ClientEarth

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Revision of the General Block Exemption Regulation

Reply to the call for evidence

Introduction

ClientEarth is a not-for-profit environmental law organisation that uses the power of the law to protect people and the planet. We are legal experts working to shape and enforce the law to tackle the world's biggest environmental challenges. For several years, we have been advocating to phase out environmentally harmful subsidies and public spending, notably through our work in EU State aid.

We welcome the opportunity to reply to the call for evidence and public consultation on the revision of the General Block Exemption Regulation ("GBER"). This briefing first sets out our general recommendations that apply to the GBER as a whole (section 1), followed by our specific recommendations with respect to certain aid categories in section 7 of the GBER (section 2).

The GBER exempts certain categories of aid from the notification obligation to the European Commission ("Commission"). The rationale behind the exemptions under the GBER is to prioritise the Commission's assessment under the notification procedure to aid measures that have the highest risk of unduly distorting competition and trade between Member States ("*small on small and big on big*"). However, the impact of the GBER on national policies and its capacity to drive the development of certain activities and economies cannot be overstated.

The latest available data (State aid scoreboard 2024 covering data of 2023) shows that Member States spent EUR 65.78 billion under the GBER, compared to 116.24 billion under notified measures. In terms of absolute amount, the large majority of aid measures are granted under the GBER. Member States reported to have provided 5903 GBER measures in 2023, representing 67% of all active measures.

Taken together with other exempted aid measures under the Agriculture Block Exemption Regulation (ABER) and Fishery Block Exemption Regulation (FIBER) and excluding crisis measures related to both the COVID-19 outbreak and the Russian invasion of Ukraine, the block exempted measures account for 93% of total new non-crisis measures.

Against this background and considering the broad scope of policy objectives pursued under the GBER, the conditions for providing aid under the GBER have a deep and lasting impact on diverse sectors and beyond.

With respect to environmental policy, the GBER and more specifically the 17 aid categories in section 7 on aid for environmental protection, **has great potential to support the EU's environmental targets** such as those laid down in the European Climate Law, and the pledges in the 8th Environmental Action Programme to phase out environmentally harmful subsidies and in particular fossil fuel subsidies. Conversely, the **GBER also has a key role to play in preventing Member States from subsidising environmentally harmful projects**, e.g. through requiring compliance with certain environmental conditionalities. Finally, environmental protection is not only about reaching environmental goals. As expressly recognised in the Taxonomy Regulation, sustainability and the transition to a safe, climate-neutral, climate-resistant, more resource-efficient and circular economy are crucial to ensuring the long-term competitiveness of the Union economy.[1]

1 General recommendations

1.1 Lack of effective horizontal conditionalities

Beyond the strict scope of the aid category for environmental protection, **the GBER lacks effective environmental safeguards**. Such safeguards, for example in the form of horizontal conditionalities aimed at preventing Member States from subsidising environmentally harmful projects, are particularly relevant for measures that do not have environmental protection as their primary objective.

The integration of environmental protection considerations in State aid is not merely optional. After all, as follows from Article 11 TFEU – a core EU law constitutional principle – read in conjunction with Article 3(3) TEU, Article 3 TFEU, Article 4(3) TFEU, Article 7 TFEU and article 37 EU Charter of Fundamental Rights, environmental protection requirements must be integrated in the definition and implementation of the Union's policies and activities generally, in view of promoting sustainable development. It compels the Commission to take due account of environmental requirements when elaborating State aid policy and enforcing State aid control, not only for environmental State aid but for all types of aid.

Moreover, as pointed out by the Climate Advisory Board report "Towards EU Climate Neutrality", the European Climate Law requires the European Commission to check that any draft measure or legislative proposal is consistent with EU climate goals. The Climate Advisory Board notes that these checks have been done on many but not all, relevant measures and proposals. According to the Board: "*they should apply to […] climate-relevant state aid decisions and communications*". Such checks warrant the implementation of environmental conditionalities, especially where these checks identify aid measures that involve environmental risks.

