

EREF position paper

Comments on European Commission proposal to revise the General Block Exemption Regulation within the consultation process from 06.10.2021 to 08.12.2021

EREF is the European federation of national renewable energy associations from across EU Members States representing all renewable energy sectors. Since more than 20 years, the federation defends the interests of independent power, fuel and heat production from renewable sources, and promotes giving non-discriminatory access to the energy market. EREF strives to create, maintain and further develop stable and reliable framework conditions for renewable energy sources, strongly advocating for the full decarbonisation of the European energy systems and markets, which need to be transformed and based on 100% decentralized generation from all renewable sources.

EREF welcomes the proposed revision of the General Block Exemption Regulation (GBER) to reflect the changes to various sets of State aid Guidelines (including the Climate, Energy and Environmental Aid Guidelines - CEEAG), which are currently being reviewed and to further facilitate public funding for the EU's green and digital transition.

We do have several comments and wishes for improvement. Our main aim is to receive new GBER rules which reflect the "Fit for 55"- approach of the European Union, honour the international commitment of the Paris Agreement and which also put the citizen at the heart of the transformation process.

We therefore strongly insist that aid to nuclear and fossil gas cannot be part of any new state aid guideline or block-exemption regulation.

EREF fears that parts of the draft GBER rules cement a push towards centralised big renewable utilities only, whereas the success of the off take of renewables in many Member States is due to the engagement of small and medium sized projects often in the hand of citizens and/or cooperative structures.

We repeat our strong criticism concerning auctioning systems. In the face of climate urgency and the tight achievement corridor to reach the 2030 climate goals of the European Union within the international context, we strongly call that auctioning can only be an exception and must be always technology specific.

To reach EU climate goals, a massive deployment of renewable energy is key. The planned provisions on endogenous rationing via auctioning put economic efficiency before the expansion of renewables. This contradicts the objectives of the Green Deal. Moreover, studies have shown that endogenous rationing causes a high level of uncertainty, further weakens the supply side and generates unwanted market distortions. Instead of artificially creating competition, measures shall address the roots of the problem of supply shortage: slow permitting process, lack of acceptance and a lack of suitable areas for tenders and auctions.

1. Coherence with EU climate and environmental goals and the state aid guidelines: no support for fossil fuels, fossil gas or nuclear

In order to meet the goals under the Green Deal, the competition rulebook of the European Commission must be adapted so that investment into the green energy transition is facilitated and granted with greater flexibility. The new rules must allow governments to support projects that decarbonise and move towards a more sustainable future. This guidance must be clear and effective in supporting green investment.

It is positive, that coal is not covered, but nuclear as well as fossil gas would unfortunately be covered. The GBER draft often treats renewables and low carbon (e.g., nuclear or fossil gas) equally. Fossil gas receives support throughout different aid categories of Section 7 - Aid for environmental protection. It is supported as an energy efficiency measure in buildings¹, in high efficient cogeneration², in district heating and cooling³ and energy infrastructure⁴, as well as indirectly through low carbon hydrogen⁵.

Aid for environmental protection should not include support for nuclear or fossil gas. This is the more critical since DG Comp did normally assure us, that the new GBER would be more focussed on renewable support.

The draft GBER should outline as in the draft CEEAG that nuclear power is not included under the GBER. The new GBER should just copy the wording under Para. 12 of the draft CEEAG.⁶

¹ Art. 38 and 39 draft GBER

² Art. 40 draft GBER

³ Art. 46 draft GBER

⁴ Art. 48 draft GBER

⁵ Art. 36; 36a and 56e draft GBER

⁶ Para. 12 of the draft CEEAG explicitly outline: **“These guidelines do not apply to: (...) (d) State aid for nuclear energy.”**

EREF insists on coherence with the Green Deal. Only aid measures supporting activities complying with the Union's objective to be climate-neutral by 2050 should be exempted from notification. **Thus, no new investment using fossil gas, or any so-called and undefined "low carbon" sources should be covered under the GBER. Any investment in those sources need to be notified to the Commission. The GBER should focus on renewable sources only!**

2. Notification Thresholds and Scope of GBER (Art. 4 draft GBER)

EREF requests that the threshold for operating aid for renewable energy projects should be raised to the same amount as the new threshold for aid for district heating and cooling systems (i.e., to EUR 50 million). EU ambitious targets cannot be reached without an increase in support for renewables.

