

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Energy efficiency in buildings

#### *Link to European Flagship: Renovate*

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### I. Objective of the guiding template

1. The coronavirus pandemic has changed the economic outlook for the years to come in the European Union. Investments and reforms in the context of the Recovery and Resilience Facility (the “Facility”) are contributing to convergence and a sustainable economic recovery. Carrying out reforms and investing in the EU’s common priorities, notably green, digital and social resilience will help create jobs and sustainable growth, while modernising our economies, and allow the EU to recover in a balanced, forward-looking and sustained manner.
2. The Facility aims at mitigating the economic and social impact of the coronavirus pandemic and at making the EU economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the twin green and digital transitions. The Facility is also at the heart of the implementation of the REPowerEU Plan,<sup>1</sup> the Commission’s response to the socio-economic hardships and global energy market disruption caused by Russia's invasion of Ukraine. Therefore, if Member States want to obtain additional financing for key investments and reforms that will help achieve the REPowerEU objectives, they must add a REPowerEU chapter to their national recovery and resilience plans.<sup>2</sup>
3. The objectives of REPowerEU are, amongst others, to increase the resilience, security and sustainability of the EU’s energy system through the needed decrease of dependence on fossil fuels and diversification of energy supplies at EU level, including by increasing the uptake of renewables, energy efficiency and energy storage capacity.
4. State aid rules apply in the framework of the Facility. Member States should therefore ensure that all investments comply with the EU State aid rules and follow all regular procedures and rules.<sup>3</sup>

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<sup>1</sup> Commission staff working document, REPowerEU Plan, COM(2022) 230 final, 18.5.2022

<sup>2</sup> See Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, OJ L 63, 28.2.2023, p. 1.

<sup>3</sup> See Commission staff working document - Guidance to Member States Recovery and Resilience Plans - Part 1, SWD(2021) 12 final, published 22.1.2021 ([https://commission.europa.eu/document/7c55aadf-6b8d-4d9c-a930-bc7ef8656de1\\_en](https://commission.europa.eu/document/7c55aadf-6b8d-4d9c-a930-bc7ef8656de1_en)) and Commission Notice- Guidance on Recovery and Resilience Plans in the context of REPowerEU, 2023/C 80/01 published 3.3.2023 (<https://eur-lex.europa.eu/legal->

5. With this guiding template, DG Competition aims at assisting Member States with the State aid elements of their recovery plans and the dedicated REPowerEU chapters, and to provide guidance on the State aid-related aspects of those investments which are expected to be common to most of those plans.
6. The investments covered by this guiding template have been chosen in line with the European flagships of the Commission’s Annual Sustainable Growth Strategy 2021.<sup>4</sup> The template has been updated because of its relevance for investments and reforms contributing to REPowerEU objectives.
7. The guiding template follows a uniform structure, providing sector-specific guidance as to when:
  - i. Instances in which the existence of State aid may be excluded, and therefore a prior notification to the Commission is not necessary;
  - ii. State aid would be involved but no notification is necessary, and specific rules may apply (in case of aid exempted from the notification obligation); and
  - iii. State aid would be involved and a notification is necessary, with reference to the main applicable State aid rules.
8. The guiding template also contains ‘boxes’ with examples of the State aid assessment of the investments and reforms contained in the components published by the Commission,<sup>5</sup> per flagship. The aim is merely illustrative, to provide additional clarifications to Member States on the State aid assessment contained in those components.

## II. Description of the investment

9. This guiding template covers investments aiming at improving the energy efficiency of buildings. Improving the energy efficiency of buildings means saving an amount of energy consumed for heating, cooling, ventilating or lighting the building determined by measuring and/or estimating consumption of the building before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption. Among other things, energy-efficiency investments can relate to insulation, installation of triple glazing, and/or smart devices improving the efficiency of the energy consumption in a building. This guiding template does not cover investments aiming at reducing the consumption of energy for production processes or the discharging of services.
10. The investments covered by this guiding template can be combined with (i) recharging infrastructure in the building for charging electric vehicles of persons using or visiting the building (for this type of investment reference is made to the guiding template on “*Electric recharging stations and hydrogen stations for road vehicles*”); and/or (ii) integrated on-site renewable electricity and/or heat generation installations and the

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content/EN/TXT/PDF/?uri=CELEX:52023XC0303(01)&from=EN). Also, the relevant public procurement rules must be respected, where applicable.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Sustainable Growth Strategy 2021, COM/2020/575 final.

<sup>5</sup> Available at [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#example-of-component-of-reforms-and-investments](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments).

related storage equipment (for this type of investment, reference is made to the guiding template on “*Investment/operating aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency*”).