[1] See recital 4 of Regulation 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

Considering the above, we have two concrete proposals that should be implemented in the GBER at a minimum, to safeguard compliance with this ‘integration’ principle.

1. The GBER should specify, under Article 1(5)(d) that its application **to aid measures that entail a violation of EU environmental law is excluded**. The Member States’ responsibility should be reflected in the reporting form (Annex II to the GBER), by requiring Member States to confirm that the measure does not entail any breach of EU environmental law. Such declaration is key to make compliance with this obligation enforceable.

2. The GBER should explicitly require **compliance with the Do No Significant Harm (DNSH) principle**. By analogy to the Commission’s proposal for the next MMF, the DNSH principle should apply horizontally to all aid objectives and is key to ensure that aid does not contribute to environmentally harmful projects. After all, it is not because the GBER focuses on aid that has a low impact on competition and trade between Member States, that the aid measures caught by the GBER cannot have a detrimental impact on the environment. The fact that under the GBER aid measures escape ex ante scrutiny by the Commission (self-assessment) is all the more reason to subject this aid to compliance with the DNSH principle. Embedding the DNSH principle by identifying concrete conditionalities in aid categories is a matter of consistency with other State aid frameworks, such as the Guidelines for State aid for climate, environmental protection and energy 2022 (“CEEAG”)[2] and the Regional Aid Guidelines (“RAG”)[3]. It is worth noting that Member States have had the time to develop sufficient experience with the application of the DNSH principle, for example for projects under the Recovery and Resilience Facility. The Member States’ responsibility to grant aid in accordance with the DNSH principle should be reflected in the reporting form (Annex II to the GBER), by asking Member States to confirm that the measure does not breach the DNSH principle.

1.2 Energy Efficiency First principle

Beyond the aid categories that concern aid for energy efficiency, the Energy Efficiency First principle as a guiding principle lacks altogether; it is neither implemented in the GBER design, nor in targeted conditions.

Integration of the Energy Efficiency First principle in the GBER is paramount to ensure that Member States prioritise energy efficiency considerations in the development of their environmental and energy policies. After all, as recognised in the CEEAG, the Energy Efficiency First principle can be a more appropriate tool than State aid for reaching increased levels of environmental protection or to ensure an efficient internal energy market.[4] Nevertheless, equally as the GBER, the CEEAG fails to meaningfully implement the Energy Efficiency First principle. The same applies to the recently adopted Clean Industry State Aid Framework. It does integrate energy efficiency measures as an equal alternative to emission reduction measures, however it still fails to prioritize energy efficiency considerations over other considerations in reaching environmental or energy policy objectives.

More concretely, effective implementation of the Energy Efficiency First principle would require Member States to declare in the reporting form (Annex II to the GBER) that aid granted to support environmental

[2] Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481.
[3] Communication from the Commission – Framework for State Aid measures to support the Clean Industrial Deal, C/2025/7600.
[4] Section 3.2.1.2.1 CEEAG.

objectives is only granted in cases where: (i) the same environmental objectives cannot be achieved through energy efficiency policies that do not involve State aid and (ii) aid for energy efficiency does not sufficiently contribute to the targeted environmental objective. These conditions should be cumulative.

1.3 Lack of respect and enforcement of publication obligations

Member States have an obligation to publish information on individual aid awards exceeding EUR 100.000 in the publicly available EU register (TAM) or relevant national register (Article 9).[5] Historically, this obligation has been **poorly respected by Member States** and poorly enforced by the Commission, as demonstrated and concluded in a fact-finding Study.[6]

Compliance with and enforcement of these publications obligations is key because it is the only way of guaranteeing that the public can monitor State aid/GBER spending of Member States. Such transparency is all the more important for GBER measures as those measures do not need to be notified and are not subject to a public Commission State aid decision. If Member States do not comply with their publication obligations, the public is left in the dark as there is often no other way to find out about GBER spending.

