

**PGNiG position on the review of the General Block Exemption Regulation (GBER): revised rules for State aid promoting the green and digital transition<sup>1</sup>**

We welcome the possibility to comment on the review of the General Block Exemption Regulation (hereafter 'the draft GBER'): revised rules for State aid promoting the green and digital transition. The initiative aimed at amending the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and ensuring complementarity with the European Green Deal and Industrial and Digital Strategy should be assessed positively. In order to develop regulations which can enable the energy transition, we suggest the following remarks on the draft GBER.

**General comments on the draft GBER revision:**

- Bearing in mind the scope of challenges related to adjusting existing infrastructure to the requirements of the EU's climate objectives, it is essential to ensure **some scope of flexibility for the undertakings as well as legal certainty**. Some amendments to proposed draft GBER should be introduced in order to **ensure coherence with other legal acts as well as grant relevant economic incentives for companies** to execute much needed investments in existing infrastructure.
- Some of the provisions of draft GBER (art. 41 (4a) or art. 46 (1b)) provide **exceptions concerning natural gas, so that the aid for facilities regarding this source of energy is allowed. It is important to keep this approach throughout the whole document** as bearing in mind that the main objective of the European Green Deal is that the EU achieves climate neutrality by 2050 and it seems impossible at least for some economies to make it without applying transitional technologies and fuels, such as natural gas. However, in the mentioned articles **exceptions concerning natural gas are allowed when providing compliance with the 2030 and 2050 climate targets. Lack of further clarifications of these vague demands will lead to legal uncertainty**. It is remarkably difficult for the undertakings to self-assess their compliance with 2030 and 2050 climate targets. In this regard further clarifications or the possibility to consult with the Commission on the compliance with aforementioned conditions should be ensured.
- **The inclusion of low-emission hydrogen to the draft GBER should be assessed positively.** However, **the preferential treatment should apply to all forms of hydrogen production** that contribute to avoiding emissions **in a technology neutral manner**. The low-carbon hydrogen is needed in the short and medium term, especially to rapidly reduce emissions from existing hydrogen production facilities and support the parallel development and future uptake of renewable hydrogen.

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<sup>1</sup> Draft of the Commission Regulation (EU) .../... of XXX 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.

# Detailed comments on the draft GBER revision:

Article of the draft GBER revision	Commission proposal and proposed changes	Comment
Art. 2, point 23	Amending existing definition from the art. 2 (23) of the current GBER in compliance with CEEAG. (23) <i>'start of works' means the <del>earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment</del> first firm commitment (for example, to order equipment or start construction) that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;</i>	According to the definition of a start of works enshrined in CEEAG it means the first firm commitment (for example, to order equipment or start construction) that makes an investment irreversible. The definition of the same term in closely related acts should be identical in order to avoid further difficulties in interpreting this provision. The definition presented in CEEAG allows to curve out from the meaning of "start of works" any possibly contentious situation where the influence on the incentive effect is derived from the actions which are neither irresistible nor express the real intention of an undertaking to undertake project with its own financial resources.
Art. 2, point 47(a)	(47a) <i>'completion of the investment' means the moment when the investment is considered by the national authorities as completed <del>or three years after the start of works, whichever is earlier;</del></i>	Due to the complexity and difficulties in the process of implementing investments in the energy sector, the indicated investment completion date of "three years" seems impossible to fulfil. It is a very short time for the implementation of a number of complex, large-scale investments.
Art. 2, point 49	(49) <i>'initial investment' means: (a) (...) – a fundamental change in the <del>overall</del> production process of the product(s) or the overall provision of the service(s) concerned by the investment in the establishment;</i>	The proposed change would be more in line with the current GBER and would introduce greater flexibility in terms of projects planned for implementation.
Art. 2, point 102c	(102c) <i>'renewable hydrogen' means hydrogen produced using <del>only</del> renewable sources of energy; (including biogas or biomethane) in accordance with [Reference to delegated act by DG ENER pursuant to Article 28 of the RED II];</i>	It should be emphasized that the renewable hydrogen includes also hydrogen produced from biogas and biomethane.
Art. 2, point 109	(109) <i>'energy from renewable sources' or 'renewable energy' means energy from renewable non-fossil energy sources as defined in Article 2, point (1), of Directive 2018/2001/EU, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which</i>	The scope should be extended to include a new area to support, allowing to use the alternative fuels for the power heating systems. Due to the unavailability of comprehensive technologies in district heating, allowing for the full use of renewable

