Government Offices of Sweden

Memorandum

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Ministry of Enterprise and Innovation
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HT.5934 Swedish comments on targeted review of GBER promoting the green and digital transition

General introduction

We appreciate the Commission's commitments to address climate and environment challenges. The state aid framework needs to facilitate the development of new technologies and materials as well as making sure that existing technologies can continue to be put to good use by Member States to reach the climate goals, in a safe and sustainable manner, without leading to greenwashing and lock-in situations that hinder the transition to a climate neutral economy. At the same time, it is a prerequisite for a well-functioning internal market that that the on-going review of the state aid framework does not lead to distortions between Member States. It is therefore necessary to ensure a robust yet effective state aid regulatory framework, flexible enough to take account of Member States' needs and national objectives but also safeguarding an efficient functioning of the Internal Market. Ultimately, it should allow Member States to achieve their climate and environmental objectives.

In order to ensure that the state aid framework in a cost-effective manner supports and not de facto hinder a transition to a fossil-free society it is essential that the state aid framework is coordinated, not only, with applicable EU legislation, but also with ongoing legislative initiatives at EU-level. Since the work with the Fit-for-55 package is under way in parallel with the ongoing revision of the state aid rules, it is of utmost importance that the Commission can ensure that the results from the work with the Fit-for-55-package as much as possible is taken into account in the revision of the state aid framework. It is essential that Member states can continue to apply and

make good use of existing aid schemes based on applicable legislation, e.g. the Energy Taxation Directive (ETD), until the amendments in the relevant directives are adopted. Since the Commission plan for amendments in the GBER and CEEAG to enter into force before the negotiations of relevant directives have been finalised, there is a risk that the state aid rules are not consistent with final adopted versions.

In view of the above we have the following comments regarding the draft General Block Exemption Regulation (GBER) with revised rules for state aid promoting the green and digital transition.

1. Proofreading and editing

Article 36, paragraph 6b and article 36a, paragraph 4 and article 36b, paragraph 4

Propose to use word "*jämviktspris*" in the SE version instead of "*enhetspris*" in the same places as "*clearing price*" is used in the EN version.

Article 48, paragraph 5.

We propose to replace "*likviditetsgap*" with "*investeringsgap*" in the SE version.

Article 2, paragraph 32

In the SE version there is a misspelled word "*åraarbetskraftsenheter*" should be spelled "*årsarbetskraftsenheter*".

Article 2, paragraph 45

Air transport is part of the definition of "*transport sector*", however, aircrafts and air transport does not occur in any of the articles in the draft GBER. For example, article 36b does not mention air crafts, which is difficult to understand with regard to the development of the air transport market in terms of electrification. We propose amendments introducing air crafts and air transport in relevant articles in section 7 Aid for Environmental protection of GBER.

Article 2, paragraph 80, point c

The definition needs a clarification as to when in time the beneficiary must have received an investment from the European Innovation Council in order to be considered an innovative enterprise. Using "*recently*" is far too vague, we therefore request a clarification.

Article 2, paragraph 92

We propose to replace *"på digital väg"* with *"med digitala medel"* in the SE version.

Article 2, paragraph 98a

It needs to be clarified what "*testa och utöka teknik*" in the SE version means. The EN version refers to "*test and upscale technology*" which can be considered to have a different meaning.

Article 2, paragraph 102c

It is problematic that the proposed definition of "*renewable hydrogen*" refers to a delegated act that has not yet been adopted. Furthermore, the scope of the delegated act is limited to the use of hydrogen by the transport sector. We therefore request a definition which will also cover industrial use and not only transport.

Article 2, paragraph 102f

In the SE version (f) is missing. Furthermore, the article refers to Directive (EU) 2009/33 which has been amended by Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019. We note that the draft CEEAG refers to Directive (EU) 2019/1161. The reference in the article therefore needs to be amended.

Article 2, paragraph 108b

We propose to us the term "*renewable cogeneration*" instead of "*green cogeneration*". Relevant in articles 41 and 46.

Article 2, paragraph 121c

In the SE version, the definition is referring to Regulation (EU) 2020/852, if that reference is correct the name of the regulation needs to be amended in the footnote. The footnote refers to: *Europaparlamentets och rådets förordning (EU) 2020/852 av den 18 juni 2020 om transparens i transaktioner för värdepappersfinansiering och om återanvändning samt om ändring av förordning (EU) 2019/2088*. According to the Official Journal it should be *Europaparlamentets och rådets förordning (EU) 2020/852 av den 18 juni 2020 om inrättande av en ram för att underlätta hållbara investeringar och om ändring av förordning (EU) 2019/2088*.

