

8 December 2021

CEE Bankwatch Network input into the targeted review of the General Block Exemption Regulation

CEE Bankwatch Network welcomes the consultation on the new draft GBER amendments which need to take into account the objectives of the European Green Deal. For future consultations, however, it would be useful if the Commission can provide an informal text with the changes tracked compared to the current Regulation.

General comments

Our starting point is that **state aid must not contribute to environmental and social harm, and that this needs to be better checked** before the aid is granted. From waste incinerators to fossil fuel-fired power plants to hydropower plants damaging rivers, too much public money has already supported damaging projects in the EU.

In particular, the fact that aid granted under the GBER is not subject to notification to the Commission means that a layer of scrutiny is missing. This means that **only the least controversial forms of aid should be included in the GBER**, which is not the case in the current draft. We are aware that the Commission does not have infinite capacity to assess notified aid.

For us, **the answer is not to allow this aid to be granted with no scrutiny, but rather to exclude those forms of aid which do not contribute to the European Green Deal**, as explained below. This would help to free up capacity to assess forms of aid which do need scrutiny but may ultimately contribute.

On the other hand, as the Commission has recognised in the draft CEEAG, **public consultations can also help to scrutinise state aid measures** – not necessarily from a state aid point of view, but certainly from an effectiveness and environmental and social point of view. With limited EC capacity available to assess proposed aid measures, we underline the role that public consultations could play and **encourage the Commission to include them also in the GBER**.

These points are explained in more detail below.

Notification thresholds

The GBER sets thresholds below which aid does not need to be notified to the Commission. This may make sense for larger Member States dealing with large volumes of aid, and for technologies which do not run the risk of causing environmental damage. However, for smaller Member States such as Croatia and Slovenia the thresholds are so high that their aid rarely needs to be notified, and such aid can easily support environmentally-damaging projects (see comments on aid for environmental protection below for more details).

We therefore recommend that the Commission does not raise the notification thresholds, particularly for technologies which entail environmental risks. For such activities (see below), some combination of the following should be applied:

i) much lower thresholds should be introduced

- ii) they should be excluded from the GBER altogether
- iii) state aid should not be allowed for high-risk activities
- iv) public consultations should be introduced

Compliance with EU (environmental) law

Although Article 1(5) of the 2014 GBER provides that the aid must not entail a non-severable violation of Union law, we are concerned that it is unlikely that non-compliant aid will actually be recovered in case of breaches. This is partly due to a continued lack of disclosure by some Member States about the aid granted, but also because there are currently no provisions in place guiding Member States or the Commission on how to deal with this issue, for example with regard to environmental law.

In addition there are cases where infrastructure projects may not actually breach EU law but they require derogations eg. from the Habitats Directive or Water Framework Directive. These cannot be considered to be contributing to the goals of the European Green Deal.

Based on the CJEU's ruling in *Austria v. Commission*¹, compliance with EU environmental law needs to be checked before granting aid. In the GBER context, this will have to be done by the same Member State granting the aid, which raises the risk that it will not be done very thoroughly. This makes the public disclosure of aid measures, as well as a notification requirement for environmentally risky types of aid all the more important.

Therefore:

- **A requirement to comply with relevant EU environmental law needs to be underlined in Article 1(5) of the GBER.**
- **The GBER needs to explicitly exclude state aid for activities which require a derogation under EU environmental law.**
- **Should aid be discovered to be supporting activities which breach EU law, the GBER needs to clearly state that it must be recovered.**

Consistency with the European Green Deal and European Climate Law

The revision of the GBER to align it with the European Green Deal and the EU's Climate Law is very welcome. Nevertheless some improvements are still needed to make these policies more coherent.

In particular, **the Energy Efficiency First principle is currently not even mentioned in the GBER. It needs to be properly integrated, as does the increased level of ambition proposed in the Fit for 55 package**, including more ambitious targets for energy efficiency and emissions reductions. The Energy Efficiency First principle must mean that Member States, before granting aid in at least the following categories, need to examine whether the same goals could be reached or partially reached by energy savings:

- Investment aid for environmental protection, including climate protection (Article 36 of the draft GBER);
- Investment aid for the promotion of energy from renewable sources, renewable hydrogen and high-efficiency cogeneration (Article 41);

¹ Judgement of 22 September 2020, Republic of Austria v European Commission, C-594/18 P, ECLI:EU:C:2020:742, para. 44- 45 and 100

- Operating aid for the promotion of electricity from renewable sources (Article 42);
- 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 (Article 43);
- Investment aid for energy infrastructure (Article 48).

