

# Revision of the General Block Exemption Regulation

## Reply to public consultation

We welcome the opportunity to reply to public consultation on the draft of the revised General Block Exemption Regulation (“Draft GBER”). Considering the broad scope of policy objectives supported in the General Block Exemption Regulation (GBER), its impact on national policies and its capacity to drive the development of certain activities and sectors cannot be overstated. In 2024, 69% of all active State aid measures were GBER measures, representing 36% of the total State aid expenditure amounting to 60.70 billion euro.<sup>1</sup> It also **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 8<sup>th</sup> Environmental Action Programme to phase out environmentally harmful subsidies and in particular fossil fuel subsidies. The GBER equally has a role to play in **preventing Member States from subsidising environmentally harmful projects**, notably through a horizontal integration of environmental conditionalities in view of integrated economic and environmental policies to drive the EU’s resilience, including its competitiveness.<sup>2</sup>

The revision as proposed in the Draft GBER brings a welcome simplification and streamlining, to the extent possible, notably by including the relevant definitions and notification thresholds within the specific aid categories. However, we would like to bring several comments and recommendations regarding the

<sup>1</sup> European Commission, State aid scoreboard 2025 (published January 2026), pp.28-29.

<sup>2</sup> State aid is one of the tools in the toolbox to address the costs of environmental inaction. The Commission estimates that the cost of not fully implementing EU environmental law and policy amounts to at least EUR 180 billion a year, as stated in its Communication on the Implementation review on Environmental implementation for prosperity and security (COM/2025/420 final). Furthermore, with respect to the energy transition more specifically, the Commission recently rightfully stated in its Communication Accelerate EU – Affordable and Secure Energy through Accelerated Action that “The transition to a clean, abundant, homegrown, secure, water-resilient and affordable energy system has never been solely a climate and environmental necessity – it is also a socio-economic, competitiveness and security imperative.”

Draft GBER to the Commission's attention. In this briefing we therefore first set out our general comments and recommendations that apply to the GBER overall (section 1). We propose how environmental considerations can horizontally be integrated in the GBER, address the problematic extended support for fossil gas and discuss the transparency issues of the GBER. We then set out our targeted comments and recommendations for several specific aid categories (Articles), with a focus on the common provisions, aid for environmental protection as well as infrastructure aid (section 2). Finally, we expand on a missing aid objective concerning small-scale coasting fishing (section 3).

Finally, we regret that the consultation procedure of the draft GBER has not been carried out in line with the existing Better Regulation guidelines<sup>3</sup>. One of the five minimum standards that apply to all consultations is "outreach" meaning "*adequate awareness-raising and publicity and adapt communication channels to the needs of all targets audiences. Without exclusion other communication tools, public consultations should be published on the "Have Your Say" web portal*". In casu, the public consultation has only been published on DG competition's webpage and not on "Have Your Say" although the consultation page indicates that the target group is "all citizens, organisations, companies and public authorities". This will undeniable result is less contributions from (smaller) stakeholders that may not very closely follow developments in State aid policy but nevertheless have relevant contributions to make.

## 1. General comments and recommendations

### 1.1 Lacking horizontal integration of environmental protection

Horizontal integration of environmental protection in State aid policy can be achieved in two ways: first, by ensuring that no State aid is granted in breach of EU environmental law (which is a requirement to be able to declare aid compatible with the internal market); and second, by integrating environmental safeguards into State aid policy that go beyond mere compliance with EU environmental law.

#### 1.1.1. Compliance with EU environmental law

The Commission's legal obligation under State aid control in terms of environmental protection is well established. It cannot authorise aid that would produce results contrary to EU law<sup>4</sup> including EU environmental law.<sup>5</sup>

It follows that block exempted aid pursuant to the GBER must not enable Member States to grant aid that produces results contrary to EU (environmental) law. While the obligation to ensure compliance with EU environmental law applies in any event, its operationalisation and enforceability within the GBER framework require that this obligation be explicitly prescribed as a condition. **We therefore recommend introducing an explicit condition requiring that aid granted under the GBER must comply with EU law, including EU environmental law. Such condition should either be integrated in Article 3 Draft GBER or be the means of a new, dedicated, provision.** Although this requirement applies regardless, its express inclusion would allow the Commission to rely on the enforcement mechanism under Article 11, namely the withdrawal of the benefit of the block exemption in cases of non-compliance.

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<sup>3</sup> Commission, Better Regulation Guidelines (November 2021); SWD(2021) 305 final.

<sup>4</sup> See e.g. Case C-431/14 P Hellenic Republic v European Commission [2016] ECLI:EU:C:2016:145, para 70.

<sup>5</sup> Case C-594/18 P (Hinkley Point C), paragraph 44.

In addition, the responsibility of Member States to verify compatibility with EU (environmental) law should also be reflected in the reporting form *ex post* (Annex II to the GBER). Indeed, given the nature of the GBER, it is not possible for the Commission to carry out this compliance check *ex ante*. **To this end, we call on the Commission to amend Annex II to require Member States to expressly confirm that the aid measure does not entail any breach of EU (environmental) law.** Such a declaration would be essential to render this obligation operational and enforceable and would provide the Commission with a clear basis for action should incompatibilities be identified.

### 1.1.2. Integration of environmental safeguards in State aid policy

In many sectors, compliance with EU environmental law is not sufficient to meet the EU's environmental targets such as those laid down in the European Climate Law and to phase out environmentally harmful subsidies as pledged in the 8<sup>th</sup> Environmental Action Programme. It is for this reason that **horizontal environmental safeguards** need to be built into public funding instruments, which is missing in the GBER. Public funding can play a pivotal role in giving the right incentives to industries but also to overcome market failures.

Horizontal environmental safeguards are needed to overcome existing external (*vis-à-vis* environmental commitments made in other policy areas) and internal (across State aid policy including guidelines) inconsistencies with respect of environmental protection objectives.<sup>6</sup> These inconsistencies are at odds with the environmental protection integration principle enshrined in Article 11 TFEU.