Article 2, paragraph 126-128

To ensure coherence with relevant legislation we propose to replace the definitions of "*re use*", "*preparing for re-use*" and "*recycling*" with the following reference:

"The definitions of 'waste', 'prevention', 'preparing for re-use', 'recycling' and 'material recovery' laid down in Article 3 of Directive 2008/98/EC shall apply"

Article 2, paragraph 128d

The SE version refers incorrectly to article 3, point (14) of Directive 2008/98/EC. It needs to be adjusted to article 3, point (15) of Directive 2008/98/EC which is also consistent with the EN version.

Article 2, paragraph 130, point a

The definition of "*electricity storage*" seems to have been deleted. We propose that it is retained.

Article 2, paragraph 130, point a, point v

The definition of "*off-shore electricity grids*" seems to be applicable only to networks connecting at least two countries and not national off-shore networks. It is important that the definition does not exclude national off-shore electricity networks from the scope of GBER. We therefore propose to make necessary amendments in the definition to ensure equal treatment regardless if the network connects countries.

Article 2, paragraph 131a

We propose an amendment clarifying that the definition also cover "*industrial process emissions".*

Further, to pave the way for and embrace innovations as they come, we propose to amend the definition in order to cover also other possible techniques for storage.

Article 2, paragraph 131a and 131b

Propose to use citation marks in the SE version to clarify that it is *"avskiljning och lagring av koldioxid", eller "CCS"* respectively *"avskiljning och användning av koldioxid", eller "CCU"* which would be consistent with the EN version.

Article 14, paragraph 4

To increase consistency with the EN version we propose to delete *"en eller flera av följande"* in the first sentence of the SE version.

Article 17, paragraph 3, point a

We propose to replace "*utökning*" with "*ökning*" in the SE version.

Article 21, paragraph 3, point b

We propose to replace "*i vilket fall perioden för stödberättigande även omfattar verksamheten i det företaget eller de sammanslagna företagen*." with "*omfattar perioden för stödberättigande även verksamheten i det företaget eller de sammanslagna företagen*" in the SE version.

Article 21, paragraph 12

In the last sentence, in the SE version, "*50%*" should be replaced with "*20%*".

Article 22, paragraph 6, point c

We propose to delete "*motsvarar*" in the SE version and propose to use "*armlängds avstånd*" in both article 22, paragraph 6 point c (iii) and article 2, paragraph 39a.

Article 25, paragraph 3, point e

We propose to replace "*normal redovisningssed*" with "*god redovisningssed*" in the SE version.

Article 26a, paragraph 2 and article 27, paragraph 4

In both articles the phrase "*reasonable margin*" is used. We request a clarification in the article of what "*reasonable margin"* means in this context.

Article 36, paragraph 2, point b

In the SE version the punctuation mark should be replaced by a comma after "*standards*".

2. Comments regarding specific articles

Article 4

We propose that the Commission introduce a threshold specific for article 49 Aid for environmental studies in the article.

Article 9

We support efforts to increase the transparency of granted state aid. We maintain, however, that reporting individual aid for transparency should remain primarily an instrument for transparency regarding significant amounts of aid that have a potential effect on competition on the internal market. The benefits of increased transparency requirements need to be proportional to the increased administrative burden upon undertakings and agencies. A reduced threshold for transparency reporting in line with the draft means a manifold increase of the number of beneficiaries to report.

Many of the aid awards involved are tax reductions. The process of collecting transparency data regarding tax reductions – especially information on applicable NUTS region and NACE code – means a significant increase in administration for this type of aid, where i.e. most tax filings would need to include this data. This means an increase in administration not only for the authorities, but also for a significant amount of undertakings.

It is essential that the transparency requirements, as far as possible, are formulated consistently in the state aid framework so that the reporting can be performed in the same way regardless of which legal bases the aid scheme is based on. In footnote 49 on page 33 of the draft CEEAG it is stated that tax aid that is not paid annually is considered to have been granted on 31 December of the year in which the aid was granted. The possibility to aggregate tax aid that is paid on monthly basis to report the annual sum once a year is very important. We propose an amendment to introduce this explicitly in GBER.