11. The *Renovate* flagship aims at improving the energy and resource efficiency of public and private buildings and is expected to substantially contribute to achieving the EU’s climate objectives, create a large number of local jobs throughout the Member States and foster digital development through smart living and metering. By 2025, it is expected to contribute to the doubling of the renovation rate and the fostering of deep renovation. This guiding template aims at facilitating the uptake of energy efficiency measures in buildings and thus reducing their emissions.
12. This guiding template focuses on support to the building owner or the tenant, irrespective of the form of aid: grants, subsidised loans, guarantees, tax reductions, etc. It also covers support granted to the building owner or the tenant for improving the energy efficiency of the building in the form of financial instruments.
13. However, this guiding template does not deal with potential direct or indirect aid to the companies carrying out the energy efficiency works, to energy services providers and to financial intermediaries, with the exception of the provisions contained in Articles 38b and 39 GBER (see Section IV.B). Insofar as the State uses financial intermediaries in the implementation of the support measure to the owner or tenant, it is important to verify that also the potential indirect support to these intermediaries complies with the applicable State aid framework<sup>6</sup>.

### **III. Instances in which the existence of State aid may be excluded**

14. The following sections present a comprehensive, but not exhaustive, number of separate instances in which the application of State aid rules or the existence of State aid may be excluded. Given the cumulative nature of the criteria of Article 107(1) TFEU, if one of the following criteria is not met, the presence of State aid can be excluded and therefore there is no need to notify the measure to the Commission prior to its implementation.

#### *A. No economic activity*

15. Support for activities which are not of an economic nature, i.e. are not used for offering goods or services on the market, is not considered State aid<sup>7</sup>.
16. This may be the case for the following types of support:
  - Direct support to households for the renovation of their own residence provided they do not rent it out and do not otherwise use the own residence for economic activities.
  - Direct support to authorities for the renovation of buildings that they own and in which no economic activities are conducted, e.g. buildings where activities pertaining to the exercise of public powers are housed (police, army, justice),

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<sup>6</sup> Article 39 GBER contains specific requirements in this respect.

<sup>7</sup> Whether an activity constitutes or not an economic activity, see Section 2, in particular section 2.4 for health care and 2.5 for education of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (‘Notice on the notion of State aid’), OJ C 262, 19.7.2016, p. 1.

buildings housing the offices of the municipal, local, regional or central/federal administration<sup>8</sup>.

- Direct support to entities carrying out non-economic activities for the renovation of buildings that they own and in which they carry out the non-economic activity<sup>9</sup>. Health care, social security and public education are often considered as non-economic activities when they are based on the solidarity principle<sup>10</sup>.
17. If the building is used for both economic and non-economic activities, only the share of the costs linked to the non-economic activities falls outside of State aid rules<sup>11</sup>. In such cases, Member States have to ensure that the public funding provided for the non-economic activities is not used to cross-subsidize the economic activities. This can notably be ensured by limiting the public funding to the net cost (including the cost of capital) of the non-economic activities, to be identified on the basis of a clear separation of accounts.<sup>12</sup>
18. When the building is used for non-economic activities, the integration of renewable electricity or heat generation and related storage on-site the building will also remain non-economic (and thus out of the scope of State aid rules) provided that:
- the installation (both renewable electricity or heat generation and storage) is used for self-consumption only (with the possibility to sell up to maximum 20% of the production to the grid or a third party)<sup>13</sup>, and
  - the capacity of the installation has been dimensioned for self-consumption.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Reform 2: National plan for energy and resource efficiency skills development, and a certification scheme for professionals:** *to address the challenge of not having enough and sufficiently trained worker to plan, implement and certify measures linked to energy and resource efficiency, life cycle performance and circularity across buildings, a national plan for relevant energy and resource skills development, including a certification scheme for professionals, will be set up. [...] Initiatives to develop the skills and/or certify individuals (e.g., through vocational training) are in general not caught by State Aid rules.*

**Investment 1: Energy and resource efficiency scheme for public buildings, health and social infrastructures based on comprehensive energy performance contracts:** *To address the challenge of high upfront costs and going beyond Article 5 of the Energy Efficiency Directive, an energy and resource efficiency scheme for public buildings, health and social infrastructures will be set up, based on comprehensive energy performance contracts.*

## B. No State resources

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<sup>8</sup> See section 2 of the Notice on the notion of State aid.

<sup>9</sup> However, when the support is granted to the owner of the building who rents it out, the support will relate to an economic activity (the renting out of buildings) even if the building is rented out to entities carrying out non-economic activities.

<sup>10</sup> See sections 2.3, 2.4 and 2.5 of the Notice on the notion of State aid.

<sup>11</sup> See by analogy paragraph 205 of the Notice on the notion of State aid.

<sup>12</sup> See by analogy paragraph 206 of the Notice on the notion of State aid.

<sup>13</sup> See by analogy paragraph 207 of the Notice on the notion of State aid.

