Response to targeted review of the General Block Exemption Regulation (GBER) with revised rules for State aid promoting the green and digital transition

Brussels, 08 December 2021

The European Green Deal target to reach climate neutrality by 2050 calls for unprecedented levels of public and private investments accompanied by deep reforms. In this context, well-designed State Aid schemes will be key to unlock investments and the GBER plays a key role in simplifying the rules and encouraging Member States to make use of the existing tools in the green transition.

As part of the ongoing revision of the Climate, Energy and Environmental Aid Guidelines (CEEAG) and the General Block Exemption Regulation (GBER), the Commission pledged to set simpler, clearer, and easier-to-apply State Aid rules for buildings renovation programmes, in particular in the residential and social sectors. Additionally, aid to energy efficiency investments was to be simplified and enhanced, as announced in the Sustainable Europe Investment Plan and in the European Green Deal Investment Plan.

The European Alliance to Save Energy is happy to provide its feedback on the revised GBER. Energy efficiency is the bedrock of a decarbonised EU energy system: energy efficiency gains are essential to achieve the increased GHG emission target reduction of 55% by 2030 and full decarbonization by 2050.

In its current form, the revised GBER offers some welcomed added flexibility for the application of state aid to energy efficiency projects. Energy efficiency is a precondition for a full integration of renewables and the phase out fossil fuels. Yet, in its current form the GBER does not provide the necessary level playing field with renewable energy sources and other energy supply measures. In particular the aid intensity levels for energy efficiency are lower and the rules on eligible costs are far more complex to apply.

Here below we have summarised our five suggestions for improvements.

e: info@euase.eu | w: www.euase.eu | @: EUASE | t: +32 2 588 56 70

1. Enforce the "Energy Efficiency First principle"

A. Enshrine the EE1st Principle

The Energy Efficiency First (EE1st) principle is a key pillar of the Energy Union, it is the guiding principle for European climate policies and energy governance and it has now a legal basis in the Commission's proposal to revise the Energy Efficiency Directive (EED)[1], which introduces the much needed obligation to apply the principle for any decision carried out in the energy and non-energy sectors.

Recommendation:

- Based on the above, we recommend enshrining the EE1st principle in the GBER, and to ensure that energy efficiency solutions are systematically taken into account, through cost-benefit analysis, when designing state aid schemes.

B. Apply the EE1st

The EE1st principle is not being applied in the revised GBER. Under articles 38 and 39, dedicated to state aid for energy efficiency measures and projects, for non-commercial buildings listed in Art. 38 3a incentives are created to combine investment in energy efficiency with renewables (for example on-site renewable energy installations generating electricity, heat or cold) which allows the eligible cost to become the total investment cost of both projects. However, there are incentives for renewables under Article 41 which allows total cost eligibility by default and raises the aid intensity by 15 points of percentage for investments using only renewable energy sources.

An additional 15 points of percentage in aid intensity can be added where the measure for energy efficiency achieves a reduction of primary energy demand by 40% (Art. 38 6a), but it is not clear whether this provision can be cumulated with Art. 38 3b, and the 45% of aid intensity be applied to the total cost of both investments in energy efficiency and the investment it is combined with. This would result in an equal level of state aid and potentially disincentivise combined investment in renewable energy with energy efficiency.

Recommendations:

- Clarify whether Art. 41 effectively offer a better treatment to RES-only projects than mixed investment in energy efficiency and renewable energy generation
- Clarify whether the additional 15 points of percentage (Art. 38 6a) could be combined with the eligibility of total cost of investment (Art. 38 3b)
- Provide greater incentive that normally applicable for combined investments in energy efficiency and in renewable energy sources
- Bring both articles 38 and 41 into line so they provide similar incentives to combine the shift to renewables with increased energy efficiency.

C. Energy efficiency for decarbonisation

In addition, the recast proposal of the Energy Efficiency Directive excludes from the accountability of energy savings under Article 8 (ex article 7), the savings resulting from switching to more energy efficient products if the underlying technology still relies on direct fossil fuels combustion.

Recommendation:

- The GBER should support the phase-out of fossil fuels. We therefore recommend that the Regulation moves away from allowing public money to fund gas-fired equipment, in spite of the gains in energy efficiency

2. Level the playing-field with RES

Energy efficiency is an absolute precondition to the full and fast integration of renewable energy sources that will enable the European Union to achieve its decarbonization goals by 2030 and 2050. The uptake of energy efficiency measures must therefore be equally promoted and supported as are renewables.

A. Align aid intensity levels

The aid intensity for investment in energy efficiency must be levelled with that foreseen for renewables and which the revised GBER now extends to renewable hydrogen and high-efficiency cogeneration. A consequence of this extended scope is the regrettable further marginalization of investment in energy efficiency as an enabler of the transition compared to other measures.

Recommendation:

- In line with the Energy Efficiency First principle and to promote the necessary synergy between energy efficiency and renewable energies, the maximum aid intensity for energy efficiency measures in industry and in buildings should be levelled up with aid for renewable energies (i.e. 65% for small enterprises, 55% for medium-sized enterprises, and 45% for large enterprises). The aid intensity should be increased to 100% for all undertakings when the aid is allocated pursuant to a bidding process.

B. Align rules on cost eligibility

Calculating the amount of state aid that is GBER-compliant is considerably simpler where the eligible cost is the total cost of the project such as provided for renewable energy sources. As a result, such projects are more likely to be considered a priority by Member States when designing their state aid schemes and by potential aid recipients when planning their investment. This undermines the strong business case needed to convince undertakings to choose highly efficient solution. There is no justification for the aid-induced market distortion favouring energy supply over demand-side solutions that the revised GBER framework created by granting energy efficiency projects both lower aid intensity levels and lesser eligible costs.