Provided the threshold in article 9, paragraph 1 is amended according to the draft we propose to also amend the ranges indicated in article 9 paragraph 2. In order to reflect the changes in paragraph 1 and the obligation to publish the required information on individual aid amounts exceeding € 100,000 the initial range in paragraph 2 should be set at 0.1 - 0.5. If the first range 0.5 -

1.0 is retained, article 9, paragraph 2 is not consistent with article 9, paragraph 1.

Article 15, paragraph 2, point b

Additional transport costs are calculated from using the means of transport which results in the lowest costs for the beneficiary, however, it is important that the article does not stop beneficiaries from choosing more environmentally friendly transport. We therefore propose that the article is amended to ensure that aid schemes encouraging beneficiaries to use more environmentally friendly means of transportation are able to take the actual costs of such alternative transportation into consideration when calculating additional transport cost.

Article 21, paragraph 3, points (a) and (b)

The proposed amendment of the conditions in article 21, paragraph 3, point b is problematic. We note that the proposed modification to *'10 years after their registration*' is made to simplify the application of the GBER, because the registration of a company is defined while the first commercial sale is subject to different interpretations. However, not only innovative enterprises can have a long start-up period and the proposed amendment may in fact not only limit the scope of application of article 21 GBER but also cause uncertainty regarding the application. Also, as the Commission indicates in the "Explanatory note accompanying the proposal for the targeted GBER revision" the criterion *'10 years after their registration*' is also subject to interpretations especially for SME's that are not subject to registration. We therefore propose to make the modification to '*10 years after registration'* an alternative criterion available for cases when it is difficult to decide '*the first commercial sale*'. In line with this we propose to retain the criterion '*seven years after their first commercial sale*' as a universal criterion applicable to all undertakings, not only innovative undertakings. That will provide responsible authorities with two alternative criteria instead of two disparate criterions with similar interpretation problems.

The introduction of the condition that the eligibility period *for undertakings that have taken over the activities of another enterprise or were formed through a merger, also encompasses the operations of that enterprise or the merged companies* is welcomed to counteract evasion of the eligibility period. However, it would be valuable if it is clarified whether or not it requires that all activities of the enterprise or an entire business has been taken over.

The proportionality of the alternative eligibility period for innovative enterprises may be questionable if it is applicable even if the activities taken over only constitute an insignificant part of the acquiring company's total business. We therefore propose to introduce a condition that the eligibility period counting from the first commercial sale only is applicable if the acquired activities constitute 25 percent or more of the total business of the acquiring enterprise. This condition should also be introduced in relation to article 21, paragraph 3, point a GBER, i.e. the condition that the company must not have been operating in any market.

Article 21, paragraph 8

One of the explicit aims of the revised state aid rules should be to facilitate more environmentally and climate friendly private investments. The rules should allow for the investor risk aversions to be taken more into account than is currently the case. Aid intensity should sufficiently reflect the need to compensate for economic disadvantages related to innovation and environmental protection. Access to financing is important in this respect, particularly for start-ups but also SME's in general. In view of this, it would be welcomed if better adapted compatibility requirements were introduced applicable only to environmentally and climate friendly investments, in order to facilitate more and larger private investments. We therefore propose that the EUR 15 million threshold be raised to enable larger amounts of risk finance investments in cases where the investments are judged to be environmentally and climate friendly investments.

Article 25, paragraph 3, point (e)

The introduction of an alternative simplified cost calculation approach for indirect costs in the form of a flat-rate is welcomed. It is often difficult to verify the indirect costs when examining eligible costs. A flat-rate alternative contributes to a more homogeneous application. However, a rate of up to 15% is not adequate in the light of rules for EU funding programmes. The maximum rate should instead be set at 25% to be coherent with the application of the rules for EU funding programmes. Further, to enhance coherence with other EU rules only direct costs, it should be considered to not include costs for external services in the cost calculation. According to the draft, the calculation seems to include also costs for external services, e.g. consulting services. By comparison, the calculation of the flat rate is based on a fair, equitable and verifiable method of calculation, in accordance with article 54c of Regulation (EU) No 2021/1060 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..