Environmental protection can be integrated into State aid policy in two complementary ways:

- First, by enabling aid that contributes to environmental protection by its very nature, such as aid for renewable energy or to restore biodiversity, which already occurs.
- Second, by introducing environmental safeguards to prevent the granting of environmentally harmful aid, which is not yet sufficiently addressed. Such safeguards may take the form of general principles of EU environmental law or targeted conditionalities and are particularly relevant for measures that do not have environmental protection as their primary objective. General principles of EU environmental law are likely to have the strongest potential to achieve horizontal mainstreaming, in particular the principle of environmental protection integration under Article 11 TFEU<sup>7</sup>, which requires the incorporation of environmental objectives into all policies, as well as the recent and significant development of the Do No Significant Harm (DNSH) principle in State aid policy<sup>8</sup> and beyond.<sup>9</sup>

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<sup>6</sup> See also: European Scientific Advisory Board on Climate Change, Towards EU climate neutrality: Progress, policy gaps and opportunities, Assessment Report 2024, 18 January 2024, see notably pp. 10, 22-23, 48, 59, 80, 236, 238, 248.

<sup>7</sup> Article 37 of the Charter of Fundamental Rights contains a similar obligation.

<sup>8</sup> A recent empirical study has found that while the CEEAG contains 5 references to the principle and the CISAF 2, a staggering 182 Commission decisions refer to the principle – mostly concerning renewable energy and environmental protection and the execution of an important project of Common European Interest (128 in total). However, the study also notes that the material impact of the application of the DNSH principle seems limited, with all 182 Commission decisions having found the aid compatible with the internal market. See: Robin Vandendriessche, Caroline Buts, Graca da Costa, Ilona Kyrashchuck and Songuye Li, Environmental Principles in State Aid Assessments: Principled Practice or Tick-the-Box?, EstAL 4, 2025.

<sup>9</sup> See also: E. Tla da Silva, Unravelling the nature of 'Do No Significant Harm': an emerging principle of EU environmental law or a transformative tool for the green economy?, Review of European administrative law, VOL 18 (2025), NR. 2 101-127; L. Kentache, The Operationalization of the novel 'Do No Significant Harm' principle

These two ways go hand in hand. It is important that the first way of integrating environmental protection by actively supporting certain categories of aid is not being undermined because of the lack of environmental safeguards which continue allowing support for harmful activities. Such holistic approach to environmental protection is essential to be impactful.

Against this background, we suggest that **the Draft GBER should explicitly require compliance with the Do No Significant Harm (DNSH) principle**. By analogy with the Commission's proposal for the next 2028-2034 Multiannual Financial Framework (MFF) in the proposed Performance Regulation, the DNSH principle should apply horizontally across all aid objectives and is essential to ensure that aid does not support environmentally harmful projects. As stated in the memorandum that complements this public consultation on the Draft GBER, one of the objectives of the next MFF is a seamless combination of EU funds and national funds. This implies that State aid rules cannot become a loophole to finance harmful activities that cannot be financed by EU funds, although we recognize that the nature of the rules that govern EU funds differs from State aid rules. Moreover, the fact that the GBER targets aid with a limited impact on competition and trade does not mean that such measures cannot have significant adverse environmental effects. On the contrary, because GBER aid bypasses *ex ante* scrutiny by the Commission and relies on self-assessment by Member States, there is an even stronger case for subjecting such aid to the DNSH principle. Finally, embedding the DNSH principle within relevant aid categories would also ensure consistency with other State aid frameworks, notably the Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG), the communication on important projects of common European Interest (IPCEI) and the Regional Aid Guidelines (RAG).

The application of the DNSH principle can be operationalised in different ways. Member States have gained substantial experience in applying the DNSH principle, particularly in the context of the Recovery and Resilience Facility and the Social Climate Fund. The Commission is also working on the DNSH guidance as proposed in the Performance Regulation, which should be adopted by January 2027, and can serve as inspiration in State aid. Concretely, **we recommend that the responsibility of Member States to ensure compliance with the DNSH principle should also be reflected in the reporting form (Annex II to the GBER) by requiring them to confirm that the aid measure does not breach the DNSH principle**.

## 1.2. Extended support for fossil gas and inclusion of low-carbon fuels

As stated numerous times in the past<sup>10</sup>, 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.<sup>11</sup> The Commission itself

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under the Recovery and Resilience Facility Framework: unraveling its multilevel application, Review of European administrative law, VOL 18 (2025), NR. 2 101-127.

<sup>10</sup> See amongst others ClientEarth's [reply to the call for evidence on the GBER](#) (October 2025), ClientEarth's [response to the CISAF consultation](#) (April 2025), ClientEarth's [briefing on the GBER regulation](#) (May 2023), ClientEarth [open letter on why the TCTF needs to put the environment at its centre](#), ClientEarth's [briefing on the CEEAG](#) (January 2022) and our [reply to the public consultation CEEAG](#) (August 2021)

<sup>11</sup> European Scientific Advisory Board on Climate Change, Towards EU climate neutrality, Progress, policy gaps and opportunities, Chapter 12: Finance and Investments – Assessment report 2024, p5: *“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.”*

most recently stated that we need to “*accelerate electrification, the roll out of additional domestic clean energy production and the energy transition. The choices we make today determine whether we face the next (energy) crisis from a position of vulnerability or strength*”.<sup>12</sup>

Despite this inconsistency and the fact that the Draft GBER will be applicable until the end of 2034 thus extending beyond the 2030 climate targets, the Commission proposes to keep supporting the same direct and indirect fossil gas activities as under the current GBER, while subjecting them to **weaker conditionality. Moreover, the Draft GBER proposes to include more support for fossil gas by including support to low-carbon fuels.** As a result, fossil gas is supported in the following aid categories:

- investment aid for high-efficiency cogeneration (Article 58)
- investment aid for fossil gas-fired district heat/cooling networks (Article 64)
- Investment aid for fossil gas infrastructure (Article 66),
- Investment aid for CCUS to decarbonise industries (Article 51)
- Aid in the form of reduction of taxes on electricity produced from fossil gas fired CHP and coal and water gas used for heating purposes (Article 61)
- Investment aid for the production of low-carbon hydrogen and for dedicated infrastructure for the transport, distribution or storage of low-carbon hydrogen (Article 51)
- Aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat (Article 23)
- Aid to low-carbon hydrogen refuelling road (Article 53) and port infrastructure (Article 80)

**We strongly oppose this backsliding and reject the possibility to support fossil gas, including low-carbon fuels, especially in a State aid instrument like the GBER.** Such support entails direct lock-in effects and path dependency 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 *ex-ante* that Member States restrict aid for fossil gas to those last resort applications/situations where no cleaner technology would be readily available. We therefore reemphasize that **aid for fossil gas should be removed from the scope of the GBER and only be subject to prior notification, even more given the long temporal scope of application of the Draft GBER.**<sup>13</sup> **Due to its nature, the GBER should be reserved for clean technologies.**

If, despite our submissions, the Commission remains supportive of aid to fossil gas in the GBER, the Draft GBER should not in any case be a regression compared to the existing GBER. **We therefore recommend the following:**

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<sup>12</sup> Commission communication, *Accelerate EU – Affordable and Secure Energy through Accelerated Action*, p.1.