Likewise, **Article 1(3) of the GBER should exclude aid for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction**, not only aid for the closure of uncompetitive coal mines by sub-paragraph (d). Any aid for the closure of plants must be notified to the Commission and carefully assessed, not left to Member States.

It must also exclude aid for other sectors which entail environmental risks. In some cases these should not receive state aid at all, while for others the EC should at least be notified:

- **All aid for fossil fuels, including fossil gas (see below), must be halted if the EU is to reach its 2030 and 2050 climate targets.**
- **Aid for new-build hydropower and primary forest biomass should not be awarded as these are both mature technologies and are environmentally damaging.**
- **Aid for fossil-based hydrogen should not be awarded while for renewables-based hydrogen it should be notified to the EC as there is insufficient experience and practice with this.**

Fossil gas

Section VII of the draft GBER enables support for fossil gas both directly or indirectly. This is no longer acceptable - **state aid and public funds in general must no longer be allowed for fossil fuels at this point in the climate crisis**. The International Energy Agency (IEA) has clearly signalled that the net-zero by 2050 pathway requires the immediate and massive deployment of renewables and no more investments in fossil fuels.² Ending fossil fuel subsidies would free up resources to be invested in energy efficiency measures and sustainable forms of renewable energy, which can help prevent spikes in energy prices, as recently stressed by the European Parliament.³

Yet, the draft GBER (as with the draft CEEAG) persistently differentiates gas from the so-called “most polluting fossil fuels” and allows it to be supported in various sectors such as cogeneration, ‘low-carbon’ hydrogen etc. We would like to ask on the basis of what data this distinction has been made? In our opinion, **this distinction between gas and other fossil fuels has no basis either in climate science nor in law and must be deleted**. Fugitive methane emissions from extraction and transportation of fossil gas are often sufficient to undermine any CO₂ emissions reductions (compared to coal) at the point of combustion. The most recent scientific studies are showing that global methane emissions have been underestimated and that fossil gas does not necessarily constitute a cleaner source of energy than coal due to its combined emissions of CO₂ and leaked methane.⁴

State aid rules for environmental protection must only support aid for activities that actively contribute to the achievement of EU policies and EU goals to reach at least a 55 per cent reduction of GHG emissions in 2030 and carbon neutrality in 2050. This means a reduction in consumption of fossil gas of 22-37 per cent by 2030 (compared to 2015) and a continued decline to negligible levels by 2050.⁵ Even these targets are insufficient to limit global temperature rise to 1.5°C (Paris Agreement): the EU should rather aim to phase

² IEA, Net Zero by 2050: a roadmap for the Global Energy Sector”, May 2021.

³ European Parliament resolution of 21 October 2021 on the CEEAG (2021/2923(RSP))

⁴ International Energy Agency, The Role of Gas in Today’s Energy Transitions (2019), p. 41; Oil Change International, Burning the Gas ‘Bridge Fuel’ Myth: Why Gas is not Clean, Cheap or Necessary (2019).

⁵ 2030 Climate Target Plan Impact Assessment, Figures 6 and 37.

out fossil gas completely by 2035.⁶ Thus the approach taken with regard to state aid must be particularly precautionary, and **fossil gas must be completely excluded from the GBER and CEEAG.**

The proposed safeguard “compliance with the 2030 and 2050 climate targets” is too weak, does not provide guidance for Member States on how to apply it, and in reality will not help at all, as all infrastructure will simply be declared to be ready for renewable gases. The situation is highly reminiscent of 10-15 years ago when new coal plants were still being planned in the EU with the argument that they were CCS-ready. And where is that CCS today? Nowhere in sight.

In light of the already existing gas infrastructure lock-in in the EU, new fossil gas projects are almost certain to undermine the achievement of the EU’s climate targets. There should therefore be a very strong presumption that fossil gas projects will not contribute to the targets.

