

Position Statement by Green Planet Energy

Public consultation on the EU Commission's official proposed amendment of the General Block Exemption Regulation (GBER): revised rules for State aid promoting the green and digital transition

Green Planet Energy (formerly known as Greenpeace Energy) is an energy cooperative founded by Greenpeace e.V. which supplies more than 200,000 customers with electricity and gas. The aim of the cooperative with its more than 28,000 members is to offer high-quality green energy products and do everything possible to ensure the success of the energy transition. To that end, Green Planet Energy conducts scientific research and is active politically. In addition, its wholly owned subsidiary Green Planet Projects (since recently known as Planet energy) builds and operates renewable energy plants (RES plants) and electrolyzers for the production of green hydrogen. By building wind and PV plants, Green Planet Energy aims to contribute to the achievement of climate protection goals and advance the energy transition to conserve nature and protect the environment. In this context, the energy cooperative delivers its opinion on the EU Commission's official proposed amendment to the Renewable Energy Directive (RED III).

Preliminary remark

The State aid General Block Exemption Regulation ("GBER") declares specific categories of State aid compatible with Article 107 and 108 of the Treaty on the Functioning of the EU (TFEU), if they fulfil certain conditions. Aid fulfilling these conditions is exempted from the requirement of prior notification and Commission approval.

Given the complementarity between the GBER and other various sets of State aid Guidelines (Energy and Environmental Guidelines; Regional Aid Guidelines; Research, Development and Innovation Framework and Risk Finance Guidelines) the Commission is, with the present targeted amendment, also revising the corresponding provisions of the GBER. The GBER defines ex ante compatibility conditions whereas guidelines lay down rules for assessing aid measures that do not fulfil those ex ante conditions and have to be notified to the Commission. Together, these two sets of rules form a comprehensive rulebook for certain areas of State aid law.

As Green Planet Energy we would like to participate constructively in the consultation phase by highlighting two issues. On the one hand, we see the urgent need for the GBER to **focus on an energy system consisting of 100% renewable energy**, thus avoiding lock-in effects caused by the use of fossil fuel-based technologies. On the other hand, we would like to emphasize that **only green hydrogen that meets strict criteria** and that has verifiably been produced from renewable energies should be applied within GBER.

➤ **Avoiding lock-in effects by focusing GBER exclusively on 100% Renewable Energy Systems (RES)**

For Europe to be climate neutral by 2045 at the latest, there must be a massive expansion of renewable energies (both centralised and decentralised) in the 2020s. To achieve that, the content and focus of EU Legislation must continue to apply exclusively to renewable energy systems (RES). That is the only way to ensure the momentum needed in the renewables sector and prevent carbon lock-in effects created by fossil-fuel-based technologies. The inclusion of low-carbon technologies within the GBER dilutes these principles and promotes pathways that are not compatible with the renewable goals and the fight against the climate crisis. We strongly warn against creating a general exemption for state aid for low-carbon technologies through the GBET. This would not prevent the general usage of low-carbon technologies. Moreover, it would help to emphasize that these technologies should only be used to reduce emissions and not to simply prolong the usage of fossil fuels. And it will give the chance to control and prove that the technologies are useful on a case-by-case basis.

The GBER draft does not contain a specific aid category for “aid to fossil gas”, yet fossil gas is not excluded per se, but even supported articles such as

- Art. 36: Investment aid for environmental protection (f.i. low-carbon-hydrogen)
- Art. 41: High-efficient cogeneration
- Art. 46: Energy efficient district heating and cooling
- Art. 48: Energy infrastructure

In this respect, the GBER includes approaches that would rather foster EU-MS in unsustainable projects rather than facilitating the fast uptake of renewable energy sources and energy efficiency measures throughout the EU. Therefore, we suggest to reduce the scope of the GBER by excluding the following approaches:

- the consideration **of fossil gas and low carbon hydrogen** that creates unintended climate damaging lock-in effects and might contribute to perpetrate projects including fossil gas infrastructures (f.i. Art. 36, 36b, 41d, 48...)
- the **reliance on carbon capture and storage (CCS), carbon capture and utilization (CCUS)** mixes exclusive State aid for RES with other mitigation measures which poses the risk of inadvertently maintaining the status quo of fossil-based business models (f.i. Art. 36...)
- any general approach **fostering biomass by green cogeneration** which does not seem to be in compliance with the EU 2030 and 2050 targets. From our point of view, it is required that only truly sustainable and renewable energy is declared as such and thus explicitly promoted (Art. 41, 46 ...)
- the approach **allowing tax reductions in favour of energy intensive industries** to balance competitive disadvantages affecting energy-intensive users.

In principle, Green Planet Energy calls into question all overgeneralisation of all low-carbon strategies. There is a risk that such overgeneralisation will create opportunities to support fossil and unsustainable fuels at the expense of renewables in the future – with unintended, climate-damaging lock-in effects. Green Planet Energy proposes to exclude all fossil fuels from this Regulation and be more precise concerning the phase out of natural gas. The gas infrastructure is also primarily designed for the transport and use of gas. Simply saying that it should be hydrogen ready without specifying how the transition should be designed and who will bear the costs is not enough. There should be an integrative approach here.

