The General Block Exemption Regulation

A revised State aid tool to encourage the green transition ?

- The European Commission approved the revised General Block Exemption regulation ("GBER")[1], together with the revised Temporary Crisis and Transition Framework ("TCTF")[2], on 9 March 2023. Initially in force until the end of 2020 and extended to the end of 2023 due to the pandemic, the revised GBER **will now apply until the end of 2026**.

- The GBER allows Member States to **grant State aid without prior notification to the European Commission**, provided that the aid complies with the conditions set out in the GBER.

- The GBER was initially revised to support the EU **Green Deal objectives**, but it recently also aims at enabling Member States to provide the necessary support to key sectors, in line with the **Green Deal Industrial Plan** to accelerate the green and digital transition. The revision mainly concerns the following categories of aid: aid for environmental protection and energy, Projects of Common European Interest (IPCEI) in the field of research and development, aid for training and reskilling, aid to regulate energy prices, aid for RD&I and aid for risk financing.

- The provisions on **aid for environmental protection and energy** concern amongst others the rules for public financial support to renewables, green mobility, industrial decarbonisation, energy communities, energy efficiency, and nature protection and restoration. The revised provisions of the GBER are aligned with the State aid guidelines for climate, environmental protection and energy 2022 ("CEEAG").[3]

- Similarly to the CEEAG, **not everything is green in the GBER**. The long-standing pledge to phase out fossil fuel subsidies, reiterated recently in the political agreement on the 8th Environmental Action Programme, is still not fully implemented. Notably, the GBER leaves room to finance fossil gas[4] projects, either directly for investments in gas infrastructure or high-efficient cogeneration, or indirectly through investments in carbon capture, use and storage (CCUS) equipment.

[1] The full English text of the revised GBER is available on the website of DG competition.
[2] Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia.
[3] ClientEarth's briefing on the CEEAG, 10 January 2022.
[4] The GBER uses the term "natural gas".

- Beyond the possibilities given by the GBER, **its actual use by Member States** to support certain economic activities should be closely watched. This also means that there is a **need for increased transparency on spendings**, to monitor the use of the GBER.

- In parallel with the revision of the GBER, the Commission also approved **the revised TCTF** which enables Member States to (i) support the economy in the context of Russia's war against Ukraine and (ii) introduces new categories to accelerate investments in essential sectors for the green transition, such as for the roll-out of renewables, the decarbonisation of industry, as well as strategic equipment and critical raw materials.

1. Introduction: purpose of this briefing

This is **an informative briefing** on the revised GBER. It only focuses on the parts of the GBER that relate to State aid for energy and the environment.

First, as a background, the briefing gives a general description of the GBER – a vital tool for Member States to grant State aid (section 2). The main changes are then highlighted (section 3) before focusing on the main aid categories that concern energy and the environment (section 4). The briefing then shortly focuses on the TCTF (section 5) and looks at the next steps (section 6). Finally, in addition to the informative sections of the briefing, **ClientEarth shares its view on the revised GBER** (section 7).

2. Background: what is the GBER about?

Due to its distortive effect on the internal market, **State aid is generally prohibited**.[5] However, in some circumstances, government intervention is necessary to address market failures. The EU Treaty lists a number of policy objectives that can be supported through State aid.[6] To ensure that the prohibition is respected and exemptions are applied equally across the EU, the European Commission ("**Commission**") (specifically, DG Competition) is responsible for enforcing the State aid rules.

Member States must therefore notify all new State aid to the Commission and cannot put aid measures into effect before such aid is approved by the Commission. There are however **exceptions** to this notification obligation, such as for aid granted under an already approved aid scheme, *de minimis aid*[7] (below certain amounts) and aid measures covered by an exemption, such as the GBER.

This means that, **aid measures that fall into the scope of application and comply with all the conditions of the GBER must not be notified by Member States to the Commission**. The purpose of the GBER is to consolidate and simplify existing State Aid rules for aid granting authorities at national, regional and local levels. At the same time, it allows the Commission to focus on the more important cases with a higher risk of distortion of competition.

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[5] Article 107 § 1 TFEU.

[6] These policy objectives are listed in article 107 §2 and §3 TFEU and concern, amongst others: the promotion of the economic development of areas with very low standard of living or high underemployment; the execution of an important project of common European interest (IPCEI); the facilitation of certain economic activities or areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

[7] Small state aid amounts (so-called *De minimis* aid) are exempted from state aid control (and therefore notification). The threshold is a maximum amount of EUR 200.000 (likely to be increased to EUR 275.000) for each undertaking over a 3-year period.

The common provisions of the GBER must be applied to all aid awards.[8] These include common conditions and **financial notification thresholds** that cannot be exceeded to benefit from the block exemption. In addition, specific conditions apply for each of the 16 different sections of the GBER[9], such as regional aid or aid for environmental protection and energy.