Pursuant to Article 10 GBER, the Commission has the power to withdraw the benefit of the block exemption altogether, in case a Member State does not comply with the said publication obligations. However, to our knowledge, the Commission has never made use of this enforcement mechanism. This **lack of enforcement** can likely be explained by the fact that the sanction is at times disproportionate to the non-compliance. Moreover, the fact that withdrawing the benefit of the block exemption would drastically increase the Commission's workload as otherwise exempted measures would become subject to the notification process, likely deters the Commission from invoking this enforcement power.

To **incentivise actual enforcement of publication obligations**, the GBER should therefore incorporate alternative sanctions that have a more limited impact on the Member State. The withdrawal of the benefit of the block exemption could for instance be limited to a fixed time (e.g. 1 year) or to a specific part of the GBER (e.g. the Member State cannot benefit from section 7 if it appears the publication of aid is particularly problematic regarding this section).

Finally, in 2022-2023, ClientEarth commissioned a study from Enerdata[7] to obtain an overview of fossil gas subsidies financed from EU funds and national budgets in the EU27, United Kingdom and Norway over the period 2015-2022.[8] This study encountered major transparency challenges in singling out fossil gas subsidies, notably aid measures granted under the GBER, as explained below in section 2.1.

[5] Article 9 GBER; The EU register is the State Aid Transparency Public Search.
[6] For more, consult the Commission's Fact-finding study on the transparency requirements implementation of the under the GBER and relevant guidelines.
[7] Enerdata is often contracted by the European Commission to carry out work around energy subsidies. Enerdata for instance delivered the last 2023 Study on energy subsidies and other government interventions in the European Union which serves as a source for the Commission's yearly State of the Energy Union report
[8] This Study is not publicly available but can be shared with the Commission in case of interest.

2 Specific recommendations regarding certain aid categories

2.1 Aid in support of fossil gas activities in general

ClientEarth's major concern regarding the GBER in terms of material scope is the continued support to fossil gas. Our concerns are shared with many, including **the European Scientific Advisory Board on Climate Change, who notes that State aid policy is inconsistent with other policies when it comes to the phasing out of fossil fuel subsidies**, stating that: "*Despite repeated political commitments, EU State aid guidelines continue to allow fossil fuel subsidies (policy inconsistency). Fossil fuel subsidies remained relatively stable in the last decade (around EUR 50 billion per year) and even increased sharply in 2022 (to EUR 120 billion) in the context of the energy crisis.*"[9]

Although support to the "most polluting fossil fuels" is excluded in the GBER, certain fossil gas activities continue to be supported, directly and indirectly:

- investment aid for high-efficiency cogeneration (Article 41)
- investment aid for gas-fired district heat/cooling networks (Article 46).
- Investments in gas infrastructure (Article 48 – see section 2.2 below),
- Investment in CCUS (Article 36 – see section 2.3 below)
- Aid in the form of reduction of taxes on electricity produced from fossil gas fired CHP (Article 44 – section 2.4 below)

As advocated during the previous targeted revision, **we strongly oppose the possibility to support fossil gas** in the abovementioned aid categories of the GBER. Such aid has lock-in effects as it (i) displaces public funds from fossil-free alternatives, (ii) limits the ability to switch to cleaner alternatives at a reasonable cost, (iii) increases the likelihood of stranded assets and (iv) goes contrary the EU's emission reduction targets. Given the nature of the GBER, it is impossible to verify that Member States restrict aid for fossil gas to those last resort applications/situations where no other technology would be readily available. **Aid for fossil gas should therefore be removed from the scope of the GBER and only be subject to prior notification.**