19. Measures that do not involve the transfer of public resources<sup>14</sup> exclude the existence of State aid<sup>15</sup>.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Reform 1: One-stop shops:** *to address administrative barriers in providing permits, certification and to support households and businesses with legal, technical (including energy audits) and financial advice.*

**Reform 4: Supportive legislative package for energy and resource efficiency in buildings:** *To further incentivise energy efficiency measures in residential, commercial and public buildings, and social infrastructures with a particular focus on multi-apartment buildings, the national government will introduce revisions to the building legislation.*

### C. No selectivity

20. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid.
21. This can be the case, for example, of a general reform of a tax or of the social security contributions. Selectivity is normally assessed by means of a three-step analysis<sup>16</sup>. Reductions or exemptions from taxes or social security contributions can fall outside State aid rules when they apply in the same way to all undertakings that are in a comparable factual and legal situation in the light of the inherent objective of the tax or social security system.
22. Selectivity can also stem from the discretion of the administration in the implementation of a scheme, in particular when fulfilling objective criteria do not automatically result in eligibility for the measure.
23. In the case of State aid to an individual undertaking, the finding of an economic advantage allows to presume selectivity.

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<sup>14</sup> The concept of ‘transfer of public resources’ can take many forms such as direct grants, loans, guarantees, direct investment in the capital of undertakings and benefits in kind. A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In addition, the measure must be imputable to the State. See Notice on the notion of State aid, section 3. Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

<sup>15</sup> The Regulation establishing the Recovery and Resilience Facility (Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17) does not exclude the possibility for Member States to channel part of their non-repayable contribution from the RRF through the Renewable Energy Financing Mechanism (Commission Implementing Regulation (EU) 2020/1294 of 15 September 2020 on the Union renewable energy financing mechanism. OJ L 303, 17.9.2020, p. 1, ‘REFM’), established under the Governance Regulation. Moreover, the Guidance to Member States on recovery and resilience plans explicitly refers to this possibility (SWD (2020) 205 final. 17.9.2020, see page 14). If a Member State uses (part of) its non-repayable contribution to make an unconditional payment to the REFM, the amount paid enters the Union budget and is allocated by the REFM to specific projects selected by the Commission on the basis of a grant award procedure. Therefore, the Member State does not have control over the disbursement of the funds by the REFM, and the link between the Member State and the selection and allocation of the beneficiary of support is broken. Therefore, the support by the REFM using the funds received from the Member State would no longer be imputable to the State and would not constitute State aid. As a consequence, the contributions to projects that are financed through the REFM would not be subject to State aid rules.

<sup>16</sup> Notice on the notion of State aid, section 5.2.3.

24. As regards support schemes for the improvement of the energy efficiency of buildings, the scheme could be of a general nature as regards the direct recipients of such support if it fulfils the following cumulative conditions:
- Any building owner and/or tenant is eligible for support under the scheme.
  - The eligibility conditions for the support are open, transparent, objective and non-discriminatory and linked to the improvement of the energy efficiency of buildings. The eligibility for support is based on the same conditions for all potential beneficiaries: no bonuses or less stringent conditions are foreseen for certain types of undertakings or certain sectors or beneficiaries located in certain regions. Finally, the eligibility criteria and definition of eligible costs should not lead to *de facto* favouring certain sectors or types of undertakings.
  - The support is not subject to the use of a specific technology, of the products or services of specific undertakings or of domestic products/services.
  - The budget allocated to the scheme is such that the scheme is open and support is accessible to all.

*D. No advantage*

25. In exceptional circumstances, where the market cannot deliver the service in a satisfactory manner and under conditions (such as price, objective quality characteristics, continuity and access to the service) that are consistent with the public interest, the Member States may decide to compensate the service provider within the framework of a clearly defined and entrusted, genuine Service of General Economic Interest (SGEI).
26. SGEIs are often observed in the areas of social housing, education, healthcare, etc. Support provided to improve the energy efficiency or energy performance of the building used to carry out the SGEI could fall under the costs eligible for an SGEI compensation.
27. In such cases, the existence of an economic advantage at the level of the building owner or the tenant may be excluded if: (i) the building is necessary for the provision of services that can be considered as genuine SGEI for which public service obligations have been clearly defined; (ii) the parameters of compensation have been established in advance in an objective and transparent manner; (iii) there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and (iv) the SGEI has been either assigned through a public procurement procedure that ensures the provision of the service at the least cost to the community or the compensation does not exceed what an efficient undertaking would require<sup>17</sup>.
28. In addition, public funding granted for the provision of a SGEI not exceeding EUR 500.000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation are also fulfilled.
29. It should be noted that the above only applies for the operator carrying out the SGEI. It does not apply for instance to support provided to financial intermediaries which on their turn might grant a loan to an SGEI provider. In addition, the building must be

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<sup>17</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*.

exclusively used for carrying out the SGEE. In case of the installation of renewable electricity or heat generation, the energy must be only used for self-consumption.

*E. No effect on trade between Member States and no distortion of competition*

*a. De minimis aid*

30. The distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid, and therefore there is no need for prior approval from the Commission. Member States do not even have to inform the Commission of such aid.
31. Aid is considered to be *de minimis* if the total amount of aid granted per Member State to a single undertaking does not exceed EUR 200,000 over any period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are respected<sup>18</sup>. Notably, the aid must be “transparent” within the meaning of Article 4 of the *de minimis* Regulation (i.e. it must be possible to calculate precisely the gross grant equivalent of the aid *ex ante* without a risk assessment), the EUR 200,000 threshold must be respected in case of cumulation with any other public support granted to the same beneficiaries under the *de minimis* Regulation, and the cumulation rules set out in the *de minimis* Regulation must be complied with.