Recommendation:

- Energy efficiency measures and projects should receive the same treatment that is granted to renewable energy sources and renewable hydrogen in terms of cost eligibility and simplicity of implementation.

EUROPEAN ALLIANCE TO SAVE ENERGY
Creating an Energy-Efficient Europe

3. Simplify cost eligibility and conditions for total cost eligibility (Art. 38 para. 3)

A. Guidance on calculating the additional cost

Subparagraphs (a) to (e) of Article 38 offer a partial clarification on the methodology to calculate the eligible cost but most of these proposed counterfactuals imply that the renovation would have taken place even without public support (see Article 38 para. 3), whereas the renovation in energy efficiency is not happening at the necessary pace to meet GHG reduction goals.

Calculating additional cost based on a counterfactual investment remains extremely complex to carry out in practice, especially in comparison to what is provided for renewable energy sources, and risks deterring companies from undertaking such investments with state aid due to their uncertainty. This would drastically limit the resulting total state aid available for energy efficiency measures whereas the European Commission EE1st Guidelines recommend providing an enabling framework and ensuring that "energy efficiency is eligible, and even preferable, for public support and financing".

Recommendation:

- We recommend that the eligible costs explicitly include the total costs of the renovation if it contributes to the progress in at least one of the following areas, in line with the European Regional Development and Cohesion fund regulation adopted by the European Parliament:
  (i) promoting energy efficiency measures
  (ii) promoting renewable energy
  (iii) developing smart energy systems, grids and storage at local level
  (iv) promoting climate change adaptation, risk prevention and disaster resilience
  (v) promoting sustainable water management
  (vi) promoting the transition to a circular economy
  (vii) enhancing biodiversity, green infrastructure in the urban environment, and reducing pollution.

  In case of building renovations, the default assumption for all building types, including commercial buildings, should be that the baseline is a "no renovation" scenario. The same principle should apply to investments in energy efficiency improvements in industrial production, where the counterfactual investment for additional costs should be a "no investment" scenario if measures go beyond existing minimum legal standards.

B. Exception one: total cost eligibility in the absence of a counterfactual.

We welcome the possible exception to the principle of "counterfactual calculation" that is provided under Article 38 Paragraph 3 (f). Regrettably, in practice it remains unclear which investment would comply to the following three conditions:

- clearly identifiable investment
- solely aimed at improving energy efficiency in the building
- have no less environmentally friendly counterfactual

Recommendation:

- Should the total cost of investment not be the eligible cost, we recommend to at least clarify and issue detailed guidance on the meaning of each condition that include practical examples of the foreseen eligible measures.

C. Exception two: Combined investments in energy efficiency and other investments

The exception to the counterfactual calculation in the case of investments in energy efficiency combined with other measures is limited to non-commercial buildings listed under Art. 38 3a. These types of buildings typically only rarely develop economic activities that would make them fall under scope of the GBER.

Recommendation:

- Should the total cost of investment not be the eligible cost, we recommend to at least extend this exception also to non-commercial buildings

4. Simplify the criteria for the "incentive effect" (favour the transition to MEPS)

Mandatory Minimum Energy Performance Standards are an essential tool to deliver the Renovation Wave and providing the right incentives and financial support to implement MEPS is key to increase the rate and depth of renovations across Europe.

Article 38 paragraph 2 prohibits state aid for any investment carried out to ensure that undertakings comply with Union Standard. If MEPS would be considered a Union Standard, Art. 38 para 2 could exclude support via state aid to building owners required to implement MEPS. Under Art. 38 para 2a there is a derogation for investment for improvement to the energy efficiency of buildings provided that they are implemented and finalised at least 18 months before the entry into force of Union Standard. 18 months leaves to short time for any building owner to be granted with aid.

Recommendations:

- Provide a clear definition of what is a "Union standard" and clarify if MEPS would fall under the scope of Art.38 paragraph 2.
- If MEPS fall under the scope of Art.38 paragraph 2, the GBER revision should provide a legal framework enabling millions of building owners across the EU, including private landlords, to receive aid to comply with MEPS. Ideally, this would be done by clearly excluding MEPS form the scope of Art. 38 paragraph 2.

5. Extend the scope of the Green Bonus

The "Green Bonus" introduced by the revised GBER allows an increase of 15 points of percentage in aid intensity for high energy-efficiency projects in renovating buildings. This is if they achieve a reduction of 40% in primary energy demand of any of the following buildings types:

(i) residential buildings
(ii) buildings dedicated to the provision of education or social services
(iii) buildings dedicated to activities related to public administration or to justice, law enforcement or fire-fighting and civil protection services and
(iv) Buildings in which the above-mentioned activities occupy less than 50%[1] of the internal floor area

[1] Previously 35%

In order to be eligible, these buildings must first develop an economic activity which, in particular for fire-fighting and civil protection services, is not in their natural scope. This is also partially recognised by the Commission itself in the Communication on the notion of State aid[2]. As a result, although positive this provision is restrictive to a very limited number of cases.

Recommendation:

- Extend the Green Bonus to all types of public buildings and installation of public bodies services based on the Energy Efficiency Directive proposal that introduces a new Article 5 (Public sector leading on energy efficiency) and a strengthened Art 6 (Exemplary role of public bodies buildings).

About us

The European Alliance to Save Energy (EU-ASE) is a cross-sectoral, business led organisation which aims to ensure that the voice of energy efficiency is heard across Europe. EU-ASE members have operations across all the 27 Member States of the European Union, employ over 340.000 people in the EU and have an aggregated annual turnover of €115 billion.

[2] Commission notice on the notion of state aid