Clarity of definitions and terminology

The GBER has to be used by Member States so it must be crystal clear. We are therefore concerned about several vaguely formulated conditions for aid measures which may result in environmentally damaging aid being granted, particularly in combination with the proposed higher notification thresholds:

- On fossil gas, phrases like “compliant with the 2030 and 2050 climate targets” or “mainly used for the transport of hydrogen and renewable gases” are too flexible and will be used to justify almost anything. Hydrogen and renewable gases development are being massively hyped at the moment but in our opinion they will never be available at the scale that fossil gas is today, so building any new gas infrastructure is just inviting a gas lock-in. **Fossil gas must be excluded from state aid altogether.**
- Definitions for low-carbon and renewable hydrogen are provided, but not for “low-carbon” and “renewable” gases and fuels more broadly. This may create confusion and open the door to greenwashing and gas infrastructure investments by the back door. In addition, these gases should not be treated equally as they are in the draft GBER. The climate impact of low-carbon versus renewable gas differs greatly: ‘low-carbon’ will not ultimately result in decarbonisation. Given that low-carbon gases and fuels do not pay all their external costs, treating them equally to renewable gases and fuels will put them at a competitive advantage – exactly the opposite of what should be done. **‘Low-carbon’ gases and fuels must not receive support under the GBER at all.**
- **The definition of “environmental protection” in point (101) and “restoration” in point (123c) should be amended in line with the CEEAG.**
- **The definitions of “energy efficiency” in point (103), “energy savings” in point (103e), cogeneration in point (108) and the definitions related to district heating and cooling in point (124a) should either refer to those in the CEEAG or to those in the recast EED after it is reviewed.**
- Point (102e) proposes a definition of low-carbon hydrogen that does not correspond to any definition in EU law. **Hydrogen should be subject to notification rather than being included in the GBER.**
- In Article 2 (108b), a new definition for “green cogeneration” appears, meaning ‘cogeneration using 100 % renewable energy sources as an input for the production of heat and power’. This is not related to any EU legislation, including the draft new Energy Efficiency Directive, and the term ‘green’ is more a value judgement than a term fit for EU rules. **At the very least, this needs to be changed to refer to ‘renewable cogeneration’,** which can be recognised by the existing EU legislation defining renewable energy. However, such generation generally covers only the biodegradable fraction of

⁶ European Civil Society Gas Manifesto, EU climate and energy policies must deliver a fossil gas phase out in Europe by 2035, June 2021.

waste and biomass, including forest biomass. **Neither waste nor primary forest biomass should be supported by state aid, and particularly not under the GBER without *ex ante* notification to the Commission, thus this renewable cogeneration category should be excluded from the GBER and any schemes or investment aid notified to the Commission.**

Public consultations

We strongly welcome the new requirement for Member States to organise public consultations on decarbonisation measures and security of supply measures in the draft CEEAG, but do not see why such consultations should be restricted to these types of measures, as eg. renewables support schemes can be just as controversial. However, public consultations are mentioned just once in the draft GBER, in relation to vehicle recharging infrastructure, and it is not clear why the Commission's rationale for requiring consultations under the CEEAG would not also apply to the GBER.

Indeed, given the lack of scrutiny by the Commission of such aid, it is even more important to collect information and suggestions at the national level to improve the aid measures, both in terms of achieving their goals and in terms of ensuring their compliance with EU law. **Therefore the Commission should include requirements for public consultations on proposed aid also in the GBER.**

Information disclosure, reporting and monitoring (Articles 5-12).

The transparency (to the public) of aid granted under the GBER needs to be dramatically improved. The European Parliament also recently called for state aid transparency to be strengthened.⁷ To this end, we welcome the lowering of the threshold for publication of information to EUR 100,000. However, in order to have any real chance of raising objections in a timely manner, the public needs to be able to monitor planned aid measures before the aid is granted, not only afterwards.

In addition, the information provided by Member States on their websites is often incomplete or simply not accessible (and therefore in violation of Article 9(4)). The deadline for publication by Member States is too long to enable close monitoring and unjustified given the much shorter deadline to report similar information to the Commission (Article 11a). Therefore:

- Member States must be required to report and publish their commitment to grant aid at least one month before it is granted and to update the information once the aid is granted.

They need to publish the information on their national/regional website at the same time as they report to the Commission, i.e within 20 working days of the entry into force of the aid measures.