3. Aid for Carbon Capture and Utilisation (Art. 2 and 36 draft GBER)

We recommend a slight but significant modification to the definition of "carbon capture and utilisation" to ensure it includes a greater range of use cases. Indeed, biogenic CO₂ can be captured from biogas, purified (i.e., processed) and even liquefied on-site before it is transported to a CO₂-consumption site. Thus, the draft GBER should be amended as follows:

Article 2(131b)

*"carbon capture and utilization" or "CCU" means a set of technologies that captures the CO₂ emitted from industrial plants based on fossil fuels or biomass, including power plants, e.g., **processes it, possibly liquefies it, and transports it to a CO₂-consumption site;**"*

4. Aid for clean or zero-emission vehicles and charging infrastructure (Art. 2; Art. 36a and 36b draft GBER)

The new definition of "zero-emission vehicle" in the draft GBER is based on the tailpipe approach, which does not take into account all previous emissions. EREF would like to stress that the tailpipe approach is not the right means to address CO₂ emissions. Only the assessment of emissions over the whole life cycle can really lead to a fair and unbiased evaluation of all fuels. Thus, the draft GBER should define a "zero-emission vehicle" based on the Well-to-Wheel approach.

Furthermore, and as already mentioned in section 1, the draft GBER should not treat renewable and low-carbon hydrogen in the same way. Support shall be limited to renewable hydrogen only.

We urge the European Commission to include vehicles using biogas/biomethane in the provisions addressing aid for refuelling infrastructure⁷ and aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles⁸. Otherwise, the new GBER runs the risk of being inconsistent with the environmental performance of biogas in vehicles, as well as with the contribution of biogas production and uses to the Green Deal's policy objective of transitioning to a circular economy.

That is why we recommend that the definition of "clean vehicle" in Article 2(102f) should be modified accordingly. We suggest "sustainable vehicles" as a more relevant term, avoiding confusion around the notion of "clean" (i.e. no energy is 100% clean on a life cycle basis today; "clean" regarding GHG emissions or pollutants or both?; clean by considering tailpipe or lifecycle emissions?).

The integration of requirements in draft Article 2(102f) are taken directly for the Climate Taxonomy Delegated Act poised to enter into force in 2022:

- These definitions and requirements have never been assessed in terms of market and technological relevance as well as impact on the market and R&D&I.
- The definitions and requirements for water, sea and coastal vessels often use reference to Regulation 2019/1242 on heavy-duty road vehicles, which is not an appropriate piece of legislation to refer to in the case of these transport modes.

The tailpipe approach does not provide a level playing field between fuels and electricity. It does not take into account for the origin of electricity (fossil or renewable origin) in the climate impact.

Biogas can be sustainably produced and used in transport under the sustainability and GHG emission savings requirements set out in the Renewable Energy Directive.

5. Investment aid for energy efficiency measures (Art. 38 and 39 draft GBER)

EREF welcomes the incentive to improve the energy efficiency of the buildings thanks to higher threshold of aid intensity when improvements lead to a significant reduction in primary energy demand. However, we believe that to reach Union's targets there is a need for a general increase in the aid intensity for energy efficiency measures together

⁷ Article 36a draft GBER

⁸ Article 36b draft GBER

with the promotion of energy from renewable sources. The aid intensity should be at least the same as for investment aid for renewable energies under the current GBER (i.e., 45% of the eligible costs + increase options).

Moreover, we think that the possibility to combine state aid for improving energy efficiency of the buildings with other aids listed in Art. 38.3b. of the draft GBER such as aid for the installation of integrated on-site renewable energy installations generating electricity, heat or cooling should not be limited to non-commercial buildings. Combined aid shall be possible for all types of building.

6. Aid for small hydropower (Art. 41 draft GBER)

We invite the Commission to specify in the draft that aid for energy production from small hydropower (up to 10 MW) is part of the GBER and to devote a specific article for aid to small hydropower. It should cover aid for both the refurbishment of existing plants and new installations, to increase steady and regional renewable energy production in line with the Water Framework Directive.

