Position Paper by
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On the Proposal for the amending Regulation on Commission Regulation (EU)
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DENEFF Feedback on the GBER Consultation Document

DENEFF – The German Business Initiative for Energy Efficiency – is the voice of Germany's energy efficiency industry, which accounts for about 600,000 employees. Significantly increasing energy efficiency in all sectors and across Europe is key for Europe to reach its higher climate targets and to kickstart a green recovery from the current economic crisis. It is also a central driver in providing modern, healthy, and comfortable places to live and work for all Europeans as well as competitive, climate-friendly industrial jobs.

To achieve the objectives of the European Green Deal for 2030 and 2050, unprecedented investments and reforms are needed. To make the sustainable economic transformation to success, it is essential to remove all existing regulatory, administrative, and financial barriers for private and public investors. This includes well-designed State aid schemes that facilitate the investments necessary for a sustainable economic recovery and for achieving EU energy and climate targets. We therefore strongly endorse the planned revision of the GBER. However, the draft GBER document still contains provisions concerning energy efficiency that run counter to the stated aims of the revision and in our view urgently need to be amended. We have summarized our recommendations below.

I. SUMMARY OF RECOMMENDATIONS

This revision of the GBER has the potential of giving energy efficiency in Europe the boost it needs to excel as an engine of climate protection, resilience, and green, long-term jobs. Currently, the GBER draft falls far short of this aim. We therefore urge the European Commission to adopt changes that are truly "fit for 55" and unleash the enormous energy efficiency potential that is still untapped.

DENEFF recommends the following changes:

1. **Increase maximum aid intensity for energy efficiency measures in buildings and industry to at least the same levels as those provided for renewable energies** (Art. 38 & 39), in line with the Energy Efficiency first principle now laid out in Art.3 of the EED recast.
2. **Simplify requirements on eligible costs for energy efficiency projects to match those for renewable energies.** The total project cost should be eligible, and the default assumption should be a "no investment" counterfactual. Otherwise, aid does not create a sufficient business case for investment. (Art. 38 & 39).
3. **Remove minimum energy performance improvement thresholds for single and staged building renovation measures and adjust deadlines for energy efficiency projects in buildings to make the planned minimum energy performance standards (MEPS) a success.** (Art. 38 & 39)
4. **Create a level playing field for ESCOs and all market participants** by removing the needlessly prohibitive and discriminating framework conditions for energy service companies (Art. 38, 39).
5. **Aid in the form of reduction of taxes and parafiscal levies:** The allowance to reduce taxes and parafiscal levies must avoid the discrimination of ESCOs and needs to be aligned to obligations for the beneficiaries to conduct organizational and investive measures (Art. 44 GBER).
6. **Investment aid for energy efficient district heating and cooling** should **consider increased aid intensities** for making waste heat accessible and usable for heating grids in buildings, neighbourhoods, and industry (Art. 46).

II. DETAILED RECOMMENDATIONS

1. Create a level playing field between investment aid for energy efficiency measures (EEAG Annex 1 and Art 38 & 39 GBER) and renewable energies in line with the "Energy Efficiency First" principle

Situation: In the GBER draft, energy efficiency projects are eligible for a maximum general aid intensity of 30%, with possible bonuses for SMEs and deeper renovations of some buildings. Renewable energy generation projects qualify for a maximum aid intensity of 45% plus bonuses for SMEs.

Problem: Lower State aid intensity levels for energy efficiency compared to renewable energy projects would significantly and without cause distort the market for decarbonization solutions in favour of energy supply-side measures. The Energy Efficiency First principle (EE1st) is now legally binding in the EED recast proposal and the EC has issued recommendations to support the practical implementation of this principle. If not adopting the level playing field the GBER would fail to implement the Energy Efficiency First principle (EE1st) and thus ignore the central necessity of reducing energy demand in achieving the European Union's decarbonization goals for 2030 and 2050. As such the State aid framework should help to accelerate the uptake of energy efficiency measures by putting them on an equal footing with renewable energies regarding the permitted aid intensity. A carbon-neutral Europe can only be achieved by realizing the full potential of energy efficiency and renewable energies working together. Under the existing GBER framework, Member State investment aid programs have not yet led to the level of private investments required to tap the saving potential.

Recommendation: Increase the permitted aid intensity for energy efficiency measures in industry and buildings to the same level as those provided for aid to renewable energies, i.e., 65% for small enterprises, 55% for medium-sized enterprises and 45% for large enterprises, or 100% for all undertakings when the aid is allocated pursuant to a bidding process.

