Public Consultation on the Revision of the General Block Exemption Regulation (GBER)

Contribution from ENGIE[1]

KEY MESSAGES:

- We welcome the increased financial thresholds below which state aid is block-exempted from notification.
- We also welcome the explicit inclusion of new activities that are very relevant solutions to achieve Europe's Energy and Climate target, notably renewable and low-carbon hydrogen, CCUs, clean mobility and energy efficiency/decarbonization of buildings.
- We are however concerned about the lack of consistency and harmonization between the GBER and relevant energy and transport legislation, particularly regarding definitions. For instance, important terms like low-carbon hydrogen should be defined in the energy legislation – most pertinently in the upcoming gas decarbonization package – and the GBER should then include a reference to this definition. Other definitions are not aligned with existing definitions or revision proposals in the FF55 package, e.g. "refuelling infrastructure" in the GBER is limited to hydrogen only and that is clearly contradicting the definitions in the Alternative Fuel Infrastructure Directive[2] (and its revision proposal) where "refuelling points" also covers gas vehicles.
- We regret that the draft GBER creates additional constraints for sustainable biogas: In order to be block-exempted, biogas has to be produced from specific feedstocks in Part A of Annex IX of the Renewable Energy Directive (RED)[3]. This is stricter than the RED itself, which only requires compliance with the sustainability and GHG reduction criteria in Art. 29 for biogas to be eligible for financial support. Moreover, this puts biogas at a disadvantage compared to renewable electricity for instance.
- We welcome that the revision of the GBER intends to facilitate the development of renewable hydrogen. At the same time, the proposal is contradicting its own intention by integrating in the definition of renewable hydrogen a reference to the heavily disputed delegated act on additionality pursuant to Art. 28 RED. Applying the criteria in the delegated act (the exact content of which is still not known !!) to any public support for renewable hydrogen whatever its end-use, is clearly questionable and, in any case, this would go beyond the provisions in the existing legislation (RED): According to the RED, the additionality requirements apply only to hydrogen used for compliance with the supplier obligation in the transport sector, not for other uses.

[1] EU Transparency Register: 90947457424-20

[2] Directive (EU) 2014/94

[3] Directive (EU) 2018/2001

- Lastly we deplore the absence of gas mobility in the revision proposal of the GBER. While charging/refueling infrastructure supplying electricity (no matter what its primary energy source) and renewable and low-carbon hydrogen can be block-exempted, the same possibility should clearly be given also to sustainable biogas. This aspect should therefore be added in the final text. Moreover, just as in the CEEAG proposal, definitions of clean and zero emission vehicles are based on the tailpipe approach which does not recognize the GHG reduction potential of biogas and synthetic fuels.

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1. ARTICLE[4] 2 DEFINITIONS

- *(102b) 'refuelling infrastructure' means a fixed or mobile installation supplying vehicles with hydrogen for transport purposes*

  ENGIE comments: This definition should also include methane (compressed or liquified) that is supplied to CNG and LNG vehicles. More generally, it would be useful to align the definitions on refuelling and recharging infrastructure in the GBER with the definitions in the revised Regulation on Alternative Fuel Infrastructure.

- *(102c) 'renewable hydrogen' means hydrogen produced using only renewable sources of energy, in accordance with [Reference to delegated act by DG ENER pursuant to Article 28 of the RED II]*

  ENGIE comments: We are concerned about the inclusion of the reference to the delegated act pursuant Art. 28 of the RED. Based on the RED, the provisions in this delegated act are strictly limited to the transport sector and they should not be extended via the GBER and/or CEEAG to other uses of hydrogen. Moreover, with the RED being under revision and "additionality" being heavily debated, the content and future application of this delegated act are highly unclear and contentious.

- *(102e) 'low-carbon hydrogen' means fossil-based hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves life-cycle greenhouse gas emissions savings of at least [73.4 %] [resulting in life-cycle greenhouse gas emissions below 3 tCO2eq/tH2] relative to a fossil fuel comparator of [94g CO2e/MJ (2.256 tCO2eq/tH2)]. The carbon content of electricity-based hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid*

  ENGIE comments: The definition of low-carbon hydrogen is a highly political and strategic topic which according to several public announcement by the EU Commission will be dealt with in the context of the upcoming "Gas market decarbonization package" and the subsequent co-decision process. ENGIE is strongly concerned that the GBER revision proposal anticipates this definition by taking the taxonomy as a reference and adding further constraints.

[4] Article numbering in this document refers to the articles in the existing GBER (Regulation (EU) No 651/2014 and not to the articles of the proposal for amending the GBER.

- *"(108b) 'green cogeneration' means cogeneration using 100 % renewable energy sources as an input for the production of heat and power;"*

  ENGIE comments: To be more exact, we propose to use the term "renewable" instead of "green".