*b. No potential effect on trade: purely local impact*

32. There may be instances of support measures which have a purely local impact and consequently have no effect on trade between Member States. This is the case if the support is granted directly to the final beneficiary (owner or tenant) and the final beneficiary uses the building to supply services to a limited area within a Member State and is unlikely to attract customers from other Member States, and if it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments (i.e. if it is unlikely to have a material bearing on the decision of investors to establish an outlet in the relevant region/Member State).
33. Evidence to demonstrate that there is no effect on trade could include data showing that there is only limited use of the infrastructure from outside the Member State and that cross-border investments in the relevant market are minimal or unlikely to be adversely affected.<sup>19</sup> This will not be the case for schemes applying to the entire territory of a Member State.

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<sup>18</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L352, 24.12.2013, p. 1.

<sup>19</sup> See paragraph 197 of the Notice on the notion of State aid. For instance a subsidy from the local municipality to the local sport facilities to insulate the buildings where the sport activities are taking place and which predominantly serve the local audience – see in particular paragraph 197(a) of the Notice on the notion of State aid.

#### **IV. Instances in which there is no need to notify for State aid clearance, but other requirements may apply**

34. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid, it may be considered compatible with the internal market and can be granted without notification in the following instances:

##### *A. Aid covered by an existing State aid scheme (conditions for no notification)*

35. If a Member State plans to grant State aid under an aid scheme already approved by Commission decision, it does not need to notify again the scheme to the Commission for approval and can directly provide the support to the beneficiary, as long as the conditions of the authorisation decision are complied with.

36. Moreover, any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not considered an alteration to existing aid. If this is the only change to a scheme already authorised by the Commission, it does not need to be re-notified to the Commission for approval<sup>20</sup>.

37. In any event, full compliance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility<sup>21</sup> should be ensured (see in particular Article 17(2)).

##### *B. General Block Exemption Regulation (GBER)<sup>22</sup>*

38. In cases where the Commission has gained sufficient experience with a given kind of State aid, it may block exempt such State aids, i.e. the Member States do not have to notify them. They only have to inform the Commission thereof.

39. The GBER provisions on aid in the field of climate, environmental protection and energy recently underwent a targeted revision aimed at further facilitating support for green projects, without the need for prior approval from the Commission. An amending GBER text was endorsed by the Commission on 9 March 2023.<sup>23</sup> The amended GBER will apply as of the day following its publication in the Official Journal. However, once the amended GBER provisions enter into force, they will apply retroactively to individual aid granted before their entry into force. For existing aid measures, Member States would need to adapt any schemes to comply with the amended GBER within 6 months following its entry into force. For a full picture of the transitional provisions, please see Article 58 GBER. Subsequent references to the GBER refer to the GBER as amended in the endorsed text.

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<sup>20</sup> In case of budget increases to already authorised schemes exceeding 20% and/or their prolongation up to 6 years, the so-called simplified notification procedure under Article 4 of the Implementing Regulation (Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1) can be used, whereby the Commission aims to complete the assessment of notified State aid measures within one month.

<sup>21</sup> OJ L 57, 18.2.2021, p. 17.

<sup>22</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>23</sup> The full text endorsed by the Commission is available here: [https://competition-policy.ec.europa.eu/document/8d68e6c3-763a-41db-9e34-42f90bc5e892\\_en](https://competition-policy.ec.europa.eu/document/8d68e6c3-763a-41db-9e34-42f90bc5e892_en).



40. Measures to support energy-efficiency in buildings are exempted from notification if granted in compliance with the conditions of the GBER, in particular, Articles 38a (investment aid for energy efficiency measures in buildings) and 39 (investment aid for energy efficiency projects in buildings in the form of financial instruments). Article 39 has been revised by the amendment to the GBER of July 2021<sup>24</sup>; Article 38a was introduced by the amendment to the GBER endorsed on 9 March 2023.
41. **Article 38a GBER** allows investment aid up to EUR 30 million per undertaking per investment project for energy efficiency improvements in buildings. A higher maximum aid amount applies in certain cases, as explained below.
42. Under this provision, the eligible costs<sup>25</sup> are the total investment costs directly linked to the achievement of a higher level of energy efficiency in the building.
43. In case of combined works such as the installation of integrated on-site renewable electricity and/or heat generation installations or construction of recharging infrastructure for use by the building users, the entire investment cost of the installations and equipment constitute the eligible costs where directly linked to the achievement of a higher level of energy or environmental performance.
44. This Article does not allow support for equipment using fossil fuels, including natural gas.
45. ~~The aid must induce a reduction in primary energy demand of at least~~ The aid must induce an improvement in the energy performance of the building measured in primary energy of at least:
- 20 % compared to the situation prior to the investment in the case of renovation of existing buildings,
  - 10 % compared to the situation prior to the investment in the case of installation or replacement of just one type of building elements, and
  - 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 initial primary energy demand and the estimated improvement shall be established by reference to an Energy Performance Certificate as defined in Article 2(12) of Directive 2010/31/EU.