Environmental taxes and parafiscal levies are from our point of view among the most effective tools to enforce one of the pillar principles of the EU - the polluter pays principle. The reduction of possible competitive disadvantages due to artificial tax exemptions as in the GBER draft mentioned would be against the environmental and climate goals of the Union. It would also distort the competition among undertakings by favouring the ones that shift their negative externalities to the public purse. It would disadvantage those players that are changing their businesses to make them "Green Deal compatible".

When it comes to consistency across EU legislation, we also suggest considering pivotal environmental principles, such as the Polluter Pays Principle (PPP) and the Energy Efficiency First Principle (EE1st). Moreover, the GBER should be consistent with and reinforce Environmental Quality Standards and other EU legislation (f.i. RED III, Del. Act Hydrogen etc.) to improve policy coherence and a more integrated approach.

For the points mentioned above, we propose specific changes to the EU Commission's draft in the appendix below.

➤ **Introduction of appropriate and consistent thresholds for Renewable Energy Communities (RECs)**

In general, we welcome the proposal that RECs should fall under the GBER framework. However, we would like to point out that the threshold of 1 MW may be appropriate for some solar projects but does not meet the requirements of many solar projects and especially wind projects. This would prevent the participation of citizens within even medium-scale projects through RECS and would therefore lower the potential of RECs to the acceptance of these projects. We therefore propose in principle to increase the threshold to 10 MW. In addition, the thresholds for wind energy projects should be based on the previous wording of the GBER and EEAG, which set a threshold of 18 MW for wind projects. It is important that the thresholds that are adopted are in line with the CEEAG so that they are consistent with the requirements of the Renewable Energy Directive.

In addition, all measures implemented by Member States under Articles 21 and 22 of RED II should also be covered by the GBER exemptions.

➤ **Green hydrogen with stringent criteria to meet industry targets**

GBER aims to simplify investments in green hydrogen by exempting investment subsidies for environmentally friendly hydrogen projects and hydrogen infrastructure from the notification requirement. Operating aid for small plants to promote green hydrogen is also exempted from the notification requirement.

With that the draft foresees the promotion of hydrogen production based on renewable energies. But the draft does not define green hydrogen precisely and does, therefore, not explicitly exclude the indirect use of fossil energy sources e.g. by using electricity that is not renewable. Art. 36 "Investment aid for environmental protection" and Art. 48 "Investment Aid for energy infrastructure" do not distinguish between low-carbon hydrogen and green hydrogen nor provide any definitions and therefore set an indication that any kind of hydrogen can be applied here. Also, renewable gases as such are not clearly defined.

As Green Planet Energy we propose that only green hydrogen that meets stringent criteria and that has verifiably been produced from renewable energies should be applied within GBER. Without stringent criteria for hydrogen production, the use of electrolyzers and their electricity supply could lead to the perpetuation and promotion of electricity generated from fossil fuels. That will lead to higher CO₂ emissions and is not in line with our climate protection targets. The promotion of hydrogen in all EU Member States should therefore focus exclusively on green hydrogen. Blue hydrogen or low-carbon- hydrogen, on the other hand, perpetuates the use of fossil fuel technologies and hinders investment in renewable technologies.

We propose a standard and strict definition for green (renewable) hydrogen and consistent criteria to be applied to the exclusive promotion of green hydrogen. Only with such a definition and precise criteria can the European Union ensure that hydrogen contributes significantly to the reduction of CO₂ emissions. The production of Green hydrogen should take place whenever the share of renewable electricity is high, and the overall electricity consumption is low. Furthermore, the required amount of electricity from renewable energy sources must also be available geographically and whenever needed. Electrolyzers should not enhance grid congestion and must therefore be either located on the right side of the grid congestion or should operate in a mode that reduces grid congestions. This must be reflected in the criteria for the promotion and labelling of green hydrogen. These criteria should be applied to every production and usage of green hydrogen.

Moreover, precisely formulated, and practical requirements for renewable hydrogen can bolster the development of a European hydrogen market and avoid unnecessary lock-in effects caused by fossil fuel gases and inflexible and rigid production methods. The market roll-out of hydrogen must not be an end in itself; it should serve to achieve the climate targets and the decarbonisation of all sectors.

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Appendix

The appendix contains concrete proposals for amendments based on the above explanations. The right-hand column contains our proposals for selected articles without covering the entire set of rules.