- Point (109) is replaced by the following:

  '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 also use conventional 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;"

  ENGIE comments: The provisions related to storage in this definition should be clarified. Do storage systems "connected behind-the-meter" refer to storage systems directly connected to a renewable installation (e.g. on the site of a wind or solar park)? It could also refer to storage behind the meter of final consumer. The rationale behind the exclusion of electricity produced as a result of such (onsite) storage should be explained. Is there a concern about double counting/double subsidies?

- *"(130a) 'distribution system operator' (DSO) means a distribution system operator as defined in Article 2, point (29), of Directive (EU) 2019/944;*
  (130b) 'transmission system operator' (TSO) means a transmission system operator as defined in Article 2, point (35), of Directive (EU) 2019/944";

  ENGIE comments: The reference to Directive (EU) 2019/944 limits the definition of DSO and TSO to electricity DSOs and TSOs. A definition of gas DSOs and TSOs with reference to the Gas Directive (Directive 2009/73/EC) should be added.

- *"(131a) 'carbon capture and storage' or 'CCS' means a set of technologies that captures the (CO2) emitted from industrial plants based on fossil fuels or biomass, including power plants, transports it to a storage site and injects the CO2 in suitable underground geological formations for the purpose of permanent storage of CO2*
  (131b) 'carbon capture and utilisation' or 'CCU' means a set of technologies that captures the CO2 emitted from industrial plants based on fossil fuels or biomass, including power plants, and transports it to a CO2-consumption site;";

  ENGIE comments: The definition should also take into account CO2 captured from the atmosphere (Direct Air Capture – DAC).

2. NOTIFICATION THRESHOLDS

We generally welcome the increase of the financial notification thresholds.

3. ARTICLE 36: INVESTMENT AID FOR ENVIONRMENTAL PROTECTION, INCLUDING CLIMATE PROTECTION

3.1 Aid for investment in CCUS

ENGIE comments: ENGIE welcomes the explicit inclusion in the GBER of investment aid to CO2 capture, transport and use or storage. This includes also aid for low-carbon hydrogen that is produced from natural gas and where the CO2 is captured. Based on the new paragraph 2.a in Art. 36 as well as the definition of CCUS in point (131b) Art. 2, we understand that such aid can address investment projects to capture CO2 (at an industrial site, a power plant, air capture, etc.) as well as the infrastructure to transport and store CO2. What remains less clear is whether installations using the captured CO2, for instance installations producing an e-fuel, can benefit from financial support as well under this article. This point should be clarified.

3.2 Aid intensities

The GBER revision proposal states that the intensity of aid granted under this article shall not exceed 40%. Where the investment results in zero direct emission, the aid intensity may reach 50%. In case of CCUs, the aid intensity shall not exceed 20%. However, for all types of aid covered under Article 36, the aid intensity may reach 100% of the eligible costs where aid is granted in a competitive bidding process.

ENGIE comments: We would like to raise our doubts about the higher aid intensity for "zero direct emissions" (in case of non-competitive procedure). Technologies with zero emissions "at the tailpipe" or "on site" may still come along with significant emissions along the value chain (e.g. if electricity or hydrogen are used at some point, but are not produced from renewable or low-carbon sources). On the other hand, technologies using bioenergy are emitting CO2 "at the tailpipe" or "on site" which is de facto neutral as it has been absorbed from the air during the growth process of the plant (short carbon cycle). Similar considerations have to be made for e-fuels (RFNBOs) which release CO2 when burnt but this CO2 could have been captured from air, for instance.

Moreover, capping the aid intensity for CCUs at 20% while other decarbonization projects benefit from higher aid intensities is not justified. The same cap of 40% should apply to all decarbonization solutions.

Apart from this, we appreciate the possibility to have aid intensities of 100% for any activity covered under Article 36 if competitive bidding is applied.

4. ARTICLE 36a INVESTMENT AID FOR RECHARGING OR REFUELLING INFRASTRUCTURE

According to Art. 36a (2), this article only covers aid for recharging and refuelling infrastructures that supply vehicles with electricity or with renewable or low-carbon hydrogen.

ENGIE comments: We strongly regret and do not understand the absence of other renewable and low-carbon gases than hydrogen, notably bioCNG and bioLNG or synthetic gases in this article. Electricity and hydrogen will not be the only solutions to decarbonize the transport sector in a cost-efficient and practical way. A mix of different technologies is needed in order to balance the advantages and disadvantages of different fuels and drivetrains (e.g. the drawbacks for electrification in terms of operational constrains and costs for operators but also its impact on system peak and grid infrastructure). In particular in the

heavy duty transport segment, CNG and LNG trucks and busses are already on European roads and are using increasing shares of biogases. When it comes to maritime transport and aviation, it is even more widely recognized that renewable or low-carbon LNG is one of the few decarbonization options (next to renewable and low-carbon liquid fuels).