46. The aid amount, expressed as a percentage of the eligible costs (aid intensity), must not exceed the ceilings set out in the tables below.<sup>26</sup>

*Renovation of existing buildings and construction of new buildings*

<b>Basic aid intensity:</b>		30%
<b>Bonuses:</b>	Energy savings of at least 40%	+15%

<sup>24</sup> Commission Regulation (EU) No 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014, OJ L 270, 29.7.2021, p. 39–75.

<sup>25</sup> Please note that the references to ‘eligible costs’ in this guiding template are to be understood exclusively for the purposes of State aid. Therefore, they have no bearing on whether a particular measure and its associated cost can be financed or not by the Facility.

<sup>26</sup> See also points 11 to 16 of the GBER.

	Small undertakings	+20%
	Medium-sized undertakings	+10%
	Investments in assisted areas of Article 107(3)(a) TFEU	+15%
	Investments in assisted areas of Article 107(3)(c) TFEU	+5%

*Installation or replacement of one type of building element*

<b>Basic aid intensity:</b>		25%
<b>Bonuses:</b>	Energy savings of at least 40%	+15%
	Small undertakings	+20%
	Medium-sized undertakings	+10%
	Investments in assisted areas of Article 107(3)(a) TFEU	+15%
	Investments in assisted areas of Article 107(3)(c) TFEU	+5%

47. No aid may be granted to comply with applicable Union standards that have been adopted, and are in force. However, aid may be granted to comply with Union standards that have been adopted but are not yet in force provided that the investment is implemented and finalised at least 18 months before the entry into force. Aid may be granted to comply with minimum energy performance standards qualifying as Union standards less than 18 months before the entry into force. In such cases, the aid intensity must not exceed 15 percentage points of the eligible costs where the investment consists in the installation or replacement of just one type of building element and 20 percentage points in all other cases.
48. Article 38b GBER allows for aid for energy performance contracting when the beneficiary is an SME or a small mid-cap<sup>27</sup>. Under this provision, the support must take the form of a loan or guarantee, or consist in a financial product aimed to refinance the respective provider (e.g. factoring or forfeiting). The nominal amount of total outstanding financing provided per beneficiary must not exceed EUR 30 million.
49. **Article 39 GBER** can also apply to energy efficiency investments in buildings but only in so far as the aid is granted through a financial intermediary. In that scenario, the aid is granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency fund or other financial intermediary, which passes the aid to the final beneficiary (building owners or tenants) in the form of cheaper loans or guarantees.
50. Under this provision, eligible costs are the total costs of the energy efficiency project. In case of combined investment, eligible costs comprise the total costs of the energy efficiency project as well as the cost of the combined investment.
51. In case of such combined investment, the nominal value of the loan or the amount guaranteed must not exceed EUR 30 million. In all other cases, the nominal value of the

<sup>27</sup> Small mid-cap is defined in Article 2(103e) GBER as an undertaking that is not an SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of Annex I to the GBER, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million; several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the GBER is fulfilled.

loan or the amount guaranteed shall not exceed EUR 25 million per project at the level of the final beneficiary.

52. Article 39 GBER establishes further conditions applying to the financial intermediary.
53. Same provisions concerning Union standards apply to Article 39 GBER as described above for Article 38a GBER.
54. It should be noted that if the grant or the cheaper loan or guarantee is provided to the energy service company, such support is covered by Article 38 GBER, unless the energy service company operates as financial intermediary and complies with the conditions for financial intermediaries under Article 39 GBER.
55. For investments in on-site renewable electricity and/or heat generation installations and the related storage equipment, which are either stand-alone investments (i.e. investments that are not combined with energy efficiency measures), reference is made to the guiding template “*Investment/operating aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency*”. For investments in charging equipment for electric vehicles which are either stand-alone investments, reference is made to the guiding template on “*Electric recharging stations and hydrogen stations for road vehicles*”.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of residential buildings and social housing:** *To address the challenge of high upfront costs of building renovation and the perceived long payback periods, the government will introduce a home renovation scheme. In case the loan guarantee involve undertakings (e.g. landlords, financial intermediaries or energy suppliers) or concern buildings in which economic activities are taking place, compliance with State Aid will be verified before the scheme enters into force. Such State Aid could be compatible under the General Block Exemption Regulation (namely art. 38a, 38b, 39 and/or 41) or alternatively under the Climate Environmental and Energy Aid Guidelines (CEEAG) for larger schemes.*

### C. Service of General Economic Interest: SGEI Decision<sup>28</sup>

56. Social housing, public healthcare etc. can be subject to public service obligations. If the building is necessary for the provision of public services entrusted as an SGEI, support to improve the energy efficiency or energy performance of the building may be considered as part of the SGEI mission.
57. State aid for the compensation of such an SGEI up to EUR 15 million per year<sup>29</sup> (on average over the whole duration of the entrustment), is exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met: in particular definition and entrustment of the SGEI, parameters of compensation established ex ante in a transparent manner, amount of compensation not exceeding the

<sup>28</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3.