Article 26a

The introduction of article 26a is welcomed. It provides a clarification when state aid can be provided for facilities that in everyday language are called test beds, demonstration platforms. At the same time, there is a risk that the practical benefits of the provision may be limited. The Commission proposes a maximum aid intensity of 25% for investments in tangible and intangible assets.

Among those who establish test beds and similar facilities, there are those to whom the investment has no direct benefit on their own development of products. Their incentive and reason to establish test beds can be to provide a facility and services requested by other actors and thus promoting business in general. Because such projects often involve high levels of risk for example due to the variable level of uncertainty regarding future number of customers, geographical contexts, regional and local business structures and also the tendency to innovate within the surrounding business population, it is sometimes necessary to provide state aid in order to facilitate a sustainable financial situation for the operation of such facilities.

In order to facilitate such actors to make investments and operate such facilities a higher aid intensity should be considered in article 26a provided that the beneficiary does not carry out any activity in industrial production of its own and the facilities are provided openly to promote business in general especially SMEs, to which there is no operational or financial link.

Article 27

Paragraph 2 states that investment aid *should* only be granted to the entity that owns the cluster facilities. Using the word *should* opens up for exceptions to this main rule and create uncertainty. We propose to replace *should* with *shall,* this would also be consistent with the conditions applicable for operating aid.

Further, we propose to split the paragraph into two separate paragraphs. One paragraph for the investment aid and the other for the operating aid. A separation will create a better overview over the conditions and increase the clarity.

Article 28

We welcome the simplified administration of innovation aid enabled with the addition to article 28.2 in combination with the new article 5.2 (ga).

Articles 36, 38 and 39

Articles 36, 38 and 39 states that aid may it granted to enable the beneficiary to for example increase the level of environmental protection resulting from its activities to comply with Union standards that are not yet in force. Provided that the investment for which the aid is granted is implemented and finalised at least 18 months before the date of entry into force of the standard concerned. It is not rare that projects receiving state aid under these articles and conditions are large and often completed several years after the date of the decision. We propose an amendment clarifying that in a situation where the Union standard has not been adopted when the decision to grant aid is made, the 18 months threshold is not applicable.

Article 36, paragraph 1a

The overall goal should be to support an effective and market-based energy transition, while gradually phasing out fossil fuels within an ambitious climate, environmental, and energy policy. In view of this we welcome that Article 36 does not apply to investments in equipment, machinery and industrial production using fossil fuels. However, we fail to understand the exemption for natural gas and we would propose to omit it.

We propose that *renewable and fossil-free hydrogen* be used consistently rather than *renewable or low-carbon hydrogen* which is now used in article 36. The concept of low-carbon hydrogen also includes blue hydrogen gas (i.e. hydrogen gas produced from natural gas with CCS technology).

Article 36, paragraph 2a, point (a)

The requirement that *the CO2 capture, transport and use or storage, including individual elements of the CCUS chain, shall be integrated into a complete CCS, CCU or CCUS chain* indicates that, for example, investments in demonstration

facilities for efficient separation technology are excluded from the scope of the article. To ensure a fit for purpose legal basis we propose to amend or delete the requirement in article 36, paragraph 2a, point a to ensure an efficient legal basis also for, investments in separate techniques or facilities regardless if it is part of a complete chain.

In the SE version CCU is mentioned twice in the same sentence. It needs to be amended to be consistent with the EN version.

Article 36a

The title of article 36a in the SE version does not seem to correspond to the contents of the article or the title used in the EN version, also the title in the SE version is the same title as for article 26a.

We propose to refer to *renewable and fossil-free hydrogen* instead of referring *hydrogen* or *renewable or low-carbon hydrogen* throughout the article.

Paragraph 2 states that this article is without prejudice to the possibility of granting investment aid relating to alternative fuel infrastructure as part of port infrastructure under articles 56b and 56c. We propose that article 36a is amended so it clarifies how it applies to infrastructures for other alternative fuels, for example biogas, and also how it relates to article 56 GBER in cases involving infrastructures for alternative fuels not covered by articles 36a, 56b or 56c.

Paragraph 4 states that aid under this article shall be granted in a competitive bidding process. This means that the competitive bidding process shall be applied also for aid for non-public recharging infrastructures. For non-public recharging infrastructure a competitive bidding procedure may be difficult to apply because it presupposes that the responsible authority can set eligibility and selection criteria, based on individual companies' needs for recharging infrastructure. We therefore propose an amendment and introduction of an alternative lower aid intensity available for situations when a competitive bidding process is not used.