Moreover, we consider it inconsistent that there is no requirement for electricity to be produced from renewable or low-carbon sources while this is the case for hydrogen (and should be the case for other gases as well).

5. ARTICLE 36b: INVESTMENT AID FOR THE ACQUISITION OF CLEAN VEHICLES OR ZERO-EMISSION VEHICLES AND THE RETROFITTING OF VEHICLES

ENGIE comments: We regret the preferential treatment of "zero-emission vehicles" which is based on definitions that only consider tailpipe emissions. This approach neglects whether a vehicle is using renewable/low-carbon or fossil fuels and related emissions all along the value chain, and especially those stemming from production of vehicles/batteries and end-of-life. On the other hand, emission savings through the use of bioenergy are not recognized and vehicles using for instance bioCNG or bioLNG are considered having the same emissions as natural gas vehicles. We understand the wish for an alignment with existing legislation, however this existing framework is already incoherent and subject to debates in the context of the FF55 package. For the sake of a fair comparison of different solutions based on real GHG reduction, we would like to encourage the EU Commission to take a more holistic (and not only tailpipe-oriented) view when evaluating state aid.

6. ARTICLE 38: INVESTMENT AID FOR ENERGY EFFICIENCY MEASURES AND ARTICLE 39 INVESTMENT AID FOR ENERGY EFFICIENCY PROJECTS IN BUILDINGS

6.1 Role of gas heating systems

ENGIE comments: We welcome the recognition of the decarbonization potential of energy-efficient gas-fired equipment and its exemption from notification requirements where it replaces oil- or coal-fired energy equipment as stated in Article 38.3d and Article 39.11. Replacing these more carbon-intensive solutions with natural gas will bring quick wins in terms GHG reduction in the short term. Moreover such gas boilers are climate-proof in the long run as they can also use biomethane and other renewable/low-carbon methane.

6.2 Connection of buildings to district heating and cooling networks (DHC)

ENGIE comments: Moreover, provisions on energy efficiency of buildings should cover aid for costs related to the connection of buildings to DHC, as well as the optimization of building performance in case such investments are needed to support better functioning of the DHC network. As a general rule, aid to increase buildings performance should consider equally efficiency measures, on-site generation of energy from renewable sources and connection to efficient DHC.

7. ARTICLE 41 INVESTMENT AID FOR THE PROMOTION OF ENERGY FROM RENEWABLE SOURCES, RENEWABLE HYDROGEN AND HIGH-EFFICIENCY COGENERATION

7.1 Investment aid for hydrogen

ENGIE comments: We welcome the explicit inclusion of renewable hydrogen projects in the GBER and that the investment aid may also cover dedicated infrastructure for the transmission, distribution and storage facilities for renewable hydrogen. We welcome that investment aid to low-carbon hydrogen produced from natural gas with CCUS is also covered by the GBER and addressed under article 3.1.

7.2 Investment aid for bioenergy

ENGIE comments: Bioenergy which is compliant with the sustainability and GHG reduction criteria in the RED should be treated on an equal footing with renewable electricity from wind, solar, etc. Indeed we are convinced that all types of renewables, including renewable electricity, renewable gases (biogas, renewable hydrogen) as well as renewable synthetic fuels and renewable heating and cooling are needed to achieve Europe's ambitious RES targets and contribute the lion share to decarbonization. It is not justified to impose additional criteria on sustainable biogas in order to be block-exempted, notably the requirement that it must be produced from feedstocks listed in Part A of Annex IX of the RED. This is also not consistent with the RED which requires bioenergy to comply with the sustainability and GHG reduction criteria in Article 29 in order to be eligible for support and does in this context not refer to Annex IX.

7.3 Competitive bidding process

ENGIE comments: We would like to recall the importance of enabling technology-specific bidding procedures (based on Article 42.3 of the existing GBER, which remains unchanged by the revision proposal). A pure technology-neutral approach could actually lead to "picking (short-term) winners" at a too early stage and prevent/slow down the development of less mature solutions that are more costly today but that have significant cost reduction potential in the future and will be required to achieve the long-term decarbonization targets. The need to adopt a specific approach by technology is also justified by the fact that authorization procedures and certain cost elements (such as taxes, connection charges, etc.) may be very different between technologies. Furthermore, organizing separate tenders for wind, solar and biomethane will allow to exploit in the best way the complementarities of these technologies, facilitate system integration and to build-up decarbonization pathways in the most optimized way. Also renewable and low-carbon hydrogen should benefit from separate, technology-specific schemes to allow for a quick uptake of both solutions and to enable the achievement of renewable hydrogen targets.