Recommended changes to the GBER text:

Art.	Consultation text	Suggested changes
38	4. The aid intensity shall not exceed 30 % of the eligible costs.	4. ***The aid intensity shall not exceed 45 % of the eligible costs.***
38	6a. The aid intensity may be increased by 15 percentage points for aid granted to improve the energy efficiency of the buildings referred to in paragraph 3a, where the energy efficiency improvements lead to a reduction in primary energy demand of at least 40 % in the case of renovation of existing buildings.	Delete if paragraph 4 is changed as suggested above, as 6a is no longer necessary.
38	--	New: ***6a. Where aid is granted in a competitive bidding process on the basis of clear, transparent, non-discriminatory and objective criteria, defined ex ante in accordance with the objective of the measure and minimizing the risk of strategic bidding, the aid intensity may reach 100 % of the eligible costs.***

2. **Simplify requirements on eligible costs for energy efficiency projects to match those for renewable energies. (Art 38 & 39 GBER)**

Situation: The GBER draft continues to restrict eligible costs of energy efficiency projects to the additional investment required vis-a-vis a theoretical alternative, less efficient investment. Exemptions from this rule are possible only for certain types of building uses. For renewable energy generation projects, no such baselining is required, and the total cost of ownership (TCO) is eligible for aid.

Problem: As outlined above, there is no justification for the aid-induced market distortion favouring energy supply over demand-side solutions that is created by the GBER framework, which grants energy efficiency projects both lower aid intensity levels and severely lower eligible costs. By dramatically limiting eligible costs in this way to a fraction of "additional costs" against a counterfactual baseline, the strong business case needed to convince undertakings to choose a more expensive, but highly efficient solution is often lost. The administrative burden and uncertainty can be enough to deter companies from making ambitious energy efficiency investments with state help. Also, in many cases, it cannot be assumed that e. g. a renovation would be attempted at all without the subsidy. As long as programs continue to be limited by the GBER to supporting only a percentage of the additional costs so narrowly defined, split incentives cannot successfully be addressed by State aid. In consequence, Paris-compatible construction and renovation will not happen at the necessary rate, especially in the tertiary sector, which is largely excluded form total cost eligibility in the GBER draft.

Recommendation: To really unleash the level of private investment needed to achieve the Green Deal objectives, the GBER needs to radically simplify requirements on eligible costs for energy efficiency projects. Especially for building renovations, the default assumption for all building types (including commercial buildings) should therefore be that the baseline is a "no renovation" scenario. For highly efficient new buildings that are at least 10% more efficient than the cost-optimal level, the total project cost should be eligible. The same principles should apply to investments in energy efficiency improvements in industrial production, where the counterfactual for additional costs should be a "no investment" scenario if measures go beyond existing minimum legal standards.

Recommended changes to the GBER text:

Art.	Consultation text	Suggested changes
38	3. The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows, by comparing the costs of the investment to those of the counterfactual investment that would be undertaken in the absence of the aid: (...)	*3. The eligible costs shall be* ***the total investment cost. In cases where Union standards apply, the total investment cost is only eligible if the investment concerns measures exceeding the efficiency levels required by Union standards.***
38	3a. Provided that the aid induces a reduction in primary energy demand of at least 20 % compared to the situation prior to the investment in	*3a. Provided that the aid induces a reduction in primary energy demand* ***compared to the situation prior to the investment in the renovation of existing***

	the renovation of existing buildings and primary energy savings of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings, the entire investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs, where the investment relates to the improvement of the energy efficiency of one of the following: (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; (iv) buildings referred to in (i), (ii) or (iii) and in which activities other than those mentioned in (i), (ii) or (iii) occupy no more than 50 % of the internal floor area.	***buildings and primary energy savings of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings, the entire investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs.***

3. **Remove minimum energy performance improvement thresholds for single and staged building renovation measures and adjust deadlines for energy efficiency projects in buildings to make the planned minimum energy performance standards (MEPS) a success. (Art. 38 & 39)**

Situation: The GBER draft states that only building energy efficiency measures leading to a primary energy demand reduction of at least 20% would qualify for aid. In possible reference to the planned minimum energy performance standards for existing buildings (MEPS) in the upcoming EPBD revision, it furthermore states that "Aid encouraging undertakings to comply with new Union standards not yet in force, which increase the level of environmental protection, may be granted under this Article provided that the Union standard has been adopted and the investment for which the aid is granted is implemented and finalized at least 18 months before the date of entry into force of the standard concerned."

