to the same beneficiary under Article 56e(5)(a)(ii), Article 56e(8)(a), Article 56e(10)(a) and Article 56f?

Since there are three measures without identifiable costs (Article 56e(5)(a)(ii), Article 56e(10)(a) and Article 56f) and one with identifiable costs (Article 56e(8)(a)), they can be cumulated without any restriction, i.e. up to the total added amount, as long as the beneficiary meets all the eligibility criteria of these Articles (EUR 33+16.5+8.25+50= 107.75 million).

- (10) Is there a limit for what InvestEU funding a large company can receive under Articles 56e(8)(c), 56e(9)(b) and 56f?

Under Article 56f a large company may receive up to EUR 8.25 million, which is not related to a specific project. In addition, this large company can obtain additional financing on a project eligible for 'climate and environmental protection' under Article 56e(8)(c) of up to EUR 50 million (aid with identifiable eligible costs).

However, if the same project is eligible under a different category for the same eligible costs, e.g., experimental development under Article 56e(9)(b) (also aid with identifiable eligible costs) with maximum foreseen amount of EUR 75 million, the large company may only receive aid with identifiable eligible costs up to the largest threshold of the two, i.e., EUR 75 million, and not the sum of the two. So, a large company with this one project can receive financing from InvestEU of EUR (8.25+75) 83.25 million.

- (11) How can a risk finance measure under Article 21 be cumulated with InvestEU aid?

Risk finance aid is without identifiable eligible costs. It can thus be cumulated without any restrictions with any other State aid with identifiable eligible costs, such as InvestEU financing for an investment in research infrastructure under Article 56e (7) (maximum amount of EUR 16.5 million under Article 21(9) + EUR 110 million= EUR 126.5 million).

Risk finance aid can also be cumulated with other State aid without identifiable eligible costs but only up to the highest relevant financing threshold. For example, an undertaking may receive for both risk finance aid (EUR 16.5 million) and aid for activities related to social services (maximum amount of EUR 33 million under Article 56e(5)(a)(ii)) up to EUR 33 million in total and not the sum of the two.

- (12) What are the applicable rules when aid under Article 56e(10)(a)(iii) is combined with other InvestEU supported aid?

Aid under Article 56e(10)(a)(iii) is aid without identifiable costs. As such, the applicable provision for cumulation purposes is Article 8(4). If implemented in compliance with Article 56e(10)(a)(iii), the supported financial product could be cumulated with all other aid under Section 16 GBER, apart from aid under Articles 56e (10)(a)(i) and Article 56e (10)(a)(ii).

As regards cumulation with other GBER aid (outside Section 16), Article 56e (10)(a)(iii) GBER can be cumulated with aid with identifiable eligible costs without any restrictions and with other aid without identifiable eligible costs up to the highest relevant total financing threshold.

- (13) In case InvestEU financial products are implemented under specific GBER Articles of Section 16 (e.g., Articles 56f and 56e (10)), would other past or present aid received by the final beneficiary outside the above-mentioned GBER Articles (i.e., EU Compartment, *de minimis*, temporary framework, grants etc.) be considered for the calculation of the maximum cumulation thresholds?

Cumulation rules apply to all aid received from different legal bases, such as the GBER, the *de minimis* Regulation and any potentially applicable temporary rules in Temporary Frameworks. In situations where financing that does not constitute State aid is combined with State aid, e.g., through the EU Compartment of the InvestEU, only the latter shall be considered for ensuring compliance with the aid intensity, the maximum aid amounts and the applicable cumulation rules. As regards the specific Articles mentioned, aid granted under Articles 56f and 56e (10) constitutes aid without identifiable eligible costs and aid under these provisions can be cumulated without limitation with each other according to the last sentence of Article 8(4). It can also be cumulated without any limitation with aid granted under the Temporary Frameworks according to the third sentence of Article 8(4).

For cumulation of two sets of aid without identifiable costs under different legal bases, the second sentence of Article 8(4) GBER applies and thus for example, cumulation of aid under Articles 56f and 56e (10) can be cumulated with risk finance aid under Article 21 up to the highest total financing threshold. Aid granted under Articles 56f and 56e (10) GBER can be cumulated without limitation with other aid with identifiable eligible costs under GBER or another legal basis.