- The Commission should publish information on the aid measures as reported by the granting authorities within one month after receiving the information.
- The Commission needs to more actively monitor the Member States' publication of information and reporting and withdraw or restrict their right to use block exemption in cases where they repeatedly violate the rules. This could include linking to Member State's websites from the EC's page in order to make it easier to check what information is being published.

Specific comments on aid for environmental protection (Section 7

Support to hydrogen (Articles 36, 36a and b, 38, 41, 43, 48)

⁷ European Parliament resolution of 21 October 2021 on the CEEAG (2021/2923(RSP)).

Renewable and low-carbon hydrogen is supported throughout several aid categories of the draft GBER. **As stated above, low-carbon hydrogen should be excluded as it is inherently incompatible with decarbonisation**, given the time-scale available for tackling climate change.

In addition, renewable hydrogen is not widespread and needs to be subject to particular conditions such as examining whether energy efficiency or electrification could preclude the need for its use, whether the renewable energy sources to be used are sustainable, and whether they are additional to those required to meet demand for direct use of renewable energy. There is a huge amount of hype around it at the moment but our assessment is that this overestimates its future use. It will always be more expensive than directly using renewable energy and its use must therefore be limited to the hard-to-abate sectors, not e.g. heating or most land transport, where better alternatives exist. **Thus the Commission must be included in examining all measures for support of renewable hydrogen and there should therefore be no notification threshold at all for renewable hydrogen projects as it should always be notified.**

To summarise, the draft GBER needs to be amended as follows:

I) Require notification of any hydrogen projects to the Commission.

II) Explicitly exclude any direct or indirect support to hydrogen that is not renewable. Infrastructure which serves to transport or store low-carbon hydrogen must also be excluded.

Investment aid for environmental protection, including climate protection (Article 36)

General comments

As with the draft CEEAG, the concept of environmental protection needs to be broadened. It is currently very much concentrated on greenhouse gas emissions reductions, but **biodiversity protection needs to be given at least equal treatment**. Renewable energy installations are much needed but they may have serious impacts on biodiversity if not properly designed, and some, such as greenfield hydropower and installations burning primary forest biomass, usually have very damaging impacts. Such measures would therefore not be in line with Green Deal objectives.

CCUS

Paragraph 2a on CCUS includes power plants, which is not justified. As an answer to the climate emergency, carbon sequestration cannot be considered as a remedy. There are serious questions from an economic, environmental and technical perspective. The particular concerns that have to be addressed include the economic costs per unit CO₂ stored, long-term viability of CO₂ storage, loss of efficiency due to CCS installation, and the commercial readiness of the technology, which in spite of years of public funding is still far off. Until proven in these three areas, it is a high risk strategy to rely on it - otherwise, it only supports business-as-usual and diverts attention and resources from real solutions, such as energy efficiency. **Therefore CCUS should certainly be excluded from the GBER and from state aid for the power sector in general.**

Investment aid for energy efficiency (Articles 38 and 39)

Compared to the EU's progress in renewable energy and greenhouse gas emissions savings – which are however still not sufficient to tackle dangerous climate change, energy efficiency is still lagging behind. Thus, as well as integrating it as a horizontal principle as mentioned above, much more action is

needed on energy efficiency in buildings in particular, as they are responsible for almost 40 per cent of the EU's final energy consumption.⁸

In this case, the amendments to Articles 38 and 39 on investment aid for energy efficiency introduce increases in the notification thresholds which seem reasonable and not likely to result in environmental and social damage.

Investment and operating aid for renewables, renewable hydrogen and high-efficiency cogeneration (Articles 41 and 42)

Investment aid for high-efficiency cogeneration

The Energy Efficiency Directive and EEAG encourage high efficiency cogeneration regardless of the energy source. This results in a loophole where, for example, the incineration of waste which is not biodegradable or can receive state aid, despite the obvious likelihood of conflict with the EU's circular economy legislation. Other forms of cogeneration require either fossil fuels such as gas, or forest biomass. So cogeneration can very rarely be considered to be sustainable - Even secondary biomass has greenhouse gas implications.