<sup>13</sup> As indicated in our [reply to the call for evidence](#), the share of fossil gas subsidies based on the GBER is considerable. Together with Enerdata we identified that more than 1/3 of the 285 identified subsidies were clearly identified as State aid linked to a State aid decision (notified). The other 2/3 of the subsidies are (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) and (iv) measures that have a strong appearance of being GBER measures. The lack of transparency regarding GBER measures did not allow us to verify this further, but many measures appear to fall within the scope of Article 44 GBER.

- The **possibility to directly support low-carbon fuels in Articles 51, 53 and 80 should be removed** from the Draft GBER.
- **Any support to fossil gas 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<sup>14</sup> should be reinstated even if 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. The current proposal to tie support for high-efficiency cogeneration and district heating/cooling to the criteria of Article 26, para 4(b) of the Energy Efficiency Directive (EED) constitutes a significant weakening of environmental conditionality:
  - o The taxonomy technical screening criteria do not only take into account the climate mitigation objective but also the five other environmental objectives, whereas Article 26 EED only focuses on climate mitigation.
  - o Article 26 para 4(b) EED requires the high-efficiency cogeneration or gas-fired district heating/cooling system to be “efficient” by meeting the criteria set out in Article 26 para 1 or 2 EED, according to which Member States can choose to fall back on the mix of primary energy sources (i.e. certain % of renewable energy) or on greenhouse gas emissions thresholds. The option based on the energy mix is problematic as it does not rule out the most polluting fossil fuels such as coal and only requires a full conversion to 100% renewable energy by 2050. The option based on the greenhouse gas emissions thresholds is less ambitious than the taxonomy technical screening criteria in which the lower emission thresholds apply more quickly (e.g. 100 g CO<sub>2</sub> as from 2030); projects that emit between 100 g and 270 g CO<sub>2</sub> must convert to renewable or low-carbon fuels by 2035, compliance with the criteria needs to be verified by an independent third party etc.

**We therefore strongly recommend maintaining the current conditionality as set out in Articles 41 para 4a and 46 para 4 GBER at the very least, whether by reference to sections 4.30 and 4.31 of Annex I of Delegated Regulation (EU) 2021/2139 or directly integrating the actual criteria in respectively Articles 58 and 64 of the Draft GBER.**

### 1.3 Lack of respect and enforcement of publication obligations

Per Article 10 Draft GBER, 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.<sup>15</sup> This obligation is poorly respected by Member States and poorly enforced by the Commission, as demonstrated and concluded in a fact-finding Study.<sup>16</sup> However, compliance with and enforcement of these publication 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 particularly important for GBER measures as those measures do not need to be notified and are not subject to a public Commission

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<sup>14</sup> 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.

<sup>15</sup> The EU register is the [State Aid Transparency Public Search](#).

<sup>16</sup> For more, consult the [Commission's Fact-finding study on the transparency requirements implementation of the under the GBER and relevant guidelines](#).

State aid decision.<sup>17</sup> 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.

The Commission has a sanction available to address such non-compliance: it has the power to withdraw the benefit of the block exemption altogether in accordance with Article 11 Draft GBER. 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 may at times seem disproportionate to the non-compliance. Withdrawing the benefit of the block exemption would also drastically increase the Commission's workload as otherwise exempted measures would become subject to the notification process, which likely deters the Commission from invoking this enforcement power.

**To incentivise actual enforcement of publication obligations, we therefore urge the Commission to 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 certain period (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).

By analogy, although we understand that the administrative burden can be proportionally decreased for granting authorities, **we regret that the Commission is proposing to abolish the *ex-post* evaluation requirement of large block-exemption aid schemes** and do not believe that Member States will make it a priority to evaluate their subsidy measures as a matter of best practice.

Finally, we understand from the memorandum that accompanies the public consultation on the Draft GBER that merely illustrative and unnecessarily detailed provisions will be moved to a separate guidance document, that will also clarify the interpretation of the GBER. Although firstly directed at granting authorities, **we stress that it is important that this guidance is publicly available in an accessible format**, just as the former GBER FAQ was publicly available. This guidance can be equally of interest to aid beneficiaries and the public, especially given the technicality of the GBER and its importance as a public funding instrument.

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<sup>17</sup> In 2022-2023, ClientEarth commissioned a study from Enerdata in view of obtaining 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. This study encountered major transparency challenges in singling out fossil gas subsidies, notably aid measures granted under the GBER, notably since the EU register or national registers are incomplete.

## 2. Targeted comments regarding the Draft GBER

This chapter sets out our detailed comments regarding individual provisions of the Draft GBER. For ease of reading, we follow the structure of the Draft GBER and are not listed in order of importance.