As regards the cumulation of aid under the GBER with aid under *de minimis*, please see the relevant question 15 below.

- (14) How is InvestEU funding cumulated with aid granted under the temporary frameworks TF, TCF and TCTF?

As regards the temporary frameworks, paragraph 20 of the TF¹⁴, paragraph 53 of the TCF¹⁵ and para 59 of the TCTF¹⁶ mention that "State aid measures covered by this Communication may be cumulated with aid under de minimis Regulations or with aid under Block Exemption Regulations provided the provisions and cumulation rules of those Regulations are respected." Aid under the temporary frameworks can be with or without identifiable eligible costs. It is noted that the 2023 amendment of the GBER added the following sentence in paragraph 4 of Article 8: "*Aid without identifiable eligible costs exempted under this Regulation may be cumulated with other aid without identifiable eligible costs granted to remedy a serious disturbance in the economy of a Member State under Article 107(3)(b) TFEU approved in a decision adopted by the Commission.*".

The objective of this addition was to be able to cumulate, without any limitation, InvestEU aid without identifiable eligible costs under the GBER with aid without identifiable eligible costs under the temporary frameworks or any other aid to remedy a serious disturbance in the economy of a Member State under Article 107(3), point (b), TFEU.

- (15) How is aid under the GBER (including under Section 16) cumulated with de minimis aid? Can for example aid under Articles 56e (10) and 56f be cumulated with de minimis aid?

To answer this question, we need to distinguish between aid with identifiable eligible costs and aid without identifiable eligible costs under both Regulations. In more detail, there are the following possible combinations:

Cumulation			Applicable Result/Rule	
1	De minimis aid with identifiable eligible costs	&	GBER aid with identifiable eligible costs <u>or</u> with State aid for the same risk finance measure	up to the highest relevant aid intensity or aid amount [first sentence of Article 5(2) De minimis Regulation and Article 8(5) GBER]
2		&	GBER aid without identifiable eligible cost	no limitation [first sentence of Article 8(4) GBER]
3	De minimis aid without identifiable eligible costs	&	GBER aid with identifiable eligible costs	no limitation [second sentence of Article 5(2) De minimis Regulation]
4		&	GBER aid without identifiable eligible costs	no limitation [second sentence of Article 5(2) De minimis Regulation]

14 Communication from the Commission - Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 423/9, 07.11.2022) [the Temporary Framework].

15 Communication from the Commission on The Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426/1, 09.11.2022, p.1) [The Temporary Crisis Framework], para 53.

16 Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101/03, 17.03.2023), para 59.

It thus clear that Articles 56e (10) and 56f of GBER are both aid without identifiable eligible costs; while, aid under these Articles can be cumulated without any limitation with de minimis aid both with and without identifiable eligible costs.

IV. Q&As on reporting and transparency requirements

The GBER provides for a specific way of fulfilling the GBER reporting and transparency obligations with respect to InvestEU products under Section 16. This specific way takes into account reporting channels applicable to InvestEU products.

The GBER reporting and transparency requirements can be grouped into three categories:

- The submission of a summary information sheet.
- The publication of the full text of the aid measures or a link providing access to the full text.
- The annual reporting of aid expenditures.
- The requirements to publish individual aid awards (transparency).

(16) Could you clarify the obligation for Member States to transmit to the Commission a summary information sheet (Article 11 (a)) for aid under Section 16?

Member States remain responsible to submit the summary information sheet allowing the Commission to assign a State aid case number to the respective GBER measure (typically a State aid scheme). The summary information sheet that needs to be transmitted to the Commission requires a link providing access to the full text of the aid measure (including its legal basis, as mentioned in the standardised format laid down in Annex II to the GBER).

It is up to the relevant Member State to determine the form of the national legal basis (e.g., a law, an administrative order, a ministerial order, etc.) or a combination of several documents, if applicable, in which the essential features of the financial product are clearly set out.