Therefore the GBER's pledge of support for non-fossil fuel cogeneration only – yet including fossil gas – is unsatisfactory. This is not only because of gas, but also because it fails to limit other unsustainable fuels - unless it excludes waste incineration based on the fact that it usually entails burning a great deal of fossil-fuel-based plastic, in which case we welcome it and it should be clearly stated.

The draft GBER also requires that the installations achieve primary energy savings compared to separate heat and electricity generation as laid down by the Energy Efficiency Directive (Article 41, para. 4). However, the current EED methodology for performing this calculation is very unambitious and the draft new EED does not look much better as the choice of comparative plants to assess this energy saving do not include heat pumps while the baseline efficiency mentioned for gas electricity-only plants is 53 per cent, while in reality, turbines with up to 64 per cent efficiency have been available for several years.⁹

Of particular relevance for the GBER is that no minimum efficiency requirement applies to small cogeneration plants. Obviously this ultimately needs to be resolved within the Energy Efficiency Directive but it raises questions on what the added value of state aid will be in this sector, especially as cogeneration plants already receive free allocation of emission allowances under the EU Emissions Trading Scheme.

For all these reasons, cogeneration should not be included in the GBER. Given the potential for harmful projects to be supported in the name of cogeneration, any aid for the sector must be subject to an *ex ante* assessment by the Commission.

Investment aid for hydropower

Given the damaging nature of greenfield hydropower with regard to biodiversity and water quality, and its general incompatibility with the EU 2030 Biodiversity Strategy's goal of restoring 25,000 km of rivers, granting state aid for new hydropower makes little sense any more. In particular the GBER system is not an appropriate avenue for such aid, due to the lack of scrutiny from either the European

⁸ Commission Recommendation (EU) 2019/1019 of 7 June 2019 on building modernisation, C/2019/4135, OJ L 165, 21.6.2019, p. 70–128

⁹ <https://www.ge.com/news/press-releases/ha-technology-now-available-industry-first-64-percent-efficiency>

Commission or the public. Recent examples show that investment aid lower than even the existing thresholds has been provided for problematic investments in Austria and Slovenia.

Gratkorn hydropower plant, river Mura, Austria

Capacity: 11 MW

Project promoter: 50:50 owned by VERBUND Hydro Power GmbH and Energie Steiermark

The plant is currently under construction, with an expected start of operation by 2024. It received a derogation under Article 104a of the Austrian Water Act (Art. 4 (7) of the WFD) which was unsuccessfully appealed against to the second instance environmental body, the Umweltsenat. The Umweltsenat found that the permitting authority had sufficiently weighed the balance of interests and correctly concluded that the project was of overriding public interest¹⁰ - despite the fact it has a capacity of 11 MW.

There has been ongoing opposition to the project in the municipal council due to concerns about negative impacts on drinking water and groundwater quality. Despite this, it received EUR 7.2 million in state investment support in 2020 according to the Austrian renewables support database.¹¹

Brežice hydropower plant, river Sava, Slovenia.

Capacity: 47 MW

Project promoter: Hidroelektrarne na Spodnji Savi, d.o.o (HESS)

The dam started trial operations in October 2017 and obtained an operating licence in October 2018. But very few of the prescribed mitigation measures and habitat compensation measures were applied in practice, or they were wrongly applied, according to December 2018 research by Birdlife Slovenia.¹² The results showed that 5 habitat types had been completely destroyed, while 7 additional habitat types had been at least 80 per cent destroyed. Habitat types such as reed beds and the abandoned gravel pits had been completely destroyed. But the replacement habitats that were to replace habitat types lost during construction had not been implemented and no monitoring of species was being carried out which would help assess those measures which had been implemented.

Yet in 2020 the Slovene government approved EUR 12.7 million in state aid for the completion of the plant, including environmental measures.¹³ It is not even clear whether this aid is legal under existing State aid rules as the environmental measures were part of the legally stipulated actions the project promoter had to take as part of the construction project. But they certainly show that it cannot be taken for granted that project promoters will stick to their permitting conditions. Rather than cutting state aid (it is not clear whether any was provided for the same plant at an earlier stage), the Slovenian government handed it out after the project promoter failed to adhere to the permitting conditions.

Aid for hydropower must therefore be removed from the GBER and made subject to *ex ante* notification to the Commission, or at the very least made subject to public consultations.