For aid measures that fall outside the scope of application of the GBER (e.g. because the supported activity is not covered or the amount of the aid measure exceeds applicable notification thresholds), State aid guidelines and frameworks set out the criteria used by the Commission to assess whether State aid measures can be found compatible with the internal market. This means that **the GBER and State aid guidelines are complementary:** the GBER provides conditions that Member States need to comply with through self-assessment before granting State aid, whereas guidelines lay down compatibility rules that the Commission uses to verify notified State aid. Together, these two sets of rules form a comprehensive rulebook for certain areas of State aid law. For energy and environmental aid measures, the following sets of rules are complementary:

- Section 7 of the GBER on environmental protection (see below),
- the CEEAG[10],
- "temporarily": sections on the roll-out of renewables (2.5), decarbonisation of industry (2.6) and investments in strategic equipment of the TCTF (2.8)(see below).

The **importance of the GBER** should not be underestimated. More than 90% of State aid measures are implemented without need to notify the Commission beforehand.[11]

Due to its widespread use and the lack of prior notification before granting aid, **transparency** of the aid granted under the GBER is key. Member States have to publish information on aid awards exceeding EUR 100.000 in the publicly available EU register or relevant national register.[12] This obligation is however poorly complied with by Member States and enforced by the Commission.[13] In addition, Member States have to inform the Commission of all aid awarded after granting it.

The GBER is a Commission regulation and is therefore not adopted in accordance with the ordinary or special legislative procedure.[14] It was endorsed on 9 March 2023, after a long period of revision that started in 2019 with an evaluation of the State aid rules, a targeted revision of the GBER in July 2021[15], and a public consultation launched in October 2021[16]. The revised GBER will **apply until the end of 2026**.

[8] Chapter I of the GBER.

[9] The 16 categories of aid in the GBER are: regional aid, aid for SMEs, aid for European Territorial Cooperation, aid for access to finance for SMEs, Aid for RDI, training aid, aid for disadvantages worked, aid for environmental protection, aid to make good the damage caused by natural disasters, social aid for transport in remote regions, aid for broadband infrastructure, aid for culture and heritage conservation, aid for sport and recreation infrastructure, aid for local infrastructure, aid for regional airports, aid for ports aid for financial products supported by InvestEU Fund.

[10] ClientEarth's briefing on the CEEAG, 10 January 2022.

[11] Letter from Executive Vice-President Vestager to national ministers, 13 January 2022. For more information about GBER measures and expenditure, consult the State aid Scoreboard, the Commission's benchmarking instrument for State aid.

[12] Article 9 GBER; The EU register is the State Aid Transparency Public Search.

[13] For more, consult the Commission's Fact-finding study on the transparency requirements implementation of the under the GBER and relevant guidelines.

[14] The Commission is empowered to adopt the GBER pursuant to article 1 of Council Regulation 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 TFEU to certain categories of horizontal State aid.

[15] Commission press release about the targeted revision of the GBER, that was not subject to a public consultation.

[16] Commission public consultation page of the GBER revision.

3. What are the main changes in the revised GBER ?

The GBER has been revised to further facilitate and speed up the green and digital transition. The amendments intend to align the GBER with the recent changes in various State aid guidelines: the CEEAG but also the Research, Development and Innovation (RDI) Framework, the Broadband Guidelines, Regional aid Guidelines and the Risk Finance Guidelines. This briefing focuses on environmental aid only.

Section 7 of the GBER encompasses the category "**aid for environmental protection**" and **still includes**, subject to modified conditions and notification thresholds (that cannot be exceeded):

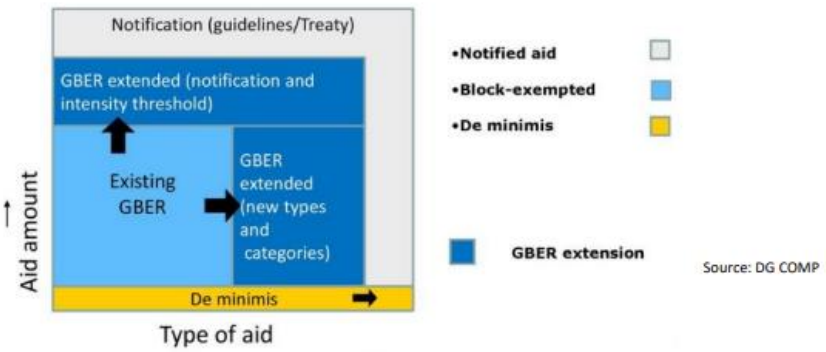
- Investment aid for environmental protection (including to go beyond EU standards) (art. 36)
- Investment aid for energy efficiency measures (art.38, 38a, 38b and 39)
- Investment aid for high- efficiency cogeneration (art. 41)
- Investment and operating aid for renewable energy (including small scale installations) (art. 41, 42 and 43)
- Reduction of environmental taxes under Directive 2003/96/EC (art. 44)
- Investment aid for remediation of contaminated sites (art. 45)
- Investment aid for district heating/cooling (art. 46)
- Investment aid for waste recycling (art. 47)
- Investment aid for energy infrastructure (art. 48)
- Aid for environmental studies (art. 49)