The summary information sheet must be submitted within 20 working days following the entry into force of the relevant aid measure. Member States may use as 'entry-into-force date', the date after which aid can be granted to undertakings rather than the actual date of use by the final beneficiary.

(17) Could you clarify the obligation for reporting of annual expenditures (Article 11(1)(b) of GBER) for aid under Section 16?

While legally it is the relevant Member State who is responsible for the submission of the annual report, the GBER allows this obligation to be fulfilled by the implementing partners if they submit annual reports on aid expenditures to the Commission.

The InvestEU reporting requirement already requires a detailed reporting from the implementing partners to the Commission.

An important prerequisite for Member States being able to ensure that the implementing partners can fulfil this obligation is that this reporting modus is stipulated in the guarantee agreements signed between the Commission and the implementing partners.

V. Q&As on other issues

- (18) Follow-on investments – would it be possible to provide follow-on investments under Article 56e(10)(a)(iii) of GBER into companies that were eligible at the time of the initial investment but evolved over time (e.g., either the temporal limit of the particular support lapsed, or the company grew into a bigger category)?

The main eligibility criterion set out in Article 56e (10)(a)(iii) of GBER is that the companies receiving aid are innovative SMEs and small mid-caps as defined in Article 2, point (80) of GBER. The provision does not specify if such aid is limited to initial investments or if it can include follow-on investments. We thus consider that the financing possibilities under InvestEU, based on this specific provision, include not only initial but also follow-on investments provided the nominal amount of the total financing per final beneficiary does not exceed EUR 16.5 million.

- (19) Recovery of aid – what process should be put in place by implementing partners for aid under Section 16?

The Member State is responsible for the recovery of any unlawful aid from the final beneficiaries on its own initiative in accordance with the national law. No additional obligations shall be applicable for the implementing partners or financial intermediaries.

- (20) Budget – could you clarify the application of Art 1(2) of GBER in relation to Section 16?

Article 1(2)(a) lays down that aid schemes whose average annual budget exceeds a certain threshold can initially only be block exempted for up to 6 months. Beyond these 6 months, such schemes can only continue to be block exempted if the Member State submits an evaluation plan to the Commission within 20 working days of the scheme's entry into force and if the Commission approves this evaluation plan. The reason for this requirement is that very large aid measures should only be block exempted if they are subject to an approved evaluation.

For aid under Section 16, Article 1(2)(a) lays down a higher threshold for this evaluation requirement than for other aid measures under the GBER, namely a threshold of an average annual budget of EUR 200 million. This provision, furthermore, lays down that for aid under Section 16 only the contribution by a Member State to the Member State Compartment of the EU guarantee, to the extent that it constitutes State aid (see question 1 of this document), which is earmarked for a specific financial product should be taken into account for the assessment of whether the threshold of EUR 200 million is exceeded.

In other words, for aid measures under Section 16, the obligation to submit an evaluation plan only applies for financial products for which a Member State has earmarked a contribution to the Member State Compartment with average annual budget of at least EUR 200 million.

- (21) How is the evaluation threshold in Article 1(2)(a) GBER calculated for the Member State contributions that correspond to multiple years of implementation of the supported Member State Compartment financial products?

The average annual State aid budget of a Member State for a financial product according to Article 1(2)(a) GBER is calculated by dividing the Member State's contribution for the specific product by the number of years between the signature of the corresponding Guarantee Agreement and **2026**, i.e., when GBER expires.

For calculating the average annual State aid budget for a Member State Compartment financial product under the GBER in order to assess whether the corresponding scheme

needs to be evaluated, one needs to take into account only the years covering the period between the signature of the Guarantee Agreement and the end of that Agreement's validity and, in any event, not later than 31.12.2026 (when the GBER is due to expire).

(22) What is the definition of small mid-caps applicable to section 16 of the GBER?

The most recent targeted revision of the GBER¹⁷ clarified that the definition of the term 'small mid-caps' in Article 2(103e), for the purpose of the application of Articles 56e (10) and 56f, shall mean an undertaking that is not an SME and employs up to 499 employees. With this change, the definition of this term is the same as the one used in the InvestEU Regulation.