8. ARTICLE 42 OPERATING AID FOR THE PROMOTION OF ELECTRICITY FROM RENEWABLE SOURCES

8.1 Scope

ENGIE comments: This article is limited to renewable electricity which does not qualify as "small-scale". We consider that operating aid for other forms of renewables notably renewable gases (biomethane, …) and renewable hydrogen should benefit from block-exemption under this article as well, with no capacity limit (but under the given financial limits), as for renewable electricity. An equal treatment and level-playing field between renewable electricity and renewable gases should be ensured.

Regarding hydrogen projects for instance, operating costs take an important part in the electrolyser business model, therefore operating aid will be paramount. Limiting operating aid to small-scale projects below 400 kW (and 1 MW in the energy communities) is unreasonably low and would exclude many projects. As a reference, average capacities of smaller scale electrolysers are in the order of 20 MW, as opposed to 100 MW for large-scale electrolysers.

Equally, we regret that efficient district heating and cooling systems are not eligible to operating aids. A similar derogation and notification threshold should be awarded to efficient DHC systems considering their key role in reaching the 2030 and 2050 EU objectives and the need to increase their competitiveness compared to fossil fuels.

8.2 Negative prices:

Article 42.7 states that "Aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative."

ENGIE comments: This new wording remains unclear: Which reference prices are referred to here (day ahead, intraday,…)? Does the 2nd part of the sentence imply that for instance the "6 consecutive hours rule"[5] , which is practiced in several countries today, is no longer possible?

9. ARTICLE 43 OPERATING AID FOR THE PROMOTION OF ENERGY FROM RENEWABLE SOURCES IN SMALL SCALE INSTALLATIONS

9.1 Definition of small installations – exemption from competitive bidding

ENGIE comments: Based on this article, the conditions for operating aid for small installations in order to be block-exempted are much lighter than for larger installations. Notably, no competitive bidding process is required while the aid can reach up to 100% of the difference between the total LCOE[6] and the market price. ENGIE is advocating for increasing the thresholds for exemption from competitive bidding in the CEEAG, and as consequence, the revised GBER should be aligned with increased thresholds as well. We ask for a threshold of at minimum 500 KW (or higher) to exempt electricity and storage projects from competitive bidding. For heat generation and gas production this thresholds should be at minimum 3 MWth.

Moreover, the text is not very clear regarding renewable hydrogen as no specific threshold is set for hydrogen while it could be interpreted as being included in the term "renewable gases". We would like to stress that the deployment of renewable hydrogen is still in its infancy and support mechanisms have not existed in the past. At the same time, the EU and Member States have set ambitious targets (6 GW by 2024 and 40 GW by 2030 on EU level[7]). In order to allow to kickstart this technology and reach scale rapidly, which will bring down cost, we are convinced that facilitated conditions are required during an

[5] According to the 6 consecutive hours rules, support payments are stopped only in case the reference prices remains negative during at least six consecutive hours.

[6] And the maximum rate of return used in the LCOE calculation shall not exceed the relevant swap rate plus a premium 100 basis points.

[7] See EU Hydrogen Strategy

initial period for renewable hydrogen projects, which includes exemption from competitive bidding irrespective of the size of the installations.

9.2. Operating aid for small bioenergy installations

ENGIE comments: As mentioned above in section 7.2, it is not justified to apply additional criteria to sustainable biogas in order to be block-exempted. The reference to the feedstock in Annex IX Part A of the RED should be removed.

10. ARTICLE 44: AID IN THE FORM OF REDUCTION IN TAXES UNDER DIRECTIVE 2003/96/EC

ENGIE comments: ENGIE welcomes the general block exemption for tax reductions that are aligned with the Energy Taxation Directive (ETD)[8]. This should also be the case for the new, revised ETD once adopted. As stated in previous sections of this note, we ask for the removal of the reference to Annex IX Part A of the RED when it comes to tax reduction for biogas.

11. ARTICLE 46: INVESTMENT AID FOR ENERGY EFFICIENCY DISTRICT HEATING AND COOLING

ENGIE comments: ENGIE welcomes the introduction of an optional funding gap approach which may be more appropriate for complex projects that rely on optimized business plans.

When using the original aid intensity method: The new 30% intensity threshold could be relevant for heating and cooling generation, but the threshold should be set at 60% for distribution network investments. Moreover, the proposed 15% green bonus should be awarded to heating and cooling projects using at least 60% renewable energy sources, including renewable cogeneration but also waste heat or carbon neutral sources or a combination thereof. Such sources should indeed all be taken into consideration to reach the 2030 and 2050 objectives.

Finally, regarding the scope of investment aids, ENGIE regrets that :

- extensions of existing efficient DHC systems are not clearly identified as part of the eligible costs and strongly suggest making it clear (Article 46 (1));
- Article 46 (1) only supports works done on “efficient” DHC systems. Investment aid should be granted for works done on already efficient DHCs but also on DHCs that are not yet efficient, providing that such supported works allow the networks to reach the standards of energy efficiency.

[8] Council Directive 2003/96/EC