The **share of fossil gas subsidies granted based on the GBER is considerable**. In 2022-2023, ClientEarth commissioned a **study from Enerdata[10] to obtain an overview of fossil gas subsidies** financed from EU funds and national budgets in the EU27, United Kingdom and Norway over the period 2015-2022.[11] Based on the collected data which encompassed 285 identified subsidies, more than 1/3 of the subsidies were identified as State aid as they could be linked to a notified aid measure (SA number). The other 2/3 of the subsidies consist partially of (i) measures to support households (no aid), (ii) sector-wide measures (unlikely to be aid), (iii) tax measures (doubts as to the qualification of State aid), but also (iv) measures that have a strong appearance of being GBER measures. Despite the lack of transparency

[9] See the special report of the European Court of Auditors, State aid in times of crisis, Swift reaction but shortcomings in the Commission's monitoring and inconsistencies in the framework to support the EU's industrial policy objectives, 2024, p. 236.
[10] Enerdata is often contracted by the European Commission to carry out work around energy subsidies. Enerdata for instance delivered the last 2023 Study on energy subsidies and other government interventions in the European Union which serves as a source for the Commission's yearly State of the Energy Union report
[11] This Study is not publicly available but can be shared with the Commission in case of interest.

of these measures, which is highly problematic in itself (see also above, point **Error! Reference source not found.**), the data found regarding these measures strongly indicates that they fall within the scope of the GBER, notably Article 44. These findings all the more call to close the gap for fossil gas subsidies in the GBER.

However, if the Commission remains supportive of aid to fossil gas in the GBER, it should be clearly constrained and subject to **effective environmental conditionality**. Requiring investment aid for high-efficiency cogeneration and gas-fired district heating/ cooling to comply with the 2030 and 2050 climate targets by meeting the technical screening criteria of the Taxonomy Delegated Regulation[12] should at the very least remain the baseline, yet it perpetuates the use of fossil gas, does not require its use to be a last resort option and does not take account of lock-in effects.

Finally, for the sake of completeness, we stress that the GBER's scope should certainly not be broadened to allow for investment aid for industrial decarbonisation based on fossil gas, nor to accelerate the rollout of low-carbon fuels, by analogy with the scope of the CISAF. Such aid should remain subject to notification, whether under the CISAF or the CEEAG.

2.2 Aid to support investment in fossil gas infrastructure (Article 48)

The conditions for supporting fossil gas infrastructure under the GBER are ambiguous, bearing serious risks of differentiated interpretation and application of the GBER by national authorities. Fossil gas infrastructure can only be supported under the condition that (i) the infrastructure is dedicated to the use for hydrogen and/or renewable gases, or (ii) that it is used for the transport of more than 50% hydrogen and renewable gases. The term "dedicated" in the (i) does not require the actual use of hydrogen and/or renewable gases. Moreover, any type of hydrogen (including unabated hydrogen) can be transported through such supported infrastructure, and its use is not reserved for those applications where no cleaner alternative is available. The conditions laid out in Article 48, para 4 seem to simply imply that the infrastructure must be "hydrogen-ready" which is a flawed concept as analysed in our report on the concept of hydrogen readiness.[13] Several risks arise from using this concept, ranging from lock-in risks, price and financial risks as well as external dependency risks.

However, if the Commission remains supportive of investment aid for fossil gas infrastructure in the GBER, it is important to have meaningful guardrails in place:

- The infrastructure should be capable of using hydrogen or other renewable gases from the outset, without any additional investments or any need to replace equipment
- The infrastructure or equipment should be converted and use of 100% renewable hydrogen or renewable gases must occur by 2035 latest (consistent with CAN Europe's PAC 2.0 model).
- Projects must guarantee upfront that conversion costs will be covered without public financing.
- Project promoters must show upfront that there will be sufficient supply and demand for hydrogen by the time of conversion (e.g. through commercial contracts).
- Project promoters must assess in advance, and on an ongoing basis, the environmental and human impacts of upstream hydrogen production and transport– referring for example to the delegated act on RFNBO production and the Methane Regulation.
- Project promoters should be required to show upfront that existing permitting regimes for hydrogen will be complied with.