<sup>29</sup> With the exception of SGEIs for healthcare, long-term care and childcare and social housing.

costs for the provision of the SGEI and a reasonable profit, and a mechanism to ensure the absence of overcompensation.

58. It should be noted that the above applies only for the operator carrying out the SGEI. It does not apply for instance to support provided to financial intermediaries which on their turn might grant a loan to an SGEI provider. In addition, the building must be exclusively used for carrying out the SGEI. In case of the installation of renewable electricity or heat generation, the energy must be only used for self-consumption. When the building is used also for other purposes or if the energy generated is also sold to third parties, specific rules apply (separate accounts and specific limitations, see for instance Article 5(9) of the SGEI Decision).

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of social housing:** *If and to the extent that the public administration performs an economic activity and is entrusted with an SGEI (in relation to a part or all of its services which qualify as an economic activity), State aid for the compensation of such SGEI can be exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met.*

## V. Instances in which notifying for State aid clearance is necessary

59. If the measure constitutes State aid and does not meet the conditions allowing an exemption from notification, a notification to the Commission for State aid clearance is required. The aim of the present section is to assist Member States in identifying and providing the necessary and relevant information to the Commission in the context of pre-notifications and notifications, bearing in mind that the Commission will assess all State aid notifications received from Member States in the context of the Facility as a matter of priority.

### A. Procedure for pre-notification and notification

60. In case the planned investment entails State aid and is not exempt from notification, the Member State should, in compliance with Article 108(3) TFEU, proceed to notify the measure to the Commission for approval before implementation.
61. For measures that must be notified, the Commission is committed to assess and treat those cases as a matter of priority and to engage with national authorities early on, in order to address problems in ‘real time’ in the context of the preparation of their Recovery and Resilience Plans. Therefore, informal contacts and pre-notifications by the Member States are encouraged as soon as possible.
62. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving complete notification from Member States.

### B. Relevant legal bases for compatibility with the Treaty

63. For support exceeding EUR 15 million or for operating aid or for support exceeding the aid intensities foreseen in the GBER, a notification to the Commission is needed.
64. On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities

within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

65. The Commission assesses whether aid to improve the energy and environmental performance of buildings can be considered compatible with the internal market under section 4.2 of the Climate, Environmental and Energy Aid Guidelines (CEEAG)<sup>30</sup>.
66. Under section 4.2 of the CEEAG, aid may be granted for the improvement of the **energy efficiency** of buildings. That aid **may be combined** with aid for any or all of the following measures:
  - a) the installation of integrated on-site renewable energy installations generating electricity, heating or cooling (e.g. solar panels);
  - b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations;
  - c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, provided that the parking facilities are located either inside the building or are physically adjacent to the building;
  - d) the installation of equipment for the digitalisation of the building's environmental and energy management and control, in particular to increase its smart-readiness (e.g. smart meters),<sup>31</sup>
  - e) other investments that improve the energy or environmental performance of the building (e.g. green roofs, equipment for the recovery of rain water, etc.).
67. Aid for (i) heating or cooling equipment directly connected to district heating and cooling systems and (ii) the improvement of the energy efficiency of production processes and for energy-generating equipment used to power machinery fall outside the scope of Section 4.2 of the CEEAG and will instead be assessed under the conditions set out in Sections 4.10 and 4.1, respectively.
68. The aid granted in accordance with Section 4.2 of the CEEAG must induce energy performance improvements leading to a minimum level of **energy savings** compared to the situation prior to the investment<sup>32</sup>.

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<sup>30</sup> Communication from the Commission — Guidelines on State aid for climate, environmental protection and energy 2022, OJ C80, 18.2.2022, p. 1.

<sup>31</sup> Including passive in-house wiring or structured cabling for data networks and the ancillary part of the passive network on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property.

<sup>32</sup> In particular, in the case of renovation of existing buildings, energy performance improvements must lead to a reduction in primary energy demand of at least 20 % compared to the situation prior to the investment or, where the improvements are part of a staged renovation, to a reduction in primary energy demand of at least 30 % compared to the situation prior to the investment, over a period of 5 years. In case of renovation measures concerning the installation or replacement of just one type of building elements (e.g. replacement of windows, roof and walls insulation, installation of boilers, etc.) a reduction in primary energy demand of at least 10 % compared to the situation prior to the investment is sufficient, provided that the Member State demonstrates the measure has at the scheme level an overall significant effect in terms of reduction of primary energy demand. In the case of new buildings, energy performance improvements must lead to a reduction in primary energy demand of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing the Directive on the energy performance of buildings (Directive 2010/31/EU, OJ L 153, 18.6.2010, p. 13–35).

69. Section 4.2 of the CEEAG allows Member States to grant investment aid to the building's **owner or tenant**, as well as liquidity support to energy service providers (**ESCOs**) that provide energy performance improvement measures under energy performance contracts.<sup>33</sup>

70. When carrying out its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU are met. In particular, the aid measure must facilitate the development of an economic activity (“positive condition”) and it must not unduly affect trading conditions to an extent contrary to the common interest (“negative condition”).