Paragraph 7 outlines the conditions for infrastructures which are open for access by users other than the aid beneficiary or beneficiaries. In relation to commercial vehicles, recharging and refuelling often takes place e.g. through destination charging at logistic hubs and is therefore not comparable with

recharging and refuelling of passenger cars. For the purposes of commercial vehicles such as heavy transport vehicles, article 36a, paragraph 7 should also cover situations where access is restricted to a certain general group of users, for example to clients.

Article 36b

Electrification and emission-free vehicles will play a crucial role in the transport sector's green transition. Some parts of the transport sector will be more difficult to electrify, other technologies will therefore also play an important role in reducing emissions in the sector. It will be necessary to make good use of a multitude of technologies and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies.

Air transport is part the definition of *transport sector* in article 2, paragraph 45, however, aircrafts and air transport does not occur in any of the articles in the draft GBER. Article 36b does not mention air crafts, which is difficult to understand with regard to the development of the air transport market in terms of electrification. We therefore propose an amendment of article 36b introducing air crafts to the scope of the article.

With regard to the importance of ensuring that the state aid rules are as technology neutral as possible we also propose to amend the article to enable aid for retrofitting vehicles to enable the use of other forms of charging as well, e.g. Electric Road Systems (ERS). We therefore propose the following amendment:

1. Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles to qualify as clean vehicles or as zero-emission vehicles ***or retrofitting vehicles to enable the use of other forms of charging*** *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.*We propose a clarification that the article is applicable for all forms of leasing (including operational leasing) and rental fleets.

We propose to refer to *renewable and fossil-free hydrogen* instead of referring *hydrogen* or *renewable or low-carbon hydrogen* throughout the article.

Paragraph 4 states that aid under this article shall be granted in a competitive bidding process. Setting up criteria for a competitive bidding process for granting state aid for the acquisition of or retrofitting vehicles will prove difficult because it presupposes that the responsible authority can set eligibility and selection criteria, based on individual companies' needs for acquiring or retrofitting vehicles. We therefore propose an amendment and introduction of an alternative lower aid intensity available for situations when a competitive bidding process is not used.

Paragraph 5 states that aid granted to an undertaking that has been awarded a public service contract in accordance with the rules laid down in Regulation (EC) No 1370/2007 may be granted outside of a competitive bidding process. The connection between the Public Service Obligations in Transport Regulation and GBER should be clarified to ensure a correct application of the GBER.

Article 39, paragraph 2a, point (a)

It will be necessary to make good use of a multitude of technologies and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensure diversified technologies. We therefore propose the following amendment:

"(a) the installation of integrated on-site, or in immediate vicinity, renewable energy installations generating electricity, heat or cold or for the recovery of waste heat;"

Article 41

We propose to refer to *renewable and fossil-free hydrogen* instead of referring to *renewable hydrogen* in the title and throughout the article.

The definition of renewable energy sources used in the article seems to exclude hydrothermal energy from the scope of the article. This means that investment aid for the promotion of ocean heat is excluded from the scope of the article. We therefore propose an amendment in the relevant definitions to include hydrothermal energy is reintroduced.

We welcome that the ban on state aid for biofuels which are subject to a supply or blending obligation has been omitted. This means that it is possible to provide state aid for such fuels provided they are too expensive to compete on the market with a supply or blending obligation only.

Paragraph 2 states that biofuels, bioliquids, biogas and biomass fuels are eligible to the extent that they are compliant with the sustainability and greenhouse gases emissions saving criteria of RED 2 and made from the feedstock listed in part A of Annex IX to that Directive. It will be necessary to make good use of a multitude of techniques and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies. All biofuels which comply with the sustainability criteria and the criteria for reduced greenhouse gas emissions according to RED 2 should be eligible for state aid according to article 41 GBER. We therefore propose to delete the reference to Annex IX to RED 2 in article 41, paragraph 4 GBER. In relation to this we request a clarification to what extent investment aid for production of intermediary products (e.g. lignin) which can be upgraded to biofuels falls within the scope of the article.

Paragraph 3 states that *the capacity of the electrolyser shall not exceed the combined capacity of the renewable generation units* provided that these are located behind a single grid connection point. We would like a clarification that this does not exclude using renewable electricity from the grid in production of renewable and fossil-free hydrogen provided that there is no electricity production on site.