Problem: In order to double the renovation rate as envisioned by the Renovation Wave communication, Europe needs both more single measures and more deep renovations implemented. However, the GBER draft practically excludes single energy efficiency measures from aid. This would be extremely detrimental to the overall level of renovation activity and the aims of the Green Deal, as across Europe, most measures are single measures. Very many of these, taken on their own, pertaining to the roof, windows, insulation, or technical building systems, do not reach 20% savings. In combination and over time, however, they are the key to significant performance improvements where owners cannot invest in a single-step deep renovation. If the GBER de facto excluded them from funding under the new rules, this would likely lead to a sharp drop in projects that is unlikely to be compensated by more deep renovations. This cannot be intention of the State aid revision. Renovating buildings and accessing Member State support for this important challenge need to become much easier, not more difficult.

MEPS are the cornerstone of the Renovation Wave. That is why they must be implemented in a robust and impactful manner, which can only be assured by embedding them in an enabling framework that includes adequate financial support. In most Member States, MEPS would likely address owners falling under the scope of the GBER first. Yet the draft Art. 36 currently provides neither sufficient security to building owners nor sufficient scope for the Member States to support the necessary investments. Art. 36 is so restrictive by requiring completion of all measures 18 months before MEPS enforcement, that it leaves only too small a time window during which building owners could be supported.

<u>Recommendation:</u> Minimum energy performance improvement thresholds for single and staged building renovation measures must be deleted. State aid must remain possible for building energy efficiency investments even when MEPS are introduced in the upcoming EPBD revision. The GBER thus needs to clearly outline how millions of building owners, including private landlords, can still be supported in complying with MEPS at least before the enforcement deadline. Ideally, this would be done by clearly defining in the GBER that MEPS will not be considered a relevant Union standard. At the very least, individual undertakings should be able to receive aid up right up to the enforcement deadline, provided the funded measures enable at least compliance with the applicable MEPS.

Recommended changes to the GBER text:

Art.	Consultation text	Suggested changes
38	2a. By way of derogation from paragraph 2, aid may be granted under this Article for improvements to the energy efficiency of buildings for the purpose of compliance with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalized at least 18 months before the standard enters into force.	***By way of derogation from paragraph 2, where Union law imposes on undertakings minimum energy performance requirements qualifying as Union standards, aid for all the necessary investments enabling undertakings to comply with those requirements will be considered to have an incentive effect, provided that the aid is granted before the requirements become mandatory for the undertaking concerned. The Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to bring the building to comply with those minimum energy performance requirements.***
38	3a. Provided that the aid induces a reduction in primary energy demand of at least 20 % compared to the situation prior to the investment in the renovation of existing buildings and primary energy savings of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU	*3a. Provided that the aid induces a reduction in primary energy demand* ***compared to the situation prior to the investment in the renovation of existing buildings and primary energy savings of at least 10 % compared to the threshold set for the nearly zero- energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings, the entire***

	in the case of new buildings, the entire investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs, where the investment relates to the improvement of the energy efficiency of one of the following: (...)	***investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs.***

4. **Providing level-playing field for ESCOs (Art 38, 39 GBER)**

Situation: The ambitious EU climate targets and increasing complexity of decarbonization projects in all sectors require both technical expertise and suitable financing solutions in order to realize the full potential for savings. ESCOs (energy service companies) must be put into the position to deliver these benefits and thereby open up market segments that are currently underserved and underinvest in decarbonization. As stated in the EED, and other EU legislation ESCOs are providing significant contributions to the decarbonization of the building and industry sector and should have the same framework conditions and opportunities as leasing or any other way of implementing energy and decarbonization investments. This should include the establishment of equal access to State Aid to ensure a fair competitive environment. Currently, ESCOs are put at a disadvantage in the GBER when offering solutions to public and private customers who are not eligible for State Aid. GBER also provides disadvantages for non-SME ESCOs providing energy services to SMEs.

Problem: Despite recommendation in EED by EC, energy services companies are not allowed to work in a level-playing field in many MS in the context of national legal framework and access to national subsidy programs. Either way creates manifest economic disadvantages for energy service companies which hinders these to prevail on the market.