### 2.1. Common provisions

#### 2.1.1. Conditions for exemption (Article 3)

Article 3 Draft GBER sets out the conditions for exemption from the notification requirement under Article 108(3) TFEU. As discussed, and detailed above in section 1.1, **we recommend adding an explicit condition that the aid must comply with EU law including EU environmental law.**

We oppose the newly introduced condition in para. 2(b), which designates undertakings as the relevant entity for assessing compliance with the GBER conditions. Shifting this responsibility from granting authorities to undertakings is inconsistent with the nature and legal effects of the GBER, whose purpose is to exempt Member States and not undertakings from the notification obligation under Article 108(3) TFEU. This inconsistency is evident in that the GBER does not and cannot provide sanctions applicable to undertakings in case of non-compliance; available sanctions are directed at Member States (see Article 11). **This condition should therefore be removed to reflect the legal reality that Member States are fully responsible for the compliance with exemption conditions.**

Finally, we see no convincing justification for the condition laid down in paragraph 2(a), according to which, in the case of aid to infrastructure (e.g. energy, port), certain conditions such as those relating to the use of the infrastructure must be complied with only for a period of ten years following the granting of the aid. Such temporal limitation risks undermining the very objective pursued by the aid measure or the associated conditionality. Indeed, it implies that, once the ten-year period has lapsed, the operator would in principle be free to use the subsidised infrastructure without regard to those conditions, including in ways that may lead to a higher environmental impact. Notwithstanding the return on investment lifecycle, this approach is unreconcilable with the long-term nature and lifespan of infrastructure investments, which often extend well beyond ten years – as well as with the Union's environmental and climate objectives, which require sustained compliance over time rather than temporary constraints.

As drafted, paragraph 2(a) therefore risks creating a perverse incentive structure whereby environmentally sensitive conditions are treated as transitional rather than intrinsic to the investment supported by public aid. For instance, in case aid is given for gas infrastructure, this condition would imply that whereas the infrastructure need to (be able to) convert to renewable gases to obtain aid, it may never have to convert if this conversion were to be planned more than 10 years as from the last payment of the aid.

**Against this background, this condition regarding infrastructure in para 2 (a) creates confusion and legal uncertainty and therefore needs to be removed altogether, or at the very least revised to require that use-related and other conditions attached to aid for infrastructure apply for the entire economic lifetime of the infrastructure, or at least for a period that is demonstrably aligned with its operational lifespan.**

### 2.1.2. Withdrawal of the benefit of the block exemption (Article 11)

The Draft GBER does not propose changes to the Commission's power to withdraw a Member States' benefit of the GBER in case of noncompliance with GBER's conditions. To our knowledge, the Commission has never used this power. Moreover, we are not aware of any formal exchanges between the Commission and Member States related to this power. As set out in section 1.3, to **incentivise the use of this enforcement power**, we suggest that the GBER incorporates alternative sanctions that have a more limited impact on the Member State.

### 2.1.3. Aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat (Article 23)

Article 23 Draft GBER allows Member States to grant aid to microenterprises through public interventions for the supply of electricity, gas or heat, without many conditions. While the possibility is limited to microenterprises and capped at EUR 200.000 per beneficiary per calendar year, it does not provide for any overall aggregate yearly ceiling per Member State. As a result, the aggregate amounts of aid that may be disbursed under this provision are potentially substantial and can therefore be quite distortive.

Moreover, this exemption supports the consumption of energy, including fossil fuels directly in the case of fossil gas, and potentially indirectly in the case of electricity and heat. The provision lacks safeguards to prevent large-scale, prolonged subsidisation of fossil-fuel demand, which in turn is detrimental for any fossil fuel phase out. The absence of an overall cap/budget therefore risks enabling cumulatively very significant public expenditure with limited control over its magnitude or its alignment with the Union's climate and decarbonisation objectives. This comes on top of the fact that similar amounts (EUR 300 000 over any period of 3 years) can be disbursed to microenterprises for similar purposes under the *de minimis* regulation.<sup>18</sup>

These concerns are amplified by the sheer number of microenterprises in the Union, which together with small enterprises account for most EU undertakings namely 99% of all undertakings.<sup>19</sup> Even relatively modest amounts of aid at the level of individual beneficiaries may therefore translate, when applied across a large group of eligible undertakings, into very high aggregate support levels.

**In light of the above, we urge the Commission to remove this exemption ground from the GBER. Aid to microenterprises in the form of public interventions relating to the supply of electricity, gas, or heat should, if eligible at all, be assessed under the CEEAG, or can be granted as *de minimis* aid.**

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<sup>18</sup> Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

<sup>19</sup> [Micro & small businesses make up 99% of enterprises in the EU - News articles - Eurostat](#)

## 2.2. Aid for environmental protection

### 2.2.1. Investment aid for climate protection (Article 51)

We support the Commission's proposal to maintain the current exclusion for fossil gas for investments in equipment, machinery and industrial production facilities, including fossil gas, unlike the scope of the CISAF that was broadened to include fossil gas.

However, we regret that Article 51 para 5 Draft GBER now includes **support for the production, use, transport, distribution or storage of low-carbon fuels**. This proposed expansion should be revised as low-carbon fuels risk delaying the energy transition. Including low-carbon fuels in the GBER (i) sends the wrong signal that the transition can be delayed, (ii) perpetuates fossil fuel reliance, (iii) creates further lock-in and path dependency, and (iv) diverts scarce public funds from alternative clearer solutions.

By including support for low-carbon fuels, the Commission allows for uncontrolled support to low-carbon fuels due to the nature of the GBER. Moreover, the maximum aid intensities do not make a distinction between low-carbon fuels and renewable fuels, putting them on equal footing although their impact/contribution to climate protection differs greatly. **We therefore demand to retract any support for low-carbon fuels from the GBER and maintain the scope of the current GBER. Support to low-carbon fuels should not be exempted from notification and can already be granted under CISAF or CEEAG. Due to the nature of the GBER, it should be reserved for clean technologies.**

While para 4 does not prescribe how much **reduction or removal of greenhouse gas emissions** need to be achieved, the aid intensities in para 8 depend on the amount of reduction. For the decarbonisation of existing installations (para 4 (a)) and investments in transport, distribution or storage (para 4 (c)) the lowest aid intensity amounts to 5% where no significant reduction is achieved. By contrast investments in new installations may benefit from an aid intensity of up to 40% (para 4 (b)) merely by reducing or capturing direct greenhouse gas emissions compared to the counterfactual investment, without any further requirements. This concretely means that if a new aided installation reduces emissions even only marginally (e.g. by only 1%) it can receive aid up to 40% of the eligible costs.