It is also noted that for the qualification of an undertaking as a small mid-cap the whole group of linked and partner entities of the final recipient needs to be examined.

¹⁷ Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 167, 30.6.2023).

ANNEX I

GBER Article	Sector	Maximum nominal amount of total financing	to any final beneficiary	per project
Article 56e (2)	Aid for projects of common interest in the area of trans-European digital connectivity infrastructure, etc.	EUR 150 million	yes	yes
Article 56e (3)	Aid for fixed investments broadband network deployment and aid for 4G and 5G mobile network deployment to connect certain eligible socioeconomic drivers.	EUR 150 million	yes	yes
Article 56(e)(4)(a)	Aid for investment in energy infrastructure exempted from third party access, tariff regulation and unbundling, based on the internal energy market legislation.	EUR 150 million	yes	yes
Article 56(e)(4)(b)	Aid for generation of energy from renewable energy sources	EUR 75 million	yes	yes
Article 56(e)(5)(a)(i)	Aid for investment in infrastructure used for the provision of social services and for education.	EUR 110 million	yes	yes
Article 56(e)(5)(a)(i)	Aid for cultural and heritage conservation purposes and activities, including natural heritage.	EUR 165 million	yes	yes
Article 56(e)(5)(a)(ii)	Aid for activities related to social services	EUR 33 million	yes	n/a
Article 56(e)(5)(a)(iii)	Aid for activities related to culture and heritage conservation	EUR 82.5 million	yes	n/a
Article 56(e)(5)(a)(iv)	Aid for education and training	EUR 5.5 million	yes	n/a
Article 56(e)(6)	Aid for transport and transport infrastructures	EUR 165 million	yes	yes
Article 56(e)(7)	Aid for other infrastructures	EUR 110 million	yes	yes
Article 56(e)(8)(a)	Aid for environmental	EUR 50 million	yes	yes

	protection, including climate protection (investments to remedy or prevent damage to physical surroundings etc., measures improving energy efficiency of a building or undertaking, remediation of contaminated sites, environmental studies, enhancement, restoration of biodiversity and ecosystems, and investment aid for the acquisition of clean vehicles etc.)			
Article 56(e)(8)(b)	Aid for environmental protection, including climate protection (measures improving energy efficiency of buildings for the installation of integrated on-site equipment generating electricity, heating, or cooling from renewable energy sources, the installation of equipment for the storage of energy generated by the on-site renewable energy installations, the connection to an energy efficient district heating and/or cooling system, the construction and installation of recharging infrastructure for use by the building users, the installation of equipment for the digitalisation of the building, and investment in green roofs and equipment for the retention and use of rain water	EUR 50 million	yes	per building
Article 56(e)(8)(e)	Aid for energy efficiency improvements relating to facilitation of energy performance contracting provided: (i) the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures, and which are the financial beneficiaries of the aid;	EUR 30 million	yes	per building

	(ii) the aid is provided for the facilitation of energy performance contracting; and (iii) the aid takes the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract or consist in a financial product aimed at financing the provider.			
Article 56(e)(9)(a) (i-iii)	Aid for fundamental research, industrial research, and experimental development	EUR 75 million	yes	yes
Article 56(e)(9)(a) (iv-vi)	Aid for process innovation or organizational innovation for SMEs, innovation advisory services and innovation support services for SMEs, digitalisation for SMEs	EUR 30 million	yes	yes
Article 56(e)(10)(a)	Aid for unlisted SMEs that have not yet been operating in any market or for less than 10 years following registration or less than 7 years after their first commercial sale, unlisted SMEs starting a new economic activity, and SMEs and small mid-caps that are innovative enterprises.	EUR million 16.5	yes	n/a
Article 56(e)(10)(b)	Aid for SMEs or small mid-caps whose principal activities are located in assisted areas.	EUR million 16.5	yes	n/a
Article 56(e)(10)(c)	Aid for SMEs or small mid-caps	EUR million 2.2	yes	n/a
Article 56(f)(3)	Aid provided through the commercial financial intermediary.	EUR million 8.25	yes	n/a