¹⁰ Umweltsenat, Betrifft: Berufungen gegen den Genehmigungsbescheid der Steiermärkischen Landesregierung bezüglich des Vorhabens „Errichtung und Betrieb der Wasserkraftanlage Kraftwerk Gratkorn“ Bescheid US 1B/2012/2031, 26.11.2013.

¹¹ Austrian register of renewables incentives, https://www.oem-ag.at/fileadmin/user_upload/Dokumente/Veroeffentlichungen/2021-09-30_VeroeffentlichungspflichtAGVO_Art

¹² Alen Ploj, Brežice Hydroelectric Power Plant – promises and reality. A review of the implementation of the promised replacement habitats and mitigating measures Birdlife Slovenia, 2018. https://www.ptice.si/wp-content/uploads/2021/01/Ploj-2018_He-Brezice_ang.pdf

¹³ Slovenian government, Program izvedbe objektov vodne, državne in lokalne infrastrukture ter objektov vodne in energetske infrastrukture v nedeljivem razmerju za izgradnjo HE Brežice, 13 August 2020. <https://www.gov.si/novice/2020-08-13-program-izvedbe-objektov-vodne-drzavne-in-lokalne-infrastrukture-ter-objektov-vodne-in-energetske-infrastrukture-v-nedeljivem-razmerju-za-izgradnjo-he-brezice/>

Certainly the monetary thresholds should not be raised for high-risk forms of renewable energy such as hydropower.

Support for existing hydropower to improve its environmental standards beyond what EU law requires, as well as its efficiency, as now proposed in the draft amendments to the GBER, can be useful as long as all EU environmental law is complied with.

The proposal to remove Article 41's requirement for hydropower projects to comply with the Water Framework Directive (WFD) on one hand makes sense because they must comply with all environmental law, not only the WFD. But in practice, having this provision explicitly mentioned in the EEAG has ensured that it receives specific attention – albeit apparently insufficient – during the Commission's *ex ante* examination of aid measures, so it is preferable to keep it. **We recommend reviving the provision on the WFD and adding 'or other EU environmental law'.**

Biomass

The controversy surrounding forest biomass at the EU level hardly needs any introduction. Judging by the draft text of the revised Renewable Energy Directive, it does not appear that this will die down any time soon, as the proposals are not proportionate to the scale of the problem regarding the greenhouse gas emissions of biomass and its impacts on biodiversity.

Therefore, support for biomass installations that may burn forest biomass must be removed from the GBER and made subject to *ex ante* notification to the Commission, or at the very least made subject to public consultations. Even if they burn secondary biomass they still need scrutiny to ensure they will not end up burning wood cut directly for burning.

The prohibition of investment and operating aid for food-based biofuels must be maintained and must apply for all installations, no matter the size.

Operating aid for renewables and renewable hydrogen in small scale installations and for renewable energy communities (Article 43)

Renewable energy communities

We welcome the inclusion of a specific regime for renewable energy communities (RECs) in the draft GBER, due to their specific characteristics and benefits for the energy transition. However, a 1 MW threshold for exemption from tendering does not make much sense for wind projects. While we are cautious regarding wind projects because of their potential environmental impacts, we assess that in the case of community energy, as long as the projects comply with EU law, exempting projects of up to 6 MW or 6 generation units, as in the current EEAG, would be acceptable. On the other hand, the existing formulation is confusing, especially given the rising output per turbine, so **for wind projects, we propose to choose one of the thresholds of the 2014 EEAG, paragraph 127, i.e. installations with an installed electricity capacity of up to 6 MW or 6 generation units, but not to leave both as options.**

Small-scale hydropower

In mountainous regions of Europe small-scale hydropower has become very widespread, causing widespread damage in e.g. Italy, Romania and Bulgaria and to a lesser extent also Croatia. This is rendered all the more unacceptable by its negligible contribution to the electricity supply. For this reason, when developing the sustainable investment taxonomy, the Technical Expert Group on

Sustainable Finance recommended to prioritise refurbishment of existing hydropower plants and rehabilitation of existing barriers, and to avoid the construction of hydropower projects below 10 MW.¹⁴

Although the EEAG and GBER brought considerable improvements by removing feed-in tariffs for plants above 500 kW – now proposed to decrease to 400 kW and then 200 kW in 2026 - and by introducing auctions, some gaps still remain. The first, as we indicated above, is the lack of checks for compliance for EU law, including for larger plants, and the lack of checks on whether derogations have been misused. The second issue is that even some very small plants can cause damage, as the Dabrova Dolina case in Croatia shows.