We therefore **recommend including significant minimum reduction and removal requirements for new and upgraded installation as compared to efficient installation in para 4, or at the very least in para 8 (b), to contribute to climate protection. If no significant minimum reduction and removal requirements are added to para 4, the 5% aid intensity in para 8 (a) should not be increased.**

Scarce public resources should not be wasted for incremental greenhouse gas reductions but be targeted at decarbonisation measures that can really contribute to the climate goals.

While the decarbonisation of existing installations is conditioned on avoiding an increase of production capacity and on achieving emission reductions (para.4 (a)), **investments in dedicated infrastructure** for the transport, distribution or storage of low-carbon hydrogen, waste heat and CO<sub>2</sub> is presumed to deliver a reduction or removal of emissions. This presumption is highly disputable, particularly given the absence of any limitations to the investments that can be supported. The definition of "dedicated infrastructure" is also not sufficiently precise to ensure that supported investments will be targeted. **We therefore recommend setting boundaries to the types of investments that can be supported** by requiring such investments to take place on the project's site and to be designed according to the needs of the decarbonisation investment.

The aid intensities set out in para. 8 distinguish between hydrogen or hydrogen-derived fuels with a Renewable Fuels of non-biological origin (RFNBO) share of at least 40% which are eligible up to 60% of the total investment costs, and low-carbon fuels which are eligible up to 35% of the total investment costs. This distinction, however, fails to consider renewable fuels, other than hydrogen, more generally.

**Finally, we do not support the inclusion of aid for carbon capture (CCUS) in the GBER** 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. CCUS should therefore remain a **last resort technology to decarbonise industries when cleaner** and more cost-efficient alternatives are not commercially available. The GBER lacks such prioritisation. Moreover, the Draft GBER fails to rule out the use of CCUS for production of electricity. If notwithstanding these concerns, support for CCUS is retained, to ensure the support for CCUS is well targeted, we recommend adding the following conditions in para 6:

- Only hard to abate industrial applications where cleaner alternatives are not readily available should be eligible;
- 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;
- Only the best available capture technologies can be supported to ensure a capture rate of minimum 95%;
- The use of carbon capture cannot lead to an increase in the use of fossil fuels;
- Support should only be given to captured CO<sub>2</sub> for permanent storage so that it does not enter the atmosphere under normal use, including any normal activity taking place after the end of the life of the product.

### 2.2.2. Investment aid for the prevention/reduction of pollution and actions for climate resilience (Article 52)

The **definition of “climate resilience”** in Article 2(7) seems to be based on the description by the International Panel on Climate Change in its Report to Policymakers 2022. This concept leaves extensive room for interpretation making it quasi unworkable given the need for the GBER to be strictly interpreted, simple and straightforward.

Most of the investment aid for the remediation of environmental damage, the protection or restoration of nature and the implementation of nature-based solutions for climate change adaptation and mitigation (Article 63 Draft GBER) would be covered by the notion of “climate resilience”. However, it is unclear if the notion also covers other types of investments.

To our understanding, the “climate resilience” aid category applies cross-sectorally, which justifies its wide scope. However, measures presented as enhancing “climate resilience” may nonetheless have detrimental impacts on nature, without being excluded under the current definition. Given the lack of environmental safeguards through horizontal application of the DNSH principle in the GBER (see section 1.1), these detrimental risks are real.

At the same time aid under this aid category could for instance be used to implement nature legislation and its targets, such as the Nature Restoration Legislation and Water Framework directive, provided the aid does not serve to ensure compliance with EU law or with basic EU standards. Such aid would be welcome.

Finally, the notion as currently defined in the draft GBER should not pre-empt the integrated framework for European climate resilience and risk management<sup>20</sup> that the Commission is currently developing to help Member States prevent and prepare for the growing impacts of climate change. We therefore **recommend for the GBER to align with any definition that will be developed in the integrated framework for European climate resilience and risk management, or at the very least complement the current definition of “climate resilience”** as follows: *“the capacity of interconnected social, economic and ecological systems to cope with a hazardous climate event, climate trend or climate disturbance, responding or reorganizing in ways that maintain their essential function, identity and structure. An increase in the level of climate resilience must be demonstrated in the form of a higher adaptive capacity or lower vulnerability to climate impacts, achieved by contributing to the objectives of EU legislation underpinning these systems”*.

### 2.2.3. Investment aid for recharging or refuelling infrastructure (Article 53)

We do not support the proposal to include support for refuelling infrastructure supplying low-carbon hydrogen and recommend modifying para 6 to reflect the current scope of Article 36a GBER, i.e. the Member State shall obtain from the beneficiary a commitment that by 31 December 2035 at the latest, the refuelling infrastructure will **solely supply renewable hydrogen**.

### 2.2.4. Investment aid for the promotion of energy from renewable sources and high-efficiency cogeneration (Article 58)

We welcome the removal of the spending limit whereby the sum of the budgets of all the schemes in a Member State to support renewable energy must not exceed EUR 300 million per year.

We also welcome the inclusion to support **demand response** in the Draft GBER. However, a definition is lacking, and we therefore **recommend clarifying para 3. (c) as follows “Demand response, as defined in Article 2, point (20), of Directive (EU) 2019/944”**. Moreover, it should be clarified that although investment aid for demand response is limited to the elements listed in para 7., this limitative list should not prevent schemes that support combined behind-the-meter renewable energy generation (para. 3a) in combination with storage (para 3b) and demand response (para 3c) to be eligible under the GBER. This combination is crucial for the deployment of demand response.

However, as set out in section 1.2, we **regret the continued support for high-efficiency cogeneration based on fossil gas in the GBER and strongly oppose the proposed backsliding in terms of conditionalities** (para.6). The current proposal to tie support for high-efficiency cogeneration and district heating/cooling to the criteria of Article 26, para 4(b) of the Energy Efficiency Directive (EED) constitutes a significant weakening of environmental conditionality for the reasons set out in section 1.2. **We therefore strongly recommend maintaining the current conditionality as set out in Article 41 para 4a GBER at the very least, whether by reference to section 4.30 of Annex I of Delegated Regulation (EU) 2021/2139 or by directly integrating the actual criteria into Article 58.**

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<sup>20</sup> [European Climate Resilience and Risk Management – Integrated Framework - Climate Action](#)

### 2.2.5. Direct price support for the production of electricity from renewable sources (Article 59)

Instead of support in the form of “operating aid” as in the current GBER, the draft GBER foresees “direct price support” for renewable energy. The latter notion is not defined, and it is unclear whether the scope of the support changes. Whereas “operating aid” focuses on company’s operating costs and targets its operational viability, “direct price support” focuses on product price and targets the market conditions and may therefore be unnecessarily restrictive. We do however note that the notion of “direct price support” would be consistent with article 19 (d) of the Electricity Market Design Regulation. In any event, **we recommend defining or clarifying the notion of “direct price support” in the draft GBER.**

To our understanding, the provisions on operating aid for renewable energy (Article 42) and on renewable energy and hydrogen in small scale projects and renewable energy communities (Article 43) have been merged because of their partial overlap. This may however have the indirect impact of reducing support for small scale projects and **renewable energy communities (REC)**, for which the GBER is an important State aid tool, as it is no longer provided for as a separate aid category.