	<i>also use conventional <b>or alternative</b> energy sources and includes renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;</i>	energy sources and the need of decarbonisation, it is necessary to use low-emission fuels and their diversification in order to ensure heat supply.
Art. 2, point 114	<i>(114) ‘new and innovative technology’ means a new and recently qualified technology compared to the state of the art in the industry, which carries a risk of technological or industrial failure and is not an optimisation or scaling up of an existing technology</i>	The term “recently qualified” is not sufficiently clear and precise. It seems reasonable to provide some clarification related to it or erase it at all.
Art. 2, point 130 (b)	<i>(i) transmission and distribution pipelines for the transport of natural gas, bio gas <b>(including biomethane)</b> and renewable gaseous fuels of non-biological origin that form part of a network, excluding high-pressure pipelines used for upstream transport <del>distribution</del> of natural gas;</i>	Using a term “distribution” might undesirably narrow the application of this provision. Transport is a broader term including both distribution and transmission as well as other forms of transporting gas. In order not to eliminate infrastructural solutions other than distributing gas, it is recommended to use a term “transport” instead of “distribution”.  It is also important to include biomethane to the definition of the energy infrastructure concerning gas as it can be the ally in the decarbonisation of the European economy and for the European energy transition.
Art. 2, point 130 (b)	<i>(iii) reception, storage and regasification or decompression facilities for liquefied natural gas (‘LNG’) or compressed natural gas (‘CNG’) <b>including liquefied or compressed bio gas and renewable gaseous fuels of non-biological origin;</b></i>	Indicated infrastructure which is currently related to LNG and CNG should also serve in the future to process biogas and other renewable gases. Bearing in mind the growing need to transform energy sector, renewable gases, also of non-biological origin, should be included to the furthest possible extent in EU legal framework.
Art. 2, point 130 (b)	<i>(v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including biomethane or hydrogen) into the network: digital systems and components integrating ICT, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission,</i>	Proposed wording of the provision do not include reverse flows from lower to higher levels in distribution networks. These types of reverse flows will be commonly used in the future and should be explicitly mentioned in the provision in order to avoid any further diverse interpretations.

	<i>distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from <del>the distribution</del> lower to higher distribution level or to the transmission level and related necessary upgrades to the existing network;</i>	
Art. 6	Adding supplementing paragraph.	Point 30 of the draft of Communication from the Commission “Guidelines on State aid for climate, environmental protection and energy 2022” (CEEAG) provides that aid can have an incentive effect even for projects which started before the aid application. The same provision should be enshrined in draft GBER.
Art. 36 (3)	<i>3. Aid shall not be granted where investments are undertaken to ensure that undertakings merely comply with the Union standards in force. Aid encouraging undertakings to comply with new Union standards not yet in force, which increase the level of environmental protection, may be granted under this Article provided that the Union standard has been adopted and the investment for which the aid is granted is implemented and finalised at least <del>18</del> 12 months before the date of entry into force of the standard concerned.;</i>	It is proposed to lower the investment completion period in line with the support level included in the current GBER due to the high dynamic of changes in the work schedule of investment projects, in particular in the energy sector.
Art. 36 (6a)	<i>6a. In case of investments relating to CCUS, the aid intensity shall <b>not exceed 20 %</b>. <b>40%</b></i>	The aid intensity for CCUS-related investments appears to be too low. CCUS technology is not mature enough with issues as regards to technical and economic feasibility, and the existing carbon dioxide capture, storage and utilization installations function currently only as test and demonstration installations. Despite its early stage of development, CCUS technology is an indispensable tool to meet the EU's climate goals, especially in high-carbon energy countries. Therefore, the CCUS technology should be given preferential treatment, and the maximum aid intensity of 20% for CCUS-related investments, mentioned in the document, should be significantly increased.
Art. 36a (2) and (3)	<i>2. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles with electricity or with renewable or low-carbon hydrogen <b>or other</b></i>	The reduction or even elimination of gases emitted by the vehicles can also be achieved through other innovative fuels like renewable gaseous fuels.