*a. Positive condition: facilitation of the development of an economic activity*

71. In order to be deemed compatible, the aid needs to facilitate the development of economic activities and have an incentive effect without resulting in an infringement of relevant EU law.

72. Firstly, the aid must contribute to the development of an **economic activity**. Measures aimed at improving the energy and environmental performance of buildings may be designed to create individual incentives to reach specific targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions. Member States must identify the economic activities that will be facilitated as a result of the aid and how the development of those activities is supported. Such economic activities may include the construction of new energy efficient buildings, the full, partial or staged renovation of existing buildings, and the installation of new building elements and equipment.

73. Secondly, the aid can only be considered to facilitate an economic activity if it has an **incentive effect**. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would not otherwise occur without the aid. In other words, the aid must not support the costs of an activity that the aid beneficiary would anyhow carry out and it must not compensate for the normal business risk of an economic activity. The aid must induce the beneficiary to engage in an additional activity or in a more environmentally-friendly activity which the beneficiary would not carry out without the aid, or at least not to the same extent or in the same manner.<sup>34</sup> In order to demonstrate the presence of an incentive effect, the factual scenario and the likely counterfactual scenario in the absence of aid must be identified and quantified.<sup>35</sup> In addition, except in exceptional cases,<sup>36</sup> the aid application must precede the start of works.

74. The Commission considers that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. However, in cases where Union law imposes on undertakings minimum energy performance standards qualifying as Union standards, aid for all the necessary investments enabling undertakings to comply

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<sup>33</sup> To be eligible for liquidity support under Section 4.2 of the CEEAG, the ESCO must be an SME or a small mid-cap.

<sup>34</sup> The aid may induce the beneficiary to make a certain investment (e.g. renovation of an existing building or installation or replacement of certain building elements) earlier in time and/or at a deeper level.

<sup>35</sup> See point 28 of the CEEAG.

<sup>36</sup> See point 31 of the CEEAG.

with those standards will be considered to have an incentive effect, provided that the aid is granted 18 months 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 standards.

75. While the Commission generally considers that aid to projects with a payback period<sup>37</sup> of less than five years does not have an incentive effect, Member States may provide evidence to the contrary.
76. Finally, neither the supported activity, the aid measure nor the conditions attached to it must entail a **violation of relevant Union law**. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically-produced products.

*b. Negative condition: no undue distortions of trading conditions to an extent contrary to the common interest*

77. The aid measure will not be declared compatible if it unduly affects trading conditions to an extent contrary to the common interest. In this regard, the Commission will check whether the State intervention is necessary, appropriate and proportionate. The Commission will also assess the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States and it will balance those negative effects with the positive effects of the aid.
78. First, aid must be **necessary** to facilitate the development of the economic activities that would not develop at all or at the same pace or under the same conditions in the absence of aid. In other words, the Member State must demonstrate that the aid effectively targets market failures that are not already fully remedied by other policies and measures. Market failures preventing energy efficiency investments in buildings include: (i) the lack of incentives that owners or tenants of the building have to take individual measures to reduce the level of emissions of the building or to increase the energy efficiency of the building, (ii) the fact that market participants other than the investor(s) may benefit from the investment (for example due to reduced pollution, higher economic value of an area/building, etc.), (iii) the difficulties faced by ESCOs, in particular where they are SMEs, in obtaining financing from the market, due to asymmetric information regarding the relevant investments, and (iv) diverging interests and incentives among investors (landlord-tenant dilemma).
79. Second, the proposed aid measure must be an **appropriate policy instrument** to achieve the intended objective of the aid. The Member State concerned must demonstrate that: (i) alternative policy options other than State aid would not be equally suitable to achieve that objective; (ii) the aid measure is designed in such way as to not counteract other measures targeting the same market failure, and (iii) alternative, less distortive, aid instruments<sup>38</sup> would not deliver equally efficient outcomes.

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<sup>37</sup> The payback period is the amount of time needed to recover the cost of an investment (without aid).

<sup>38</sup> Such as repayable advances as compared to direct grants; tax credits as compared to tax reductions; or forms of aid that are based on financial instruments, such as debt as compared to equity instruments, including, for example, low-interest loans or interest rebates, State guarantees, or an alternative provision of financing on favourable terms.