Art 36 (b)	<p>"1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production using fossil fuels, except those using natural gas. This Article shall apply to investments in equipment, machinery and industrial production using hydrogen to the extent that the hydrogen used qualifies as renewable hydrogen or low-carbon hydrogen. In such a case, the Member State shall ensure that the requirement to use renewable hydrogen [or low-carbon hydrogen] is complied with throughout the economic lifetime of the investment.";</p>	<p>"1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production using fossil fuels, except those using natural gas. This Article shall apply to investments in equipment, machinery and industrial production using hydrogen to the extent that the hydrogen used qualifies as renewable hydrogen or low-carbon hydrogen. In such a case, the Member State shall ensure that the requirement to use renewable hydrogen [or low-carbon hydrogen] is complied with throughout the economic lifetime of the investment.";</p>
Art.36 (d)	<p>(d) the following paragraphs 2a and 2b are inserted:</p> <p>"2a. Investments in carbon capture and utilisation or storage ('CCUS') shall fulfil the following cumulative conditions:</p> <p>(a) the CO₂ capture, transport and use or storage, including individual elements of the</p>	<p>(d) the following paragraphs 2a and 2b are inserted:</p> <p>"2a. Investments in carbon capture and utilisation or storage ('CCUS') shall fulfil the following cumulative conditions:</p> <p>(a) the CO₂ capture, transport and use or storage, including individual elements of</p>

	<p>CCUS chain, shall be integrated into a complete CCS, CCU or CCUS chain;</p> <p>(b) the net present value ('NPV') of the investment project over its economic lifetime shall be negative. For the purpose of calculating the project's NPV, the avoided costs of CO2 emissions shall be taken into account;</p> <p>(c) the investment costs shall not relate to the CO2-emitting installation (industrial installation or power plant), but solely to the CCUS project.</p> <p>2b. When the aid aims at reducing direct emissions, in particular greenhouse gas emissions, those reductions shall not be offset by increases in indirect emissions resulting from the same investment.";</p>	<p>the CCUS chain, shall be integrated into a complete CCS, CCU or CCUS chain;</p> <p>(b) the net present value ('NPV') of the investment project over its economic lifetime shall be negative. For the purpose of calculating the project's NPV, the avoided costs of CO2 emissions shall be taken into account;</p> <p>(c) the investment costs shall not relate to the CO2-emitting installation (industrial installation or power plant), but solely to the CCUS project.</p> <p>2b. When the aid aims at reducing direct emissions, in particular greenhouse gas emissions, those reductions shall not be offset by increases in indirect emissions resulting from the same investment.";</p>
Art. 41 (d)	<p>the following paragraph 4a is inserted:</p> <p>"4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured.";</p>	<p>"4a. Investment aid for high-efficiency cogeneration running on renewable energy shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured."</p>
Art. 46	<p>1. Investment aid for the construction or upgrade of energy efficient district heating and cooling systems 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>1a. Aid shall only be granted for the construction or upgrade of district heating and cooling systems which are or are to become energy efficient. Where the system does not yet become energy efficient as a result of the supported works, the further upgrades required to reach the standard of energy efficiency shall commence within three years from the start of the supported works.</p>	<p>1. Investment aid for the construction or upgrade of energy efficient district heating and cooling systems shall be compatible with the energy efficiency first principle, 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>1a. Aid shall only be granted for the construction or upgrade of district heating and cooling systems working on renewable energies which are or are to become energy efficient. Where the system does not yet become energy efficient as a result of the supported works, the further upgrades required to reach the standard of energy efficiency</p>

	<p>1b. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation may be granted only where compliance with the 2030 and 2050 climate targets is ensured.</p> <p>1c. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:</p> <p>(a) the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources;</p> <p>(b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas;</p> <p>(c) in case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, compliance with the 2030 and 2050 climate targets is ensured.</p>	<p>shall commence within three years from the start of the supported works.</p> <p>1b. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation may be granted only where compliance with the 2030 and 2050 climate targets is ensured.</p> <p>1c. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:</p> <p>(a) the distribution network is or becomes suitable for the exclusive transmission of heating or cooling generated from renewable energy sources, thus excluding any blending with fossil energy carriers;</p> <p>(b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas;</p> <p>(c) in case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, compliance with the 2030 and 2050 climate targets is ensured.</p>
Art. 48	<p>1. Investment aid for the construction or upgrade of energy infrastructure 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>2. Aid for energy infrastructure that is partly or fully exempted from third party access or tariff regulation in accordance with internal energy market legislation shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.</p> <p>3. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the</p>	<p>1. Investment aid for the construction or upgrade of energy infrastructure shall be compatible with the energy efficiency first principle, 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>2. Aid for energy infrastructure that is partly or fully exempted from third party access or tariff regulation in accordance with internal energy market legislation shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.</p> <p>3. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty</p>

	<p>infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or mainly used for the transport of hydrogen and renewable gases.</p> <p>4. The eligible costs shall be the [total] investment costs.</p> <p>5. The aid intensity may reach up to 100 % of the funding gap, calculated as the difference between the positive and negative cash-flows over the lifetime of the investment and discounted to their current value using the cost of capital.”;</p>	<p>where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or mainly used for the transport of hydrogen and renewable gases.</p> <p>4. The eligible costs shall be the [total] investment costs.</p> <p>5. The aid intensity may reach up to 100 % of the funding gap only for projects concerning renewable energy, calculated as the difference between the positive and negative cash-flows over the lifetime of the investment and discounted to their current value using the cost of capital.”;</p>
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