	<p><b>renewable gaseous fuel</b> for transport purposes. The Member State shall ensure that the requirement to supply renewable or low-carbon hydrogen is complied with throughout the economic lifetime of the infrastructure. This Article is without prejudice to the possibility to grant aid for investments relating to alternative fuel infrastructure as part of port infrastructure under Articles 56b and 56c.</p> <p>3. The eligible costs shall be the costs of the construction, installation, upgrade or extension of the recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself, installation of or upgrades to electrical <b>and gas</b> or other components, including electrical cables and power transformers <b>or gas networks and gas stations</b>, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit <b>or renewable gaseous fuel</b>, as well as related technical equipment, civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.</p>	<p>Member States and car manufacturers should be allowed to freely enhance the development of technologies as long as they prove to be beneficial for the environment. Bearing this in mind the possibility to support infrastructure related to renewable gaseous fuels along with hydrogen should be granted in draft GBER. The more environmentally friendly possibilities can be granted support, the greater incentives for all of the involved actors to embark on innovative projects <i>inter alia</i> related to renewable gases used in the transport sector.</p>
Art. 41 (1)	<p>1. Investment aid for the promotion of energy from renewable energy sources, <b>renewable gases</b>, renewable hydrogen and high-efficiency cogeneration 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 the conditions laid down in this Article and in Chapter I are fulfilled.”;</p>	<p>One of the sources of renewable energy might also be renewable gases – other gases than hydrogen. This characteristic should be included in an indicated provisions in order to stimulate the full development of renewable energy in Member States.</p>
Art. 41 (1a)	<p>1a. Investment aid for storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty <del>only to the extent that</del> if it is granted on the basis of a scheme open to combined renewable and storage projects (behind-the-meter), where both elements are installed and put into operation at the same time. The storage investment shall have as a maximum the same capacity as the connected renewable investment. Aid to storage connected to an existing renewable installation (behind-the-meter) may also be covered by the same scheme, where the storage investment fulfils the same conditions and all investment projects</p>	<p>It is important to extend the investment aid also on a separate storage investments as the planned energy transition which would rely basically on the intermittent renewable sources of energy needs to be supported by guaranteeing the stability of the energy system.</p>

	<i>(renewables and storage) are considered an integrated project for verification of compliance with the thresholds set out in Article 4. <b>Investment aid shall be also exempted if it is granted to energy storage projects which are a separate investment and which source of supply may be both renewable energy installations and high-efficiency cogeneration units.</b></i>	
Art. 41 (7)	<i>7. The aid intensity shall not exceed: (a) <del>30</del> <b>45%</b> of the eligible costs for the production of energy from renewable energy sources, renewable hydrogen and high-efficiency cogeneration;</i>	It is proposed to increase the aid for cogeneration to 45% in line with the support level included in the current GBER. Currently, the investment gap of hydrogen generation projects is 60-70%.
Art. 41 (7)	<i>7. The aid intensity shall not exceed: (b) <del>15</del> <b>30%</b> of the eligible costs for projects involving <del>thermal energy and</del> electricity storage.”;</i>	In the current market conditions, investments in energy storage are considered as capital-intensive with a long payback period. The planned support at the level of 15% seems too low to effectively develop the energy storage in the energy sector. The level of 30% would be more suitable given the needed investments and their significant importance in the process of energy transition.
Art. 44 (5b)	<i>5. Tax reductions in favour of energy-intensive businesses defined in Article 17(1), point (a) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty. Beneficiaries under such schemes that are large enterprises shall in addition: (b) within <del>[three years]</del> from the moment the reduction is granted to it: – implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed <del>3</del> years and that the costs of their investments are proportionate; or alternatively</i>	It is worth to reconsider the condition of paying-back time for relevant investments which cannot exceed 3 years as it could be difficult to fulfil it by many environmentally friendly investments. Some flexibility in this regard would be much appreciated.
Art. 48 (3)	<i>3. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where <b>the investment in such infrastructure makes the networks ready for adding hydrogen, renewable and low carbon gases. infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases,</b></i>	Existing art. 7 (1) (h) (ii) of Regulation 2021/1058 on the European Regional Development Fund and on the Cohesion Fund <sup>2</sup> , adopted in relation to the European Green Deal, refers to an investment in the expansion and repurposing, conversion or retrofitting of gas transmission and distribution networks <b>provided that such</b>

<sup>2</sup> Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund.

	<p><del>or mainly used for the transport of hydrogen and renewable gases.</del></p>	<p>investment makes the networks ready for adding renewable and low carbon gases, such as hydrogen, biomethane and synthesis gas, into the system and allows to substitute solid fossil fuels installations. This provision differs in many aspects with the proposed wording of art. 48 (3) of draft GBER. Due to existing discrepancies in interpretation of art. 7 of Regulation 2021/1058 as well as a need to ensure the consistency of the legal framework, a universal reference point related to new investments in gas related infrastructure should be provided.</p>
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