80. In addition, where the aid is granted to ESCOs, the aid may only take the form of a loan or guarantee to the ESCO or consist in a financial product aimed at financing the ESCO (for example, factoring or forfaiting). Where the aid is granted in the form of financial instruments, the aid to the financial intermediary (e.g. energy efficiency fund) must take the form of an endowment, equity, a guarantee or a loan and the aid to the building's owner or tenant must take the form of a guarantee or a loan.
81. Third, aid amount must be **proportionate**. When assessing the proportionality of the aid, the Commission verifies that the aid amount per beneficiary is limited to the minimum needed to achieve the objective of the measure. Where the aid is granted through a competitive bidding process, the aid amount is considered proportionate as it is considered that such process provides a reliable estimate of the minimum aid amount required by potential beneficiaries.<sup>39</sup> If a competitive bidding process is not used, the following rules apply.
82. The eligible costs are the investment costs directly linked to the achievement of a higher level of energy or environmental performance. The aid amount, expressed as a percentage of the eligible costs (aid intensity), must not exceed the ceilings set out in the tables below.<sup>40</sup>

*Renovation of existing buildings and construction of new buildings*

<b>Basic aid intensity:</b>		30% <sup>41</sup>
<b>Bonuses:</b>	Energy savings of at least 40%	+15% <sup>42</sup>
	Small undertakings	+20%
	Medium-sized undertakings	+10%
	Investments in assisted areas of Article 107(3)(a) TFEU	+15%
	Investments in assisted areas of Article 107(3)(c) TFEU	+5%

*Installation or replacement of one type of building element*

<b>Basic aid intensity:</b>		25% <sup>43</sup>
<b>Bonuses:</b>	Energy savings of at least 40%	+15% <sup>44</sup>

<sup>39</sup> The competitive bidding process must be conducted in accordance with the criteria set out in points 49 and 50 of the CEEAG. Where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the Member State must ensure that the risk of overcompensation is appropriately addressed, for instance by setting bid caps.

<sup>40</sup> See also points 147 to 150 of the CEEAG.

<sup>41</sup> A reduced basic aid intensity of 20% applies where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force.

<sup>42</sup> This increase in aid intensity does not apply where the project, although delivering a reduction in primary energy demand of 40% or more, does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months.

<sup>43</sup> A reduced basic aid intensity of 15% applies where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force.



	Small undertakings	+20%
	Medium-sized undertakings	+10%
	Investments in assisted areas of Article 107(3)(a) TFEU	+15%
	Investments in assisted areas of Article 107(3)(c) TFEU	+5%

83. Depending on the specific characteristics of the measure, the Member State may also demonstrate that a higher aid amount is required by presenting a funding gap analysis.<sup>45</sup> For cases of individual aid and schemes benefitting a particularly limited number of beneficiaries, funding gap calculations need to be presented at the level of the detailed project business plan, while for aid schemes on the basis of one or more reference projects. In any case, the aid amount must not exceed the funding gap.
84. Where aid enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the maximum aid amount must not exceed 70% of the funding gap.
85. Aid granted in the form of financial instruments is not subject to the maximum aid intensities set out above.
86. Where the aid is granted in the form of a guarantee, the guarantee should not exceed 80% of the underlying loan. Where the aid is granted in the form of a loan, the repayment by the owner(s) of the building to the energy efficiency fund or renewable energy fund or other financial intermediary must at least equal the nominal value of the loan.
87. As a final step, the Commission will assess the **negative effects** of the aid measure on competition and trading conditions and **balance** the identified negative effects with the positive effects.<sup>46</sup>
88. In the case of investments in equipment using natural gas, the Member State must demonstrate that the aid will not displace investments into cleaner alternatives that are already available on the market or lock in more polluting technologies. The Commission will take into account if the equipment using natural gas replaces energy equipment using most polluting fossil fuels such as oil and coal. Similarly, in the case of investments in equipment using highly polluting fossil fuels such as oil and coal, it must be shown that the aid will not lock in fossil fuel technologies or displace investments into cleaner and more innovative alternatives available on the market by shifting demand away from energy equipment that does not use fossil fuels.
89. In cases where the aid is granted through an energy efficiency fund or renewable energy fund or other financial intermediary, the Commission will verify that conditions are in place to ensure that the financial intermediaries do not receive any undue

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<sup>44</sup> This increase in aid intensity does not apply where the project, although delivering a reduction in primary energy demand of 40% or more, does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months.

<sup>45</sup> In accordance with points 48, 51 and 52 of the CEEAG.

<sup>46</sup> See section 3.2.2 and points 155 to 157 of the CEEAG.

advantage and apply a commercially sound investment strategy for the purpose of implementing the energy performance aid measure.<sup>47</sup>

## VI. References

- Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3.
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- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.
- Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p. 1.
- Communication from the Commission – Guidelines on State aid to promote risk finance investments. OJ C 508, 6.12.2021, p. 1-36.
- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.
- Communication from the Commission – A Renovation Wave for Europe – greening our buildings, creating jobs, improving lives, COM(2020) 662 final.
- Guidelines on regional State aid for 2014-2020, OJ C209, 23.7.2013, p.1.

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<sup>47</sup> In this regard, the following conditions must be met: (a) financial intermediaries or fund managers must be selected through an open, transparent and non-discriminatory process which is made in accordance with applicable Union and national laws; (b) conditions are in place to ensure that financial intermediaries, including energy efficiency funds or renewable energy funds, are managed on a commercial basis and will ensure profit-driven financing decisions; (c) the managers of the energy efficiency fund or renewable energy fund or other financial intermediaries pass the advantage on to the largest extent possible to the final beneficiaries (the owner(s) or tenant(s) of the building), in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates.

- Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.