EREF provided recently a list with scientific articles about small hydropower and the environment to staff members of the European Commission working on taxonomy and environmental issues. These scientific articles demonstrate that modern small hydropower plants are compliant with environmental goals. Small hydropower and latest environmental mitigation measures and management practices are compatible with EU environmental goals, especially with regard to a good ecological status of water bodies, ensuring river continuity and fish migration as well as and biodiversity protection.

7. Investment aid for high-efficient cogeneration (Art. 41 draft GBER)

Exemption from notification is now expressively excluded for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured (Art.41.4 draft GBER). As mentioned in section 1, state aid for environmental protection should support aid for activities that contribute to the achievement of EU goals to reach at least 55% reduction of greenhouse gas emissions in 2030 and carbon neutrality in 2050. Thus, the draft GBER should focus on the support for renewable energies and exclude from the notification exemption all new investment using fossil gas. Members States should be encouraged to start the process of phasing out fossil gas and invest in alternatives.

Otherwise, we have doubts about the effectiveness of monitoring compliance with the 2030 and 2050 climate targets without notification to the Commission. Member States will give their own interpretation of the compliance with the 2030 and 2050 climate targets. Diverging interpretations amongst Member States would not serve the common climate targets.

Therefore, EREF asks the Commission to remove the exception for natural gas and all types of aid to fossil gas in general from the draft GBER.

8. Renewable hydrogen (Art. 41 draft GBER)

We welcome the inclusion of renewable hydrogen under the GBER. However, the definition of renewable hydrogen in the draft GBER should explicitly include renewable hydrogen of biological origin and refer to GHG emission savings requirement set in the Renewable Energy Directive for renewable hydrogen of non-biological origin.⁹

9. Aid for energy storage / batteries (Art. 41 1a draft GBER)

The draft GBER unfortunately allows investment aid for storage projects only where the renewable energy generation facility and the storage unit are installed and put into operation at the same time. This is limiting the development of new markets, for example for wind energy projects that are no longer subsidised.

EREF calls on the Commission to extend the existing exemptions for aid for renewables to storage projects directly connected to "new or existing" renewable energy generation installations.

10. Aid for the production of biofuel from biomass (Art. 41 and 56e draft GBER)

Aid for biofuels should only be covered by the GBER if it is granted for sustainable biofuels as defined in the Renewable Energy Directive. Block exemption for investment aid and operating aid for the production of biogas should not be conditional on the exclusive use of Part A of Annex IX to the Renewable Energy Directive.

⁹ Article 25(a) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

The Renewable Energy Directive introduces a sustainability and GHG emission saving criteria¹⁰ that biogas production must comply with in order to be counted towards renewable targets, be eligible for support, etc. The Renewable Energy Directive thus distinguishes primarily between biogas which is compliant with these criteria (“sustainable biogas”) and non-compliant biogas. Part A of Annex IX of this directive refers to a category of feedstock types for a production of “advanced biofuels” and “biogas for transport” that is not capped. Therefore, it is restricted to one end-use of biogas, where installations that could be aided under Articles 41 and 43 can provide biogas for different end-uses: on-site combined heat and power, off-site combined heat and power, power generation, transport or heating (whether the upgraded biogas is injected in the gas networks or not). The category of “advanced biogas for transport” in the Renewable Energy Directive cannot be taken as such to create a so-called more environment-friendly category of biogas.

Thus, the draft GBER should be amended as follows:

Art. 41.2 draft GBER “Investment aid for the production of biofuels, bioliquids, biogas and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 ~~and its implementing or delegated acts and are made from the feedstock listed in Part A of Annex IX to that Directive.~~”

Art. 43.3 draft GBER “Operating aid for the production of biofuels, bioliquids, biogas and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 ~~and its implementing or delegated acts and are made from the feedstock listed in Part A of Annex IX to that Directive.~~”

Art. 44.4 draft GBER “Tax reductions for the products defined in Article 16(1) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 ~~and its implementing or delegated acts, and are made from the feedstock listed in Part A of Annex IX to that Directive.~~”

Art. 56e (a) (iv) draft GBER “in case of installations producing biofuels, aid shall only be granted for installations producing biofuels compliant with the sustainability and greenhouse gases emissions saving criteria referred to in article 29 of Directive (EU)

¹⁰ Article 29 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Part A of Annex IX to that Directive”.