The **new types of aid** that have been introduced in Section 7 of the GBER are:

- Investment aid for clean mobility (art. 36a & b)
- Investment and operating aid for hydrogen (art. 36, 39, 42 and 43)
- Investment aid for carbon capture and storage (CCUS) (art. 36)
- Operating aid for renewable energy communities (art. 43)
- Reduction of environmental taxes or parafiscal levies (art. 44a)
- Investment aid for the protection or restoration of biodiversity (art. 45)
- Investment aid for resource efficiency and to support the circular economy (art 47)

Besides Section 7 on environmental protection, the revised GBER also contains two new provisions to support small and medium enterprises (SME) **to mitigate the effects of the energy crisis** following the war in Ukraine. Aid can be given to **micro-enterprises** (art. 19c) and **SMEs** (art.19d) in the form of **temporary public interventions for the supply of electricity, fossil gas or heat produced from fossil gas**. Suppliers can be compensated for costs incurred from supplying at regulated prices if the public intervention requires them to supply below cost. There are specific conditions to avoid a demand increase, that apply to SMEs only. The notification threshold for this aid amounts to EUR 200.000 per year per undertaking for micro-enterprises and at EUR 2 million per year per undertaking for SMEs. Similar provisions for larger enterprises are contained in the TCTF[17], notably in section 2.4.

The revision of the GBER can be summarized as follows[18]:



Besides the new categories (see above) and particularities addressed under point 3 (see below), most of the changes to the GBER are rather incremental. Yet, in general terms, the following aspects of the revised GBER can be highlighted:

- The **(financial) notification thresholds have been raised significantly**: they doubled for many of the aid categories, such as for investment aid for renewable energy or for district heating/cooling. This widens the scope of application of the GBER and will result in even **fewer formal notifications to the Commission**.
- The revised GBER is **more generous** in how much aid can be given to projects. For many types of measures, the maximum aid intensity rates (expressed as a percentage relative to the eligible costs, usually the investment cost) have been raised. Where aid is granted through a competitive bidding process or based on the funding gap[19] methodology, the aid intensity can be up to 100%. Moreover, as a new feature, if a competitive bidding process is organised, at least 70% of the selection criteria for ranking bids is to be defined in relation the contribution to environmental objectives of the aid measures, whereas 30% could be attributed to other objectives.
- Although support to the “most polluting fossil fuels” is excluded, certain **fossil gas activities**, directly and indirectly, can keep being supported subject to conditions (see below).
- The Energy Efficiency First principle is not mentioned in the GBER, although the CEEAG recognises that it can be a more appropriate tool than State aid for reaching certain objectives.
- Investments in **energy efficiency measures** can be supported outside buildings (art. 38), inside buildings (art. 38a), and through the facilitation of energy performance contracting (art. 38b). The regime has been adapted to allow for higher aid amounts, extended eligible costs and to facilitate the combination of energy efficiency measures with amongst others integrated on-site renewable energy generation and recharging infrastructure for electric vehicles. In all instances, energy equipment fired by fossil fuels, including fossil gas, is excluded from the GBER.

[17] Notably in section 2.4 TCTF “Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices”.
[18] Presentation of the GBER revision by DG Competition.
[19] This is the net extra cost determined by the difference between (i) the economic revenues and costs of the aided project and (ii) those of the alternative project which the aid beneficiary would carry out in the absence of aid; see article 2, para 118 GBER.

- State aid for the production of **nuclear energy is excluded** from the GBER. However, some indirect support to nuclear energy is possible, mainly through the support that can be given to hydrogen produced from electricity (see below). Nonetheless, aid for nuclear energy can be authorised by the Commission directly under art. 107(3)(c)TFEU[20].
- Unlike most guidelines and frameworks, the **GBER does not explicitly provide that aid measures have to comply with Union law** (which includes EU environmental law), which should nevertheless be the case for aid to be compatible with the internal market. The GBER does also not explicitly recognise the "do no significant harm principle".
- State aid in the form of **reductions in taxes under the Energy Taxation Directive**[21] remains possible (art. 44). The initial proposal to include a specific regime for energy intensive users was removed from the final text.[22] In addition, Member States can set up aid schemes under the GBER in the form of **reductions in environmental taxes or parafiscal levies** provided that (i) a higher level of environmental protection is pursued through these taxes or levies and (ii) only undertakings that would not be able to pursue their economic activities are eligible for reductions (art. 44a).