[12] Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities.
[13] ClientEarth, Hydrogen readiness: a Trojan horse for fossil fuel lock-in (April 2025).

2.3 Aid to support investment in industrial decarbonisation (Article 36)

The residual aid category for environmental protection in Article 36 encompasses industrial decarbonisation. Investments of add-on components to improve environmental protection of exiting equipment as well as equipment/machinery and dedicated infrastructure to transport hydrogen (and fuels), are eligible under this Article. We **urge the Commission to maintain the current exclusion for fossil gas for investments in equipment, machinery and industrial production facilities**, unlike the scope of the CISAF that was broadened to include fossil gas (as compared to the TCTF).

Nevertheless, **Article 36 also allows for investment aid in CCUS, which we do not support**. This technology should not be generally promoted as a clean technology as it fosters the continued use of fossil fuels, is commercially unproven with high deployment costs, is energy inefficient, does not tackle other pollution issues beyond greenhouse gas emissions at the extraction point, and seriously risks displacing cleaner alternatives. Carbon capture can therefore only be applied as a last resort in a targeted way in specific hard-to-abate sectors, and should not be incentivised at large as a clean technology.

If the Commission remains supportive of CCUS in the GBER, the current requirements of Article 36, para 2a are insufficient. We suggest that the following environmental conditionality be added:

- Only hard to abate industrial applications where cleaner alternatives are not readily available should be eligible
- Only the best available capture technologies can be supported with aid to ensure a capture rate of minimum 95%
- Carbon capture should be restricted to residual emissions that are not technically abatable after all measures to reduce emissions at source have been implemented, including demand reduction, increasing recycling rates, electrification, and maximising energy, process and material efficiency
- The use of carbon capture cannot lead to an increase in the use of fossil fuels.
- Support should only be given to captured CO2 for permanent storage.
- In order to avoid stranded assets, an aid beneficiary should demonstrate that it is able to manage the estimated lifetime economic costs of CO2 management

This is broadly echoed by the European Scientific Advisory Board on Climate Change, who notes that:[14] "*several EU policies support CCU/CCS, including CO2 infrastructure (e.g. REPowerEU plan, hydrogen strategy, TEN-E Regulation, Innovation Fund, Net-Zero Industry Act proposal, State aid rules), without targeting their deployment to applications with no or limited other mitigation options. Residual emissions (e.g. in agriculture or industry) that motivate the use of carbon capture and storage (CCS) are currently not defined at the EU or Member State level (policy gap).*".

2.4 Aid in the form of reduction of taxes on electricity produced from fossil gas fired CHP and biomass (Article 44)

[14] See the special report of the European Court of Auditors, State aid in times of crisis, Swift reaction but shortcomings in the Commission's monitoring and inconsistencies in the framework to support the EU's industrial policy objectives, 2024, p. 50.

The GBER supports aid in the form of reductions of taxes on electricity produced from biomass and CHP including those running on fossil gas (Article 44). This allows Member States to apply tax rates below the minimum taxation rates provided in the Energy Taxation Directive ("ETD") (Annex I to Directive 2003/96/EC).

This exemption is unacceptable because it undermines the general polluter pays-principle, and in extension thereof, the principle of equal treatment. Allowing Member States to systemically reduce taxes on electricity produced from biomass and fossil gas fired CHP undermines the effective integration of associated environmental costs in the price. This is particularly problematic when considering that the GBER provides the same advantage to electricity produced from renewable energy sources, thereby putting electricity produced from biomass and fossil gas fired CHP on the one hand, and electricity produced from renewable energy sources on the other hand, at the same level. This contravenes the principle of equal treatment which prompts that situations that are not comparable must not be treated in the same way. Moreover, since the objective of aid granted under Article 44 GBER is environmental protection, and considering their fundamentally different environmental impact, there is **no justification for treating electricity produced from renewable energy sources the same as electricity produced from biomass and fossil gas fired CHP**.