11. Operating aid for the promotion of electricity from renewable sources (Art. 42 draft GBER)

The draft GBER maintains the obligation to grant operating through a bidding processes and the rule “technology neutral” for granting aid.

The draft GBER also deletes the possibility to grant operating aid without the organisation of a bidding process to renewable energy projects with an installed capacity of less than 1 MW for the production of electricity from all renewable sources except for wind energy, where aid could be granted to projects with an installed capacity of less than 6 MW or with less than 6 generation units. It means that operating aid for the promotion of electricity from renewable sources can now only be granted in a competitive bidding process.

In line with [EREF’s position on the revision of the CEEAG](#), we highlight that a bidding process is not a rapid and flexible tool to reach the renewable energy targets and a coherent sector-coupling system change. Member States should be free to decide whether the auctioning is the most efficient and effective way to reach the targets.

If the new GBER maintains the obligation to organise a bidding process, we ask that an exemption be maintained for small and medium-sized projects. The actual size thresholds of the GBER (and CEEAG) should be raised to 10 MW for most of renewable technologies and for wind energy 10 turbines with a capacity of 6 MW each.

Technology-specific aid should be the rule and not the exception. We have seen that “technology neutral” bidding processes have the opposite effect of limiting the access to different technologies and the development of less mature technologies that could, when mature, be more effective. We maintain the position that the rule should be changed to “technology specific” to allow the Member States to play to their renewable strength. The Member States should be free to choose appropriate technology specific remuneration mechanisms in order to accelerate the deployment of the most appropriate mix of renewables in all sectors. Each technology has its own characteristic in terms of performance for the power system beyond the criteria of energy as system services and capacity guarantee. Technology neutral tenders are not able to deal with these requirements.

Thus, EREF asks the Commission to withdraw the obligation to grant operating through a bidding processes and the rule “technology neutral” for granting aid.

The draft GBER provides in article 42.7 that aid shall not be paid for any periods where prices are negative. It is comprehensible that there shall not be any incentives to produce energy in the absence of demand on the market. However, the current market design does not allow plant operators to sell the produced electricity in other sectors. Hence, the loss of remuneration in the event of negative prices causes an enormous price risk without providing any possibility for plant operators to react adequately. Thus, this provision shall be removed from the draft GBER until a more suitable market design, which puts a price on flexibility, has been established. We therefore recommend allowing incentives for the set-up of regional flexibility markets.

12. Operating aid for the promotion of energy from renewable sources and renewable hydrogen in small scale installations (Art. 43 draft GBER)

Article 43 of the draft GBER reduces the size thresholds¹¹ that allows Member States to grant operating aid to small-scale installations without notification and (implicitly) without bidding process.

We believe that the same size threshold as we propose for article 42 draft GBER should be used for small-scale installations, i.e., 10 MW for most of renewable technologies and for wind energy 10 turbines with a capacity of 6 MW each.

In line with our position on the revision of the CEEAG, we think that Member States should have the right to grant direct support to small and medium sized project (i.e., without bidding process).

Thus, we ask the Commission to specify for more clarity in article 43 that operating aid for small scale installations can be granted without bidding process.

The current GBER permits operating aid for biofuel production plants with an installed capacity of less than 50,000 tonnes per year. This provision should remain in place for the production of biogas and other renewable gases, and be extended to apply to all its uses, rather than exclusively to transport or heating.

¹¹ e.g., Wind energy: below 400 kW installed capacity instead of less than 3 MW or less than 3 generation units and only 200 kW in 2026

13. Aid for Renewable Energy Communities (Art. 43 draft GBER)

In line with the Renewable Energy Directive, the draft GBER includes aids for the promotion of Renewable Energy Communities (REC). It provides that aid to REC shall be exempted from notification to the Commission only for projects with an installed capacity of less than 1 MW.

We support and welcome the proposal to include REC in the GBER but we regret the absence of an aid regime for citizen energy communities, which engage in renewable energy production.

The 1 MW threshold (even though it is higher than the one for small-scale installations) seems very low to ensure the promotion of REC, in particular for wind projects. This threshold could favour solar PV over other technologies.