4. Focus on some GBER particularities and aid categories

Environmental protection and decarbonisation measures (art. 36)

This provision encompasses the **residual aid category for environmental protection**, meaning that it applies whenever more specific rules do not apply. It used to mainly encompass aid to go beyond Union standards but has been expanded to include **decarbonisation measures**.

The following investments fall into the scope of this category:

a) **Add-on components** improving the environmental protection of existing equipment, machinery and industrial production facilities, provided it does not expand the production capacity or increase the consumption of fossil fuels (e.g. filters and other interventions to mitigate pollution)

b) **Equipment and machinery using, and dedicated infrastructure**[23] **transporting renewable hydrogen, hydrogen-derived fuels** or **hydrogen produced from electricity** (all subject to specific conditions), provided the aid beneficiary commits to use and/or transport only these types of hydrogen during the lifetime of the investment (see below)

c) **CO_2 capture and transport** provided (i) it is integrated into a complete CCUS chain, (ii) the investment is not profitable over its lifetime and (iii) only the additional investment cost for CCUS receives support

Investments in equipment, machinery and industrial production facilities using **fossil fuels, including fossil gas as such, are excluded**.

[20] Treaty on the functioning of the European Union.
[21] Directive 2003/96 restructuring the Community framework for the taxation of energy products and electricity.
[22] There is a specific regime to support energy intensive users in the CEEAG.
[23] Infrastructure is "dedicated" when it is built for one or a small group of pre-identified users.

These investments should enable a project to increase the environmental protection of the beneficiary's activities (i) beyond, (ii) in the absence of, or (iii) for early adoption of Union standards. For dedicated infrastructure, the increase in environmental protection may also result from another entity involved in the infrastructure chain (e.g. a production unit connected to a hydrogen pipeline). Finally, investment to reduce or avoid emissions must not merely lead to a displacement of emissions.

Aid can be allocated through a competitive bidding process or, in absence thereof, up to a certain percentage of the eligible investment costs.

The notification threshold that applies for aid to fall in the scope of this category is **EUR 30 million per undertaking per investment project** (increased from EUR 15 million), with the exception of dedicated infrastructure that are limited to EUR 25 million per project.

Clean mobility (art. 36 a & b)

This category covers road[24], rail, inland waterway and maritime transport. Member States can provide investment aid for (i) the **refuelling and recharging infrastructure** as well as (ii) the **acquisition or leasing of clean vehicles or zero-emission vehicles and retrofitting of vehicles**. Aid shall in principle be allocated through a competitive bidding process, but can, by derogation, be granted up to a certain percentage of the eligible investment costs.

For refuelling and recharging infrastructure, investment aid can be granted for the construction, installation, upgrade or extension, as well as for on-site production and/or storage of renewable electricity or renewable hydrogen. Refuelling infrastructure supplying any type of hydrogen can receive support, provided that only renewable hydrogen will be supplied by 2035 at the latest. This creates a loophole for unabated fossil hydrogen to receive support.

The aid can target private but also publicly accessible infrastructure, subject to conditions.

The **notification threshold** that applies for aid under these categories is **EUR 30 million** per undertaking per investment project, and specifically for infrastructure and in case of aid schemes, an average budget of EUR 300 million.

Section 15 of the GBER contains specific provisions on **aid to maritime and inland ports (art. 56c & d)[25]**. These provisions also give the possibility to grant aid for recharging and refuelling infrastructure supplying electricity, hydrogen, ammonia and methanol, as well as aid for on-site production and/or storage of renewable electricity or renewable hydrogen. A similar possibility to supply any type of hydrogen applies until 2035.

Fossil gas

Although support to the "most polluting fossil fuels" is excluded[26], Member States can keep supporting fossil gas, **directly and indirectly**, notably through aid for:

[24] This includes electric vehicles but also hybrid vehicles. I also covers mobile terminal and groundhandling equipment.
[25] The notification threshold that applies for aid to maritime ports is 143M per project and is 44 M per project for inland ports.
[26] The most polluting fossil fuels can indirectly still be supported since aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels can receive State aid subject to conditions (article 46, para. 5 GBER).

- Investments in high efficient cogeneration, limited to EUR 30 million per undertaking per project (art. 41)
- Investments in gas-fired district heating and cooling networks, limited to EUR 50 million per undertaking per project (art. 46)
- Investments in gas infrastructure (see below art. 48)
- Investments in CCUS (see above art. 36)
- Temporary public interventions for the supply of electricity, fossil gas or heat produced from fossil gas, to mitigate the energy crisis (see above art. 19 c & d)

For the direct investments into fossil gas (first two measures listed above), aid may be granted only where **compliance with the 2030 and 2050 climate targets** is ensured. The Commission considers this to be the case if the technical screening criteria of respectively Annex I, section 4.30 and 4.31 of the Taxonomy Delegated Regulation[