Dabrova Dolina 1, river Mrežnica, Croatia

Capacity: 225 kW

Project promoter: Kelemen Energy d.o.o.

A harmless-sounding mill conversion project on Croatia's stunning river Mrežnica is a textbook example of how even small hydropower plants can damage protected areas - in this case a Natura 2000 site.

A biodiversity impact assessment was carried out in 2013 and the project was approved, but with 23 measures stipulated to reduce harmful impacts on the Natura 2000 network during construction.

But the project design was later changed and no new assessment was undertaken. Then the construction was carried out differently again, diverting much more water from the Šušnjar tufa waterfall than had been permitted and directly damaging some of the tufa by digging into it. In the first year of the plant's operation, during summer 2017, the tufa barrier completely dried out.

After numerous complaints by the public and NGOs, the Croatian environmental inspectorate finally asked the concession-holder to make adjustments to the plant. As of November 2021, some adjustments appear to have been made while others are outstanding.

Since the inspectorate's work has no impact on incentives, as of the end of 2020 the Croatian Network Operator still had a contract with Kelemen Energy d.o.o. as a privileged producer able to receive feed-in tariffs.¹⁵

We therefore urge the Commission to amend the draft GBER and consider any aid for greenfield small hydropower plants below 10 MW (including those on existing weirs that would raise the water level) as incompatible state aid to disproportional negative externalities compared with the positive environmental effects in terms of renewable energy generation.

Investment aid for remediation of environmental damage and biodiversity (Article 45)

We very much welcome the new aid category regarding biodiversity in the GBER, in line with the need to tackle both the climate and wider environmental emergencies. Nevertheless we have a few comments:

1) "Environmental damage" should be defined.

2) A distinction is made between "*remediation of environmental damage or rehabilitation of natural habitats and ecosystems*" and "*protection or restoration of biodiversity and in nature-based solutions for climate change adaptation and mitigation*" but this is in danger of being unworkable, as these are in reality often part of the same projects.

¹⁴ Technical annex to the TEG final report on the EU taxonomy, March 2020.

¹⁵ More details about the project here: <https://bankwatch.org/project/dabrova-dolina-hydropower-plant-croatia>

3) The term ‘nature-based solutions’ has often been mis-used to describe all kinds of activities, including those aimed at offsetting carbon emissions instead of cutting them. Therefore, aid for what the Commission calls ‘nature-based solutions’ must be limited to truly biodiversity-positive projects.

Investment aid for district heating and cooling (Article 46)

The proposed GBER would *worsen* the current situation as it exempts aid to the upgrade of networks that are not energy energy efficient and allows aid to networks based on fossil fuels, as well as allowing a higher notification threshold of EUR 50 million. This would allow coal-dependent cities to simply circumvent Commission scrutiny and we are not sure what the advantage of this would be.

Aid to district heating or cooling must only support those which run completely on renewable energy (excluding primary forest biomass), with no exemptions in the GBER.

Investment aid for energy infrastructure (Article 47)

Several studies show that new fossil gas infrastructure is incompatible with a 1.5 degree climate goal and is no longer needed for the EU’s security of supply.¹⁶ It is therefore unclear why supporting fossil gas infrastructure remains possible in the draft GBER.

As mentioned above, allowing aid for gas infrastructure only if it is ‘dedicated to the use for’ or ‘mainly used for the transport’ of hydrogen and renewable gases is largely meaningless. The renewable gas or hydrogen may or may not materialise in the quantities needed, and our assessment is that it will not require anything like the infrastructure that is currently used for gas. If it doesn’t materialise, there will be a strong push to keep using the infrastructure for fossil gas. Moreover it is not specified that the hydrogen would have to be renewable, nor that it must be transported alone, not blended with fossil gas.

Again we underline that no state aid can be allowed for new fossil fuel infrastructure.

¹⁶ Artelys, An updated analysis on gas supply security in the EU energy transition, January 2020.