Paragraph 4a states that the article is not applicable for fossil fuel fired cogeneration installations. The exclusion of fossil fuel cogeneration installations from the scope of the article is welcomed. However, we fail to understand the exemption for natural gas, and we would propose to omit it.

Paragraph 5 states that the aid amount shall be independent from the output. It needs to be clarified why it is relevant for the eligibility criteria to retain this sentence especially given that the rest of the sentence has been deleted.

Article 42

It will be necessary to make good use of a multitude of technologies and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies. We therefore propose that also production of *renewable liquid and gaseous transport fuels of nonbiological origin'* shall be covered by the article's scope.

Article 43

We propose to refer to *renewable and fossil-free hydrogen* instead of referring to *renewable hydrogen* in the title and throughout the article.

It will be necessary to make good use of a multitude of technologies and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies. All biofuels which comply with the sustainability criteria and the criteria for reduced greenhouse gas emissions according to RED 2 should be eligible for state aid according to the article. We therefore propose to delete the reference to Annex IX to RED 2 in article 43, para 3. In line with this, we also propose that production of *renewable liquid and gaseous transport fuels of nonbiological origin'* shall be covered by the article's scope.

A small-scale installation for biofuels must have an installed capacity of less than 50 000 tonnes per year according to article 43.2 in the now applicable GBER. In Sweden a large share of the produced biogas is used in the transport sector and therefore a biofuel according to the definitions in the now applicable GBER. According to the draft the new threshold for renewable gas projects is 400 kW installed capacity.

An introduction of the 400 kW-threshold would exclude an unreasonably large number of biogas projects from the scope of article 43 GBER. According to statistics from the Swedish Gas Industry only 1 out of 68 upgrading facilities (that upgrade biogas to biomethane) in Sweden has a capacity below 400 kW. For an installation in operation 8 000 hours per year 400 kW only corresponds to about 200-250 tonnes of biogas. We therefore strongly urge the Commission to reconsider the introduction of the 400 kW-threshold in both article 43 GBER and point 92 CEEAG. We understand the intention of limiting the size of the threshold for such installations but call on the Commission to maintain a similar approach as in the current article 43 GBER. Instead of the 400 kW-threshold we suggest reducing the accepted installed capacity to a reasonable level. Small scale projects for the production of biogas and biofuels could instead be defined as an installation that has an installed capacity of less than 25 000 tonnes per year, i.e. half of the threshold that is applicable today according to article 43, paragraph 2 GBER. This threshold should apply to the installation that receives aid to *produce* biogas. It would then still be possible to maintain a separate threshold in kW for electricity production plants that produces electricity from biogas.

In the new draft GBER, the definition of small-scale installations in article 43 paragraph 2, point b only refers to *renewable gas production* which is identical with the wording in point 92(c)(iii) draft CEEAG regarding the definition of small projects. Meanwhile, in article 43, paragraph 3 in the draft GBER it is referred to *the production of biofuels, bioliquids, biogas and biomass fuels*. It is important that this is addressed. Article 43, paragraph 2, point b GBER and point 92(c)(iii) CEEAG need to be clarified and include *the production of biofuels, bioliquids, biogas and biomass fuels*.

Article 44

We welcome that the basic functionality of article 44 and the reference to the Union minimum tax level required by Directive 2003/96/EC is retained. In view of this, Sweden calls on the Commission to also retain the provisions for the simplified proportionality test for harmonised environmental taxes in the CEEAG. Retaining the provisions for the simplified proportionality test for harmonised environmental taxes in the CEEAG would facilitate a coherent approach between the GBER and the CEEAG and ensuring a coherence of the state aid scrutiny of state aid schemes falling under the scope of the GBER or CEEAG respectively.

Paragraph 4 states that biofuels are eligible only as long as they "*comply with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 (RED 2) and its implementing or delegated acts, and are made from the feedstock listed in Part A of Annex IX to that Directive"*. It will be necessary to make good use of a multitude of techniques and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies. All biofuels which comply with the sustainability criteria and the criteria for reduced greenhouse gas emissions according to RED 2 should be eligible for state aid according to the article. We therefore propose to delete the reference to Annex IX to RED 2 in article 44, paragraph 4.