Moreover, we regret that the Commission proposes to extend the exemption to participate in a competitive bidding process set out in para 7(b) to citizen energy communities (CEC) without any safeguards. Such expansion without safeguards creates risks of market distortions to the detriment of bottom-up and community owned renewable energy projects, in particular RECs, and enables corporate capture of energy communities. Large incumbent energy suppliers are already attempting to co-opt the development of energy communities to pursue State aid, especially investment aid, and other preferential treatments.<sup>21</sup> Any possibility for CEC to benefit from the exemption can therefore only occur if the following safeguards are in place:

- The governance principles should coherently apply to RECs and CECs. The principle of autonomy should be defined at national level and equally apply to both RECs and CECs to ensure that CECs cannot be financed or driven by larger enterprises engaged in large-scale commercial activity and/or whose participation constitutes their primary commercial or professional activity;
- Member States should have a clear definition of REC and CEC as properly transposed in conformance with the eligibility criteria that are established under Article 2(16) of the RED II and Article 2(11) of the IEMD, respectively;
- There is sufficient regulatory oversight in place to ensure that RECs and CECs that are registered or otherwise acknowledged under national law comply with national REC/CEC definitions established in conformance with Article 2(16) of the RED II and Article 2(11) of the IEMD;

We also recommend modifying “small projects” in para 7(b) into “small-scale projects” to ensure consistency with para. 9 that contains derogations for such small-scale projects.

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<sup>21</sup> For a broader analysis of corporate capture of energy communities and the way to address this, we refer to [Rescoop’s consultation response on CISAF](#) in which the Commission also decided to expand the scope to CEC.

## 2.2.6. Aid in the form of reductions in taxes under Directive 2003/96/EC (Article 61)

The GBER allows aid in the form of tax reductions on electricity produced from biomass, combined heat and power (CHP) installations including those fired by fossil gas, as well as with coal and water gas used for heating purposes. This enables Member States to apply tax rates below the minimum levels laid down in the Energy Taxation Directive (“ETD”) (Annex I to Directive 2003/96/EC).

This exemption is unacceptable as it undermines the polluter-pays principle. Allowing Member States systematically to reduce taxes on electricity produced from biomass, fossil-gas-fired CHP, and coal and water gas used for heating below the ETD minimum rates weakens the effective internalisation of environmental costs into product prices.

The problem is worsened by the fact that the GBER confers the same advantage on electricity produced from renewable energy sources. As a result, electricity produced from biomass and fossil-gas-fired CHP, and coal and water gas used for heating, are placed on the same footing as electricity from renewable sources, despite their fundamentally different environmental impacts. This runs counter to the principle of equal treatment, which requires that situations which are not comparable must not be treated in the same way. This is particularly concerning considering that the objective of aid granted under Article 61 GBER is environmental protection.

**The potential negative impact on the environment of this aid category is further 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 is undefined and theoretically 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<sup>22</sup> (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 61 draft GBER 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 and on coal and water gas used for heating purposes; 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.

The relevance of these concerns is illustrated by the data presented in the [State aid scoreboard 2024](#): aid granted under Article 61 GBER (currently 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. Strikingly, the latest State aid scoreboard 2025 does not specify the share of State aid for environmental tax reductions allocated under Directive 2003/96/EC. Moreover, the data sourced in the study that we

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<sup>22</sup> Article 44 GBER exempts Member States from the obligation to charge the minimum tax tariffs provided by the Energy Taxation Directive.

Commissioned from Enerdata in 2023 referred to above in section 1.2, suggests that a large proportion of subsidies to fossil gas is granted through tax incentives under Article 61 relates to fossil gas activities.

Considering the above, we **urge the Commission to remove reduction of taxes on electricity production from biomass and gas fired CHP, as well as on coal and water gas used for heating purposes from the scope of Article 61 GBER**. Where such products are deemed eligible for aid at all, they should be subject to an individual, in-depth assessment by the Commission, for example under the CEEAG. To ensure that Article 61 genuinely contributes to environmental protection objectives, its scope should be limited to electricity produced from renewable energy sources.

### 2.2.7. Investment aid for district heating and/or cooling (Article 64)

The main point of contention for this aid category is the **continued support for fossil fuels, including the most polluting ones such as coal**. Moreover, the Commission's proposal in Article 64 Draft GBER is a clear backslide compared to the existing Article 46 GBER, which already leaves ample room to support fossil fuels.

*First*, with respect to **aid for “energy efficient” district heating/cooling systems**, para. 4 states that aid can only be granted for energy efficient systems, or those that are part of a plan to become energy efficient, that meet the criteria of Article 26 Energy Efficiency Directive (EED). This does not exclude the most polluting fossil fuels because under Article 26 para 1 EED, any fossil fuel can be part of the generation mix until 2050.

Moreover, member States may, as an alternative to the criteria in Article 26 para 1 EED, rely on GHG emission thresholds provided under para. 2. It should be noted that these emission thresholds are more lenient than the thresholds of the Taxonomy screening criteria for the same activity, i.e. Annex 1, section 4.31 of Delegated Regulation (EU) 2021/2139.