The **potential negative impact on the environment of Article 44 GBER is exacerbated by the fact that no financial ceilings/thresholds apply to tax reductions granted under the ETD**. As a result, the absolute value of schemes covering tax reductions can theoretically be unlimited. The fact that aid amounts at beneficiary/project level are limited by the difference between the applicable national tax rate (upper limit), and the minimum taxation rate of nil[15] (lower limit), does not detract from the above, for the following reasons:

1. The upper limit is not fixed, meaning that the aid volumes granted under Article 44 depend on the applicable national taxation level.
2. This implies that the higher the ambition of Member States in terms of environmental protection i.e. the higher the taxation of electricity production under the ETD, the larger the aid amounts it can provide under the GBER. This is outright counterproductive as far as environmentally harmful tax reductions are concerned such as those applicable to electricity produced from biomass and fossil gas fired CHP; it undermines any initial efforts by Member States to integrate the polluter pays principle through energy taxation.
3. The lack of applicable financial thresholds/ceilings (for notification) goes against the rationale of the GBER, which is aimed to focus on small measures that are unlikely to unduly affect competition and trade.

This is clearly reflected in the State aid scoreboard 2024: aid granted under Article 44 GBER amounts to over EUR 14.59 billion, out of a total of EUR 22.05 billion spent on environmental and energy aid measures approved under the GBER. Moreover, the data sourced in the study that we Commissioned in 2023 to Enerdata referred to above in section 1.3 and 2.1, suggests that a large proportion of subsidies to fossil gas is granted through tax incentives under Article 44 relates to fossil gas activities.

In light of the above, we **urge the Commission to remove aid in the form of reduction of taxes on electricity production from biomass and gas fired CHP from the scope of Article 44 GBER**. Such aid, if eligible for aid at all, should be subject to an in-depth assessment by the Commission, e.g. under

[15] Article 44 GBER exempts Member States from the obligation to charge the minimum tax tariffs provided by the Energy Taxation Directive.

the CEEAG. To truly contribute to the environmental protection objective of Article 44 GBER, the provision should be limited to electricity produced from renewable energy sources.

3 Missing aid objective: aid for small-scale coasting fishing

Whether as part of the FIBER, or the revised GBER by redefining the exclusion for the fishery sector, ClientEarth takes the view that sustainable fisheries should be promoted. A tailored block exemption strictly limited to the small-scale fishing sector is needed to help reinforce the development of this sector, in support of the transition of the fishery sector to fishing practices that are aligned with the climate, energy, and technological goals. Exemptions are also needed to enhance the small-scale fishing sector representation in European bodies, which is equally crucial to enable the said transition.

While FIBER includes relevant aid types (e.g. safety upgrades for small vessels, promotion of local products), it lacks categories specifically designed for small-scale fisheries. Yet, unlike the GBER, FIBER does not include environmental protection as a general aid objective. This may limit the alignment of state aid policy with the Common Fisheries Policy (CFP), which seeks to ensure sustainable fisheries and support the socio-economic well-being of fishing communities—especially in areas with a high concentration of small-scale fisheries. These communities are central to the CFP's goals of responsible fishing and environmental stewardship.

To address these gaps, we propose revising Article 1.3(a) of the GBER to allow aid for processing and marketing in the fishery sector, however strictly limited to the small scale-fishing sector. This would enable the GBER to include a provision—under environmental protection aid—allowing support for small-scale fishers in "coastal and rural areas that depend on fishing." Limiting eligibility to small-scale fishers already significantly reduces the risk of distorting competition and trade.

Eligible costs should fall into two categories. First, aid for investments in digitalisation, traceability, infrastructure, circular economy, fishing gear, CCTV installation, and similar areas to support climate, energy, and technological goals. Second, aid to strengthen collective capacities for representation in European bodies—particularly to compensate for income lost due to participation in such work. This could take the form of replacement income for time spent away from fishing to engage in representation activities.

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