"4. Tax reductions for the products defined in Article 16(1) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts~~, and are made from the feedstock listed in Part A of Annex IX to that Directive~~."

Since the work with the Fit-for-55 package is under way in parallel with the ongoing revision of the state aid rules, it is of utmost importance that the Commission can ensure that the results from the work with the Fit-for-55-package as much as possible is taken into account in the revision of the state aid framework. It is essential that Member states can continue to apply and make good use of existing aid schemes based on applicable legislation, e.g. the Energy Taxation Directive (ETD), until the amendments in the relevant directives are adopted. Since the Commission plan for amendments in the GBER and CEEAG to enter into force before the negotiations of relevant directives has been finalised, there is a risk that the state aid rules are not consistent with final adopted versions.

The ETD must be decided unanimously and judging by the experiences in 2015 that is a challenge. It is therefore important that other regulations, such as the state aid rules, do not take precedence and set requirements that are not completely compatible with the applicable wording of the ETD. Not until there is a unanimous decision to amend the ETD, the state aid rules which refer to the ETD should be amended accordingly. This does of course not pre-empt amendments of the state aid rules regarding tax or fiscal aid as long as it remains in line with the applicable ETD.

Paragraph 5 contains requirements that are not included in the current wording of the ETD or the proposed amendments to the ETD. In order to ensure coherence with the ETD we therefore propose to delete article 44 para 5. If the Commission nevertheless chooses to adopt the proposed article 44, para 5, it is necessary to clarify that the specific limitations in article 44 paragraph 5 only refers to reductions that are given in accordance with article 17, para 1, point a ETD and no other reductions under ETD (eg article 5 ETD). We also propose that article 44, paragraph 5, point b should be amended so that it also applies to activities with zero emissions. The current wording seems to exclude businesses that already has zero emissions in its operations.

Article 44a

Tax legislations, the tax systems and tradition of preferred design of tax reductions differs from member state to member state. Article 44a needs to take this into account. The article therefore needs to be neutral in terms of envisaged forms of tax reductions. We propose that the article be amended

so that also other forms of reductions than reductions in environmental taxes or parafiscal levies are covered by the exemption.

Paragraph 1 states that the article is not applicable to reductions in taxes or levies on energy products, including electricity. It needs to be clarified on what basis electricity is defined as an energy product when ETD states that electricity is not considered an energy product.

Article 46

The overall goal should be to support an effective and market-based energy transition, while gradually phasing out fossil fuels within an ambitious climate, environmental, and energy policy. In view of this we welcome that article 46 para 1b excludes state aid for the construction or upgrade of fossil fuel-based generation facilities. However, we fail to understand the exemption for natural gas, and we would propose to omit it. We are also in favour of introducing conditions for state aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels. However, we believe that that the conditions in article 46, paragraph 1c should be stricter.

Articles 46 and 48

The wording in the definition in article 2, paragraph 39 and articles 46 and 48 match to avoid ambiguities and misinterpretations of how the aid intensity can be calculated. The Swedish Environmental Protection Agency requests clarification regarding the calculation method and which level of discount rate is to be applied when calculating the liquidity gap.

Article 47

Paragraph 2, point c, needs further clarification. It is supposed to be about other products, materials or substances than waste. However, the use of the terms *re-use, sorting* and *recycling,* by definition, means that it still refers to waste. Article 47, paragraph 2, point c is therefore contradictory and there is a risk it will not be possible to apply it.

Paragraph 6 refers to *normal practice*, what constitutes normal practice needs to be clarified in order to guide responsible authorities in their application of the exemption.

Article 48

We propose that *renewable and fossil-free hydrogen* be used consistently rather than *hydrogen* which is now used in article 48.

Article 49, paragraph 2, sentence 2.

The SE version does not refer to *only part of the study* which the EN version does. The SE version instead refers to *the entire study* which should be corrected.

Article 56e

We propose that *renewable and fossil-free* hydrogen be used consistently rather than *hydrogen* which is now used in article 56e.

It will be necessary to make good use of a multitude of techniques and sustainable solutions to pave the way for and embrace innovations as they come. It is therefore important that the state aid rules ensures diversified technologies. All biofuels which comply with the sustainability criteria and the criteria for reduced greenhouse gas emissions according to RED 2 should be eligible for state aid according to the article. We therefore propose to delete the reference to Annex IX to RED 2 in article 56e, paragraph 4, point b, point iv.