Moreover, as explained more generally in section 1.2, it is highly regrettable that support for high-efficiency generation facilities based on fossil gas is no longer required to comply with the 2030 and 2050 climate targets in accordance with Annex 1, section 4.30 and 4.31 of Delegated Regulation (EU) 2021/2139. As indicated in the above paragraph, the EED thresholds are more lenient than the taxonomy screening criteria and only tackle climate mitigation without any consideration for the other five environmental objectives for which the section 4.30 of Delegated Regulation (EU) 2021/2139 sets screening criteria. **This concretely means that block-exempted State aid can be granted for projects that merely comply with EU law, more specifically the EED, without imposing any additional decarbonisation conditions (see above section 1.1). We therefore strongly recommend maintaining the current conditionality provided by Article 46 para 4 GBER, whether by reference to the sections 4.30 and 4.31 of Delegated Regulation (EU) 2021/2139 or by including the actual criteria in the Draft GBER.**

We also regret that projects that are part of a plan to become energy efficient in line with Article 26 para 5 EED are no longer bound by a 3-year timeline to start the works to be eligible for aid. Instead, these projects must prepare a plan to ensure more efficient consumption of primary energy, to reduce losses and to increase the share of renewable energy, without any binding timeframe. Again, this means that **block-exempted State aid can be granted for projects that merely comply with EU law without imposing any additional decarbonisation conditions. We therefore recommend for the timeline of the current GBER to be reinstated.**

*Second*, with respect to the derogation to support **upgrades of existing systems that will not become energy efficient** (also not according to a plan as mentioned above) as per para 5., we are concerned that such support seems to violate Article 26 para 14 EED that stipulates that “*Member States shall ensure that any available support for cogeneration is subject to the electricity produced originating from high-efficiency cogeneration and the waste heat being effectively used to achieve primary energy savings. Public support to cogeneration and district heating generation and networks shall be subject to State aid rules, where applicable.*” Indeed, this provision rules out the possibility for Member States to support district heating/cooling that does not comply with the energy efficiency criteria. **We therefore recommend removing para 5 Draft GBER altogether.**

In the alternative, should the Commission decide to keep para 5, we raise the following comments regarding the two conditions applicable to existing systems that do not become energy efficient. We welcome the second condition which prohibits upgrades resulting in an increase in energy generation from fossil fuels and no longer contains an exclusion for fossil gas. However, the first condition that requires the distribution network to be “suitable for the transmission of heating or cooling generated from renewable energy sources and/or waste heat” concretely translates into “**hydrogen-ready infrastructure**”, which is a flawed concept as analysed in our report on the concept of hydrogen readiness<sup>23</sup> (see also our comments below on energy infrastructure which contains similar conditionality). Important risks arise from using this concept: increased lock-in risks and further path dependency, financial risks such as stranded assets and price volatility, exacerbated external dependency and geopolitical risks. **Para 5 Draft GBER will therefore allow Member States to keep supporting the status quo in terms of fossil fuel generation, including the most polluting fossil fuels (if it does not lead to an increase). We therefore recommend removing the possibility to keep supporting systems that do not comply with the energy efficiency standards of Article 26 EED, or at the very least to incorporate meaningful guardrails as set out for fossil gas infrastructure more generally below (see point 2.3.7) to ensure that support to all fossil fuels is phased out and conversion is realistically planned.**

### 2.2.8. Aid to support investment in fossil gas infrastructure (Article 66)

The conditions for supporting fossil gas infrastructure in para 3 (c) Draft GBER remain ambiguous, bearing serious risks of differentiated approached by national authorities. Pursuant to para 3 (c), 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.

These conditions are problematic for several reasons. *First*, the term “dedicated” does not require the actual use of hydrogen and/or renewable gases at any point in time. *Second*, the supported infrastructure can be used for any type of hydrogen, including unabated (grey) hydrogen. *Third*, the distinction between “dedicated to the use” and “transport of more than 50%” is unworkable. Whereas the second part of the sentence would for instance apply to fossil gas pipelines that would need to transport more than 50% of hydrogen and/or renewable gases (through blending), a decompression facility would only need to be dedicated to the use of hydrogen and/or renewable gases, (which does not mean it should actually be used for it) although both types of infrastructure are connected as part of the same fossil gas supply chain. *Fourth*, there is no requirement to comply with the energy efficiency first principle as set out in Article 3 Energy Efficiency Directive and the Commission’s own guidance on the principle.

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<sup>23</sup> ClientEarth, [Hydrogen readiness: a Trojan horse for fossil fuel lock-in](#) (April 2025).

As a result, the conditions of para 3 (c) Draft GBER imply that the infrastructure must be “**hydrogen-ready**” which is a flawed concept as analysed in our report on the concept of hydrogen readiness.<sup>24</sup>

**Important risks arise from using this concept: increased lock-in risks and further path dependency, financial risks such as stranded assets and price volatility, exacerbated external dependency and geopolitical risks.**

If the Commission remains supportive of investment aid for fossil gas infrastructure, **the Draft GBER needs to have meaningful guardrails in place to ensure that the conversion/use for hydrogen/renewable gases will take place**, similar (to the extent possible) to the conditions that have been developed for fossil gas investments for industrial decarbonisation under CISAF. We therefore recommend that any aid for fossil gas infrastructure is subject to the following **cumulative conditions that need to be fulfilled upon granting the aid (ex ante)**:

- The infrastructure must be capable of using exclusively hydrogen or other renewable gases from the outset, without any additional investments or any need to replace equipment.
- Beneficiaries must convert the infrastructure, use 100% renewable hydrogen or renewable gases and thereby phase out fossil gas by 2035 latest (consistent with CAN Europe’s PAC 2.0 model).
- Beneficiaries must guarantee upfront that conversion costs will be covered without public financing.
- Beneficiaries must show upfront that there will be sufficient supply and demand for hydrogen by the time of conversion (e.g. through commercial contracts).
- Beneficiaries 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.
- Beneficiaries should be required to show upfront that existing permitting regimes for hydrogen will be complied with.

**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).

## 2.3. Section 9 aid for infrastructure

### 2.3.1. Aid for airports (Article 79)

**New investment aid for airports should be discontinued** as it fails to take the environmental impact of aviation into account. In the alternative, if the Commission continues to enable investment aid for airports, any investment aid should be subject to **environmental conditionalities** (see point 1.1 above) to ensure that the most harmful kinds of aid are excluded and alignment with the EU’s climate objectives is guaranteed. In addition, we recommend that a beneficiaries of investment aid must be required to allocate a part of the aid to investments in energy efficiency and decarbonisation.