We think that GBER should provide for higher specific thresholds based on the specificity of each technology (size, capacity, etc.). We recommend introducing a 10 MW threshold for most renewable energies and 10 turbines with a generation capacity of 6 MW each for wind projects.

EREF calls for the exemption from bidding processes for all REC and citizen energy communities' projects. This should be specified in the GBER and reflected in the new CEEAG. As mentioned in our position on the revision of the CEEAG, there has been noticeable decrease in participation by RECs due to the transition from feed-in tariffs to competitive bidding; this has made it more difficult to obtain investment and increased the administrative burden and costs.

14. Aid in the form of reductions in environmental taxes under Directive 2003/96/EC (Art. 44 draft GBER)

It is an important step that the draft GBER introduces conditions for the grant of tax reductions for large energy-intensive companies. However, we would suggest the following amendments to article 44:

- The provisions of article 44 should be consistent with the conditions proposed in the draft CEEAG and include the condition in (365) draft CEEAG to reduce the carbon footprint of the electricity consumption of large energy-intensive companies, so as to cover at least 30% of their electricity consumption from carbon-free sources.
- We recommend replacing the word "carbon-free" in b) to "renewable", since only renewable energy can significantly contribute to preventing the climate crisis.

This must go along with the obligation for all Member States to provide guarantees of origin to all renewable energy producers according to the draft Renewable Energy Directive.

- The condition to fulfil a certain quota of renewable energy consumption when profiting from state aid should be mandatory to have a significant impact.

15. Investment aid for resource efficiency and for supporting the transition towards a circular economy (Art. 47 draft GBER)

The proposed amendments to article 47 imply difficulties to aid for waste recovery operations that generate both energy and additional material, like anaerobic digestion and gasification can do.

- Anaerobic digestion is a mature technology to process waste efficiently and in an environmental-friendly way. It produces energy and useful material, that is the digestate as an organic fertilizer and biogenic CO₂ as a feedstock of renewable origin for fuel production, chemistry, the food and beverage industry and other applications.
- Gasification is a mature technology (TRL 8) that recover energy and material from waste that is either non-recoverable in the form of material, or technically and economically difficult to process in other sectors into energy. It processes dry organic waste, such as wood-derived residues, and solid non-organic waste.

Under Union law, waste recovery operations based on anaerobic digestion and gasification are considered recycling of waste, and therefore block exempted under article 47 of the GBER.

For the sake of rapid upgrading towards improved environmental standards, we would like that the GBER introduces a certain flexibility for Member States to assist their industries to reform more rapidly their environmental standards and to fulfil faster legislative standards. Article 47.6 and 47.10 of the draft GBER would prevent Member States to use these aids to support the upgrading of the environmental performance of existing facilities.

Paragraph 10 introduces a new provision “Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards.”. We would suggest seeing this as the rule and to add the following exception: “Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards, **unless in order to encourage faster compliance and/or better system integration.**”

16. Investment aid for energy infrastructure (Art. 2(130) and 48 draft GBER)

Article 2(130) of the draft GBER definition of “energy infrastructure” should be modified to match better with the reality of infrastructure for gas, including biogas. Energy infrastructure for gas and hydrogen should not be limited to pipelines for the distribution and transmission of gas. In Member States that do not have an extensive national gas grid, gas is mainly distributed in liquid form via infrastructure other than gas networks; it can be also compressed in tanks and transported by road.

Furthermore, we believe that the phrase “upgrade of energy infrastructure” in article 48 of the draft GBER, should be more explicit.

17. Promotion of renewable energy pilot projects

Renewable energy pilot projects improve the energy and cost efficiency of the energy transition and provide new technological solutions to successful climate change mitigation. Thus, the GBER should enable Member States to grant investment and operating aid to renewable energy pilot projects without prior notice to the Commission. We recommend avoiding size limitations since the size of renewable energy plants is one of the decisive factors to improve efficiency.

18. Cross border opening of support schemes to facilitate decarbonisation

The draft GBER (and the draft CEEAG) should introduce a specific aid regime for cross-border support schemes in line with the Renewable Energy Directive. There are considerable benefits to the cross-border cooperation such as reducing overall support costs of energy from renewable sources, make use of the renewable sources available while encouraging the Member States to exceed their national targets.