

COMMENTS TO THE COMMISSION's DRAFT General Block Exemption Regulation (GBER)

Main comments

An exemption from the notification requirement of article 108(3) should be granted only for those measures for which it is possible to certainly ex-ante conclude that the balancing test would give a positive result. In fact, this should be the criteria for establishing the GBER's aid categories and their accompanying conditions. Consequently:

- Measures that involve any fossil fuel should be excluded from the GBER. Regarding natural gas (e.g. infrastructures, energy efficiency, etc.), although under certain circumstances such an aid could be compatible, it is necessary to carry out a balancing test under the CEEAG's criteria to ensure it. Thus, natural gas-related measures should not have a place in the GBER.
- Under the GBER context, the definition of "low-carbon hydrogen" must ensure that the "do no significant harm" principle is fulfilled. Otherwise, there would be doubts on whether aid implies a carbon lock-in or even a subsidy for fossil fuels. Thus, the definition should be based on the threshold defined for hydrogen manufacture in Regulation 2020/852 (i.e. 3 kgCO₂eq/kgH₂).
- Regarding infrastructures (including PCIs), the GBER should not include aid for assets that (a) are not part of an integrated energy planning in the sense of the Energy System Integration Strategy, (b) are not subject to third party access, or (c) are partially or fully exempted from internal energy market legislation. These limitations are especially relevant given the increase of the notification threshold proposed (from EUR 50 to 70 million).
- Regarding renewable hydrogen, it seems clear that it is highly compatible with the CEEAG's balancing criteria than other environmental protection measures, including high-efficiency cogeneration. This, together with (a) its higher sustainability in the longer-term, and (b) its high cost for the time being, justifies that the GBER requires to renewable hydrogen less strict conditions than to other environmental protection measures. More specifically, the GBER should allow for (a) a higher notification threshold for investments in renewable hydrogen production and for dedicated infrastructures and storage associated to the supply of renewable hydrogen, (b) higher maximum aid intensity for zero-direct-emissions investments for environmental protection based on renewable hydrogen, and (c) higher maximum aid intensity for investments in renewable hydrogen production.
- Regarding investment aid for CCS / CCU / CCUS, (a) projects fulfilling the screening criteria defined in the Delegated Act supplementing Regulation (EU) 2020/852 should be eligible only, and (b) it should be defined as a maximum and, given the significant uncertainty regarding the price of the ETS during the lifespan of the investment, incorporate a mechanism to ensure proportionality.
- Regarding recharging or refuelling infrastructures, the necessity of aid for should be presumed based on the accomplishment of the targets defined in the Alternative Fuels Infrastructure Directive Regulation (AFIR), for which the Commission has presented a proposal as part of the "Fit for 55" package.

Detail comments and amendments proposed

1. Comments to article 2, “Definitions”

- Regarding paragraph (102e), the definition of “low-carbon hydrogen” to be considered in the context of the GBER should be explicitly based on the threshold defined for hydrogen manufacture in the Commissions Delegated Regulation supplementing Regulation (EU) 2020/852 establishing the technical screening criteria, as this ensures the compliance with the do no significant harm principle. Furthermore, as the application of Regulation (EU) 2020/852 is to be reviewed regularly to assess, inter alia, the progress with regard to the development of technical screening criteria, the definition of “low-carbon hydrogen” in the context of the GBER should automatically incorporate any change in the threshold defined for hydrogen manufacture. Hence, the following amendment is proposed:

(102e) ‘low-carbon hydrogen’ means fossil-based hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves has 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 threshold defined for hydrogen manufacture in the Commissions Delegated Regulation supplementing Regulation (EU) 2020/852, which is to be reviewed regularly. 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;

- Regarding paragraph (130), the infrastructure categories considered under the GBER should be exclusively those whose consistency with the 2030 and 2050 EU targets (i.e. aid must not breach any EU legislation) and the energy efficiency first principle (i.e. appropriateness criterion) is not controversial. In other words, infrastructure categories that might be contrary to such objectives and principle should be notified to the Commissions and assessed under the CEEAG’s provisions. In this sense:
 - Regarding subparagraph (b)(i) and (iii), it cannot be assumed that aid for transmission and distribution pipelines for the transport of natural gas and for LNG/CNG facilities is in all cases consistent with the 2030 and 2050 EU targets. Thus, it should be excluded from the scope of the GBER:
 - (i) *transmission and distribution pipelines for the transport of ~~natural gas, bio gas and renewable gaseous fuels of non-biological origin that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;~~*
 - (iii) *~~reception, storage and regasification or decompression facilities for liquefied natural gas (‘LNG’) or compressed natural gas (‘CNG’);~~*
 - Regarding subparagraph (b)(iv) and (v), aid to enable bi-directional capacity or reverse flows from the distribution to the transmission level that is not aimed at the integration of biogas, biomethane and renewable gaseous fuels of non-biological origin should be excluded from the scope of the GBER:

- (iv) *any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity for the sake of integrating into the system biogas, biomethane or renewable gaseous fuels of non-biological origin, including compressor stations;*
 - (v) *smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including biomethane or hydrogen) into the network: digital systems and components integrating ICT, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network for the sake of integrating into the system biogas, biomethane or renewable gaseous fuels of non-biological origin;*
- Regarding subparagraph (c)(ii) and (iii), the GBER should not include aid for underground hydrogen storages or facilities for the dispatch, reception, storage and regasification/decompression of liquefied hydrogen or hydrogen embedded in other chemical substances that are not part of an integrated energy planning in the sense of the Energy System Integration Strategy (i.e. appropriateness criterion would be in doubt):
 - (ii) *underground storage facilities connected to the high-pressure hydrogen pipelines referred to in point (i) and are part of an integrated energy planning in the sense of the Energy System Integration Strategy;*
 - (iii) *dispatch, reception, storage and regasification or decompression facilities for liquefied hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid and are part of an integrated energy planning in the sense of the Energy System Integration Strategy;*
- Regarding subparagraph (c)(v), the GBER should not include aid for categories listed in subparagraphs (b)(i) to (iv) that are not subject to third party access – i.e. due to its high potential negative impact on competition and trade, any exception to third party access for aided infrastructures should be subject to an assessment under the CEEAG criteria:
 - (v) *Any of the assets listed under points (i), (ii), (iii), and (iv) may be newly constructed assets or assets converted from natural gas to hydrogen, or a combination of the two. Assets listed under points (i), (ii), (iii), and (iv), which are not subject to third party access shall not qualify as energy infrastructure;*
- Regarding subparagraph (f), the GBER should include in its scope aids for PCIs which are fully subjected to internal energy market legislation only. PCIs that are partially or fully exempted from internal energy market legislation, and for other infrastructure categories, should be notified to the Commissions and

assessed under the CEEAG's provisions (i.e. risk of a high impact on competition and trade). Hence:

- (v) *Projects of Common Interest, as defined in TEN-E legislation (Article 2, point (4) of Regulation (EU) 347/2013 of the European Parliament and of the Council***) which are fully subjected to internal energy market legislation*;

2. Comments to article 4, “Notification thresholds”

- Regarding paragraph 1(s), it seems clear that the renewable hydrogen is more compatible with the CEEAG's balancing criteria than other non-renewables-based climate protection options. This, together with (a) its higher sustainability in the longer-term and (b) its higher cost for the time being, justifies that the GBER grants to renewable hydrogen a higher notification threshold.
- Regarding paragraph 1(sa), the notification threshold for dedicated hydrogen infrastructure and storage referred to in article 36.5 should be higher for projects based on renewable hydrogen than for projects based on low-carbon hydrogen, as the first faces higher operative limitations (e.g. geographical and temporal correlation with renewable power generation) and, hence, require a more flexible approach in terms of dedicated infrastructure and, specially, storage.

Hence, the following amendments are proposed:

(s) for investment aid for environmental protection, unless otherwise specified: EUR 20 million per undertaking per investment project;

(s') for aid for renewable hydrogen referred to in Article 41, paragraph 3: EUR 30 million per undertaking per investment project;

(sa) for aid for dedicated infrastructure and storage referred to in Article 36, paragraph 5: EUR 10 million per project when it is based on low-carbon hydrogen and EUR 20 million per project when it is based on renewable hydrogen;

3. Comments to article 36, “Investment aid for environmental protection, including climate protection”

- Regarding paragraph 1a, the scope of the GBER should include exclusively investments whose consistency with the 2030 and 2050 EU targets and the energy efficiency first principle is not controversial. In other words, investments that might be contrary to such objectives and principle should be notified to the Commissions and assessed under the CEEAG's provisions. Hence, investments in equipment, machinery and industrial production using fossil fuels (including natural gas) should remain out of the scope of the GBER. In addition, the condition to ensure that low carbon hydrogen is used throughout the economic lifetime of the investment must be included, although allowing for its substitution with renewable hydrogen. Hence, the following amendments are proposed:

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 ~~{for low-carbon hydrogen}~~ (though allowing for the substitution of low-carbon hydrogen with renewable hydrogen) is complied with throughout the economic lifetime of the investment.

- *Regarding paragraph 2a, investment aid for CCS/CCU/CCUS should be defined as a maximum and, given the significant uncertainty regarding the price of the ETS during the lifespan of the investment, incorporate a mechanism to guarantee for proportionality regarding actual CO₂ avoided costs – i.e. if the CO₂ avoided costs are larger than those estimated when granting the investment aid, then the beneficiary should return an amount of aid equal to that difference. Hence, the following amendment is proposed:*

2a. Investments in carbon capture and utilisation or storage ('CCUS') shall be granted to projects that comply with the technical screening criteria defined in the Delegated Act supplementing Regulation (EU) 2020/852 only and fulfil the following cumulative conditions:

(d) in case the actual expost avoided costs of CO₂ emissions are larger than those initially estimated when calculating the project's NPV, then the beneficiary of the aid shall return the difference between the actual and the initially estimated avoided costs of CO₂ emissions.

- *Regarding paragraph 6, the maximum aid intensity allowed for renewable hydrogen should be higher than for low-carbon hydrogen given the existing cost differential between both alternatives for the time being:*

6. The aid intensity shall not exceed 40 % of the eligible costs. Where the investment results in zero direct emissions, the aid intensity may reach 50 %. Where the investment results in zero direct emissions and an increase in renewable energy deployment, the aid intensity may reach 60 %.

4. Comments to article 36a, "Investment aid for recharging or refuelling infrastructure"

- *Regarding the second subparagraph of paragraph 3, in case the project integrates on-site both a renewable electricity production unit and an electricity storage, then the peak capacity of the integrated renewable electricity production unit should be allowed to exceed the maximum rated output of the recharging infrastructure, as the potential "excess" of renewable electricity could be stored:*

The eligible costs may also cover the investment costs of integrated on-site production of renewable electricity or the investment costs of storage units for storing renewable electricity or renewable or low-carbon hydrogen. The peak capacity of the integrated on-site renewable electricity production unit shall not exceed the maximum rated output of the recharging infrastructure to which it is

connected plus the capacity measured in kW of the integrated storage should it be part of the project.

- Regarding paragraph 9, the necessity of aid for recharging or refuelling should be presumed based on the accomplishment of the targets defined in the Alternative Fuels Infrastructure Directive Regulation (AFIR), for which the Commission has presented a proposal as part of the “Fit for 55” package. Therefore, once such a Regulation is in force, the threshold defined in this paragraph 9 should be substituted with those eventually defined in the AFIR. Hence, the following amendment is proposed:

9. By way of derogation from paragraph 8, the necessity of aid for recharging or refuelling infrastructure for road vehicles shall be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 2 % of the total number of vehicles of the same category registered in the Member State concerned. For the purpose of this paragraph, passenger cars and light-duty commercial vehicles shall be considered as being part of the same category of vehicles. In any case, if recharging and refuelling infrastructures objectives are established in EU legislation, the need for aid shall be presumed while such objectives are not achieved and regardless the number of vehicles previously described.

5. Comments to article 38, “Investment aid for energy efficiency measures”, and article 39, “Investment aid for energy efficiency projects in buildings”

- Regarding paragraph 3d of article 38, according to the amendments proposed by the Commission to the Energy Efficiency Directive, “energy savings from policy measures regarding the use of direct fossil fuel combustion will not be eligible energy savings under the energy savings obligation as of transposition of this Directive”, and “The restriction aims at encouraging Member States to spend public money into future-proof, sustainable technologies only”. This aim should be introduced also in the GBER – i.e. investment aid for energy savings which involve the use of direct fossil fuel combustion should be out of the scope of the GBER and, thus, should be notified to the Commissions and assessed under the CEEAG’s provisions. This would ensure that such measures, which are clearly doubtful at least against the 2030 and 2050 EU energy and climate targets, the “do no significant harm” principle or the “energy efficiency first” principle, are thoroughly assessed. Hence, the following amendment is proposed:

3d. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building. Aid for the installation of oil-fired, coal-fired or gas-fired energy equipment shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty. ~~Aid may be granted for the installation of more energy-efficient gas-fired energy equipment provided that it replaces oil-fired or coal-fired energy equipment and that it is ensured that the gas-fired energy equipment is replaced by equipment using renewable fuels by 2050 at the latest.~~

- Regarding paragraph 11 of article 39, the same considerations should be made. Hence, the following amendment is proposed:

11. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building. Aid for the installation of oil-fired, coal-fired or gas-fired energy equipment shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty. ~~Aid may be granted for the installation of more energy-efficient gas-fired energy equipment provided that it replaces oil-fired or coal-fired heating equipment and that it is ensured that the gas-fired energy equipment is replaced by equipment using renewable fuels by 2050 at the latest.~~

6. Comments to article 41, “Investment aid for the promotion of energy from renewable sources, renewable hydrogen and high-efficiency cogeneration”

- Regarding paragraph 3, it is stated that renewable hydrogen projects could integrate an electrolyser and one or more renewable generation units behind a single grid connection point, together with dedicated infrastructure for the transmission or distribution of renewable hydrogen and storage facilities for renewable hydrogen. However, it would also be possible to integrate an electricity storage behind-the-meter to further optimise the project operation and/or cost, in line with paragraph 1a of article 41. Hence, the following amendments are proposed:

3. Investment aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen. For renewable hydrogen projects consisting of an electrolyser, ~~and one or more renewable generation units~~ and an electricity storage behind and a single grid connection point, the capacity of the electrolyser plus the capacity of the electricity storage shall not exceed the combined capacity of the renewable generation units. The investment aid may cover dedicated infrastructure for the transmission or distribution of renewable hydrogen, as well as storage facilities for renewable hydrogen.

- Regarding paragraph 9, the maximum aid intensity to produce renewable hydrogen should be higher considering (a) it is more compatible with the CEEAG's balancing criteria than other environmental protection measures (e.g. high-efficiency cogeneration fed with natural gas), (b) it is more sustainable in the longer-term, and (c) it has higher cost for the time being. Hence, the following amendment is proposed:

9. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration, and by 20 percentage points for investments using only renewable hydrogen.

7. Comments to article 43, “Operating aid for the promotion of energy from renewable sources and renewable hydrogen in small scale installations and for the promotion of renewable energy communities”

- Regarding paragraph 2, the size thresholds must be harmonised for all technologies and energies. This is key to ensure a level playing field, especially under the new Energy System Integration paradigm (i.e. substitutability between different energies is now a reality; technology neutrality is more needed than ever). Hence, the following amendment is proposed:

2. Operating aid for small-scale installations shall be exempted from the notification requirement of Article 108(3) of the Treaty only up to the following size thresholds:

- (a) *for electricity generation or storage projects: projects below the applicable threshold set out in Article 5 of Regulation (EU) 2019/943;*
- (b) *for heat generation and renewable gas production technologies: projects below ~~400 kW installed capacity~~ the same threshold set for electricity generation or storage projects.*

For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.

- Regarding paragraph 2b, it is unclear whether the threshold defined in paragraph 2(b) for “renewable gas production technologies” also applies to hydrogen – a clarification seems to be needed. In any case, the threshold defined in paragraph 2(b) should also apply to hydrogen.

8. Comments to article 46, “Investment aid for energy efficient district heating and cooling”

- Regarding paragraph 1b and 1c, and as already argued paragraph (130) of article 2, the infrastructure categories considered under the GBER should be exclusively those whose consistency with the 2030 and 2050 EU targets and the energy efficiency first principle is not controversial. In other words, infrastructure categories that might be contrary to such objectives and principle should be notified to the Commissions and assessed under the CEEAG’s provisions. Such infrastructures would comprise those transporting any fossil fuel, including natural gas. Hence, the following amendment is proposed:

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.~~

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:

- (a) *the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources;*
- (b) *the upgrade does not result in an increased generation of energy from fossil fuels ~~except for natural gas;~~*
- ~~(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.*~~

9. Comments to article 48, “*Investment aid for energy infrastructure*”

- Regarding paragraph 3, and as already argued paragraph (130) of article 2, the infrastructure categories considered under the GBER should be exclusively those whose consistency with the 2030 and 2050 EU targets and the energy efficiency first principle is not controversial. In other words, infrastructure categories that might be contrary to such objectives and principle should be notified to the Commissions and assessed under the CEEAG’s provisions. Hence, investments in gas infrastructures that would be dedicated to blending (i.e. transporting natural gas together with hydrogen) should not be exempted from the notification requirement of Article 108(3) of the Treaty. Hence, the following amendment is proposed:

3. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty 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.~~