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<sup>24</sup> ClientEarth, [Hydrogen readiness: a Trojan horse for fossil fuel lock-in](#) (April 2025).

We support the proposal to increase the travel distances and times in para 7 in view of reasonably limiting eligibility for investment aid. Such distance between airports would sufficiently support connectivity and cohesion, while excluding airports that do not have a societal added value.

However, we **oppose the proposal in para 14 to significantly increase the passenger threshold for airports that are eligible for operating aid from 200.000 passengers/year to 500.000 passengers/year**. Although formal statistics are missing, we estimate (based on Eurostat and Eurocontrol numbers) that around 55 to 65% of EU airports (approximately 450 commercial airports in the EU) transport less than 200.000 passengers per year and around 70 to 80% of all EU airports transport less than 500.000 passengers per year. Whereas remote, island, or public service obligation routes may justify a State intervention to preserve social cohesion, operating aid is generally highly distortive of competition and leads to airport capacity expansion, which in turn contributes to the uncontrolled and unsustainable growth trend of air travel in Europe. The threshold can therefore not be increased and any aid for airports above the 200.000 passengers/year threshold should be subject to the notification requirement.

### 2.3.2. Aid for ports (Article 80)

The extension of Article 80(5)(d) to allow aid for refuelling infrastructure under the condition supplying not only renewable hydrogen but also *low-carbon hydrogen* by 31 December 2035 is problematic and unjustified considering the objectives underpinning the GBER and EU climate and energy policy.

First, the inclusion of low-carbon hydrogen risks undermining prioritisation of renewable energy sources. Even if Article 80(5)(d) does not concern hydrogen production, treating renewable and low-carbon hydrogen as equivalents for the purpose of aid to refuelling infrastructure weakens the environmental integrity of the provision and blurs an essential distinction between truly zero-emission solutions and transitional technologies. In other words, these fundamentally different energy sources should not be treated equally in view of the Union's climate objectives.

Second, the provision creates a risk of technological lock-in. Refuelling infrastructure is long-lived, capital-intensive infrastructure. Allowing public aid for infrastructure that may continue to supply fossil-based hydrogen until as late as 2035 risks entrenching demand for non-renewable hydrogen well beyond the period necessary for transition. This is difficult to reconcile with the Union's climate neutrality objectives.

Third, extending eligibility to low-carbon hydrogen refuelling infrastructure dilutes the justification for an exemption from the notification obligation. Where aid supports infrastructure serving technologies with materially different environmental impacts, a simplified compatibility presumption under the GBER is no longer appropriate. Aid to infrastructure that is to serve low-carbon hydrogen should be assessed through an individual notification such as based on the CEAG, allowing the Commission to scrutinise if and under what conditions such aid can be declared compatible.

For these reasons, the scope of point 5(d) should be limited to refuelling infrastructure supplying **renewable hydrogen only**, with low-carbon hydrogen infrastructure, if eligible at all, subject to an individual assessment outside the GBER framework.

The concerns and arguments set out above also apply to Article 82(6)(b), which likewise concerns aid for port refuelling infrastructure, though provided via the InvestEU Fund.

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

We welcome the proposed extension of the GBER to the fisheries sector, as well as the introduction of sector-specific exceptions. However, if the GBER is to support a transition towards sustainable fisheries, its framework must be more ambitious. A meaningful transition requires, first, that no public aid be granted to operators engaged in illegal, unreported and unregulated (IUU) fishing or other unsustainable practices, and second, that support to small-scale fishing be clearly prioritised. To that end, we recommend strengthening the draft GBER through two complementary measures.

#### 3.1. Safeguards against aid to operators engaged in illegal practices

Allowing Member States to grant aid under the GBER to operators involved in IUU fishing or other unsustainable activities would undermine both EU policy objectives, notably under the Common Fisheries Policy (CFP), and the Union's international commitments. Effective safeguards are therefore indispensable. Member States should be required to demonstrate that they have robust and effective control, inspection and enforcement systems, regarding CFP compliance in place. These systems must also address the issue of opaque ownership structures in the fisheries sector that are potentially connected to IUU fishing, in accordance with the prohibition for EU nationals to support or engage in IUU fishing. supporting or supporting or engaging in IUU fishing.<sup>25</sup>

The GBER should therefore explicitly incorporate binding safeguards through a conditionality mechanism. Concretely, Article 1(2) of the draft GBER should be extended to require Member States, as a condition for granting aid to the fisheries sector or establishing aid schemes open to that sector, to comply with Articles 36(3) of the CFP Basic Regulation (Regulation (EU) No 1380/2013) and Article 5 of the Control Regulation (Regulation (EC) No 1224/2009). These provisions place clear obligations on Member States to ensure effective control, inspection and enforcement of fisheries activities.

#### 3.2. A dedicated exemption for small-scale coastal fishing

The draft GBER should also introduce a dedicated aid category for "small-scale coastal fishing" as defined in Article 2(1) of the EMFAF regulation. Such an exemption is essential to actively support the transition to climate-, energy- and technology-aligned fishing practices, while addressing the structural vulnerabilities of the sector.

Beyond supporting sustainability objectives, this exemption would play a critical role in strengthening the representation of small-scale fishers in European decision-making bodies which is an often overlooked but essential condition for a successful transition. The fragmented, predominantly local and low-capacity nature of the small-scale fishing sector has historically limited its ability to participate effectively in governance processes.

Given these characteristics, aid granted under a dedicated exemption would be unlikely to distort competition or affect trade between Member States to an extent contrary to the common interest and would remain fully consistent with the principles underpinning the GBER.

Eligible costs under this exemption should fall into two complementary categories. First, aid should support investments contributing to climate, energy and technological objectives, including digitalisation,

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<sup>25</sup> See Art. 39 of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Union system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

traceability systems, infrastructure, circular economy initiatives, selective fishing gear, CCTV installation, and related measures. Second, aid should strengthen collective capacities for representation in European bodies, including through compensation for income forgone due to participation in advisory councils or other governance fora, such as replacement income for time spent away from fishing activities.

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