Recommendation: To unleash the enormous decarbonization contribution of energy services, GBER needs to provide equal conditions for energy services. The Commission should use the GBER-revision to create a level-playing field for all market participants and remove prohibitive and discriminating framework conditions for energy services. First of all, GBER Art 38 should be revised in accordance with Art 18 EED to explicitly require the Member States to give energy service companies (ESCOs) equal access to government funding and subsidies that would apply to their customer.
And, the level-playing field should not be limited to energy performance contracting as a single business and financial model. Market experience in the majority of large industry processes and other more volatile (not following typical statistically energy demand profiles) energy consumers in buildings such as universities, health care sector, multi usage commercial buildings show that energy performance contracting may not be a practical approach: energy performance contracts in the sense of the definition of directive 2012/27 EU needs a reliable energy consumption and cost baseline to calculate the energy savings appropriately. An appropriate calculation of savings is the basis of the remuneration model of the energy service companies (ESCOs) and a highly sensitive topic for energy savings performance contracts- experience shows that the risk of not appropriate calculation and contractual disputes is much more likely for volatile consumers. Thus, the market provides for different business models for volatile consumers, in which usually a part

of the remuneration is based on energy performance parameters (e.g., the efficiency coefficient of a steam production) and not so much the absolute energy savings. These models are well established in the important industry market segment, but they do not fully comply to the definition of directive 2012/27 EU. Instead of referring to energy performance contracting as the single option business model, we propose strongly to refer to energy services that contribute to the EU decarbonization, efficiency, and renewable targets 2030 and 2050 and the related EU targets set out in EED, EPBD, RED III, "Fit for 55"[1] and provide evidence of energy savings, energy efficiency and renewable energy measures. Also, the scope of the activities should not be limited to buildings and should include buildings and industry. Also, the company size needs to be opened not only to SME or small-cap companies but to all ESCOs.

Recommended changes to the GBER text:

Art.	Consultation text	Suggested changes
Art 38	7. Aid for the improvement of the energy efficiency of buildings may also relate to the facilitation of energy performance contracting subject to the following cumulative conditions:	*7. Aid for the improvement of the energy efficiency of buildings may also relate to the facilitation of energy performance contracting and* ***any other energy service models and are able to provide evidence[1] of energy savings and carbon footprint reductions from implemented energy efficiency and renewable energy measures*** *subject to the following cumulative conditions: ....*
	a. the support takes the form of a loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed to refinance the respective provider (for example, factoring or forfaiting);	*a. the support takes the form of a loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract* ***or any of the energy service models mentioned above*** *or consists in a financial product aimed to refinance the respective provider (for example, factoring or forfaiting);*
	b. the nominal amount of total outstanding financing provided under this paragraph per beneficiary does not exceed EUR 30 million;	- *no changes* -
	c. the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures;	~~c. the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures;~~
	d. the support is provided for the facilitation of energy performance contracting within the meaning of Article 2, point (27) of Directive 2012/27/E	*c. the support is provided for the facilitation of energy performance contracting within the meaning of Article 2, point (27) of Directive 2012/27/EU* ***or energy service models able to provide evidence[2] of energy savings of energy savings and carbon footprint reductions***

[1] Using the readily available, state-of-the-art M&V schemes

		from implemented energy efficiency and renewable energy measures.
	e. the energy performance contracting relates to a building referred to in paragraph 3a.	*d.* the energy performance contracting relates to a building referred to in paragraph 3a. ***and industry***;"

[1] Using the readily available, state-of-the-art M&V schemes

[2] Using the readily available, state-of-the-art M&V schemes

5. Aid in the form of reduction of taxes and parafiscal levies (Art. 44 GBER):

Situation: Art 44 of the GBER draft allows the reduction of taxes and parafiscal levies if they impose a disproportionate burden. This should prevent environmental taxes to impose a competitive disadvantage that would hinder the introduction of the tax in the first place.

Problem: The current Art. 44 contains two major problems:

a) Different intensity levels for levies and taxes for ESCOs: The way member countries have designed and applied state aid schemes in the past have generated a discriminatory environment for ESCOs.

b) Allowance for reduction without strict and binding preconditions: It is obvious, that the reduction of levies and taxes without any precondition will create numerous exemptions which will lead to higher energy consumption and thus counteract the energy efficiency targets set out in the EED.

Solution: Art 44 provides the opportunity to move away impediments for energy efficiency and energy services which contribute to the energy transition and decarbonization in the way described in our amendments for Art. 38.

a. Ensure a level playing field for ESCOs: Art. 44 should state, that the use of taxes and parafiscal levies has to be non-discriminatory for ESCOs in comparison to other market players. Thus, a differentiated and discriminative use of taxes and levies against ESCO services which are compliant with the decarbonization targets of the EU, the RED II, the EED and the EPBD should be prohibited.
b. Raise the thresholds for exemptions for consumers: for industry and other consumers, the reduction of parafiscal levies and taxes has to be aligned with certain preconditions: the use of cheap energy is not incentivizing the efficiency in industries. Thus, State aid should only be considerable in a case, where the tax or parafiscal levy reduction is combined with measures to increase energy efficiency and thus contribute to the EU decarbonization targets: e.g., the implementation of a certified energy management system in accordance with EN ISO 50001 or investments aiming to increase energy efficiency (see also new 44 Nr. 6).

Recommended amendments to the GBER text:

Art. 44	Consultation text	Suggested changes
New		**Add new Nr. 5):** ***The use of Art 44 a 1)-3) on parafiscal levies and taxes should not lead to***

		discrimination or preference of specific market participants.
New	---	**Add new Nr. 6):** ***6.1 An undertaking eligible for aid shall, by 1 January 2023 at the latest, implement a certified energy management system in accordance with DIN EN ISO 50001, December 2011 edition or December 2018 edition, or an environmental management system in accordance with Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25. November 2009 allowing voluntary participation by organisations in an eco-management and audit scheme and repealing Regulation (EC) No 761/2001, and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1), as last amended by Regulation (EU) 2018/2026 (OJ L 325, 20.12.2018, p. 18) (EMAS).*** ***6.2. Alternatively, enterprises which, in the three calendar years preceding the accounting year, had a total average energy consumption of fossil fuels of less than 10 gigawatt hours may, no later than 1 January 2023 operate a non-certified energy management system based on DIN EN ISO 50005:2021* at least in accordance with implementation level 3.***
		6.3 An enterprise shall receive the aid under Art. 44 if, in addition to the other requirements in para. 6.1 to 6.4, it has made investments from the accounting year 2023 onwards for measures to improve energy efficiency which have been specifically identified within the framework of the respective energy management system and have been assessed as economically feasible. Insofar as no further measures pursuant to the first sentence have been identified in an enterprise, the enterprise shall receive the aid pursuant to this regulation without having made any investments in the accounting year. The economic feasibility of a measure shall be deemed to be given if the measure has a positive net present

		value in the economic feasibility assessment within the framework of the energy management system which has been determined on the basis of EN 17463, February 2020 edition.

6. Investment aid for energy efficient district heating and cooling (Art. 46 GBER)

Situation: District heating investments are necessary to deploy the use of waste heat in a broader scope of buildings and industry. Even if cost efficiency is given the use of waste heat in district heating grids provides numerous risks such as bankruptcy of the waste heat provider, changes in the quality and quantity of waste heat etc. Thus, and with regard to the enormous so far untapped de carbonization potential of waste heat, the investments of making waste heat commercially accessible and usable need specific guidance and support.

Problem: Art. 46, Nr. 3- 5 sets up a rather complex state aid intensity level between 30 and 50% of the eligible costs. Lower State aid intensity levels for energy efficiency compared to renewable energy (up to 65%) projects would significantly distort the market for decarbonization solutions. The GBER would fail to implement the Energy Efficiency First principle (EE1st), a well-articulated pillar of Commission policy for years, and thus ignore the central necessity of reducing energy demand in achieving the European Union's decarbonization goals for 2030 and 2050. As such the State aid framework should help to accelerate the uptake of energy efficiency measures by putting them on an equal footing with renewable energies regarding the permitted aid intensity. A carbon-neutral Europe can only be achieved by realizing the full potential of energy efficiency and renewable energies working together.

Recommendation: Increase the permitted aid intensity for energy efficiency measures for the use and deployment of waste heat in industry and buildings to the same level as those provided for aid to renewable energies, i.e., 65% for small enterprises, 55% for medium-sized enterprises and 45% for large enterprises, with an increasement of additional 15% for waste heat, and 100% for gap of the net present value of the cash-flows over the life time of the investment.

Recommended amendments to the GBER text:

Art. 46	Consultation text	Suggested changes
New	3. The aid intensity shall not exceed 30 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings. 4. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration. 5. As an alternative to paragraph 3, the aid intensity may reach up to 100 % of	*3. The aid intensity shall not exceed* ***45 %*** *of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.* *4. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration* ***and waste heat.*** *5. As an alternative to paragraph 3, the aid intensity may reach up to 100 % of the funding gap, calculated as the difference between the positive and negative cash-*

	the funding gap, calculated as the difference between the positive and negative cash-flows over the lifetime of the investment and discounted to their current value using the cost of capital.	*flows over the lifetime of the investment and discounted to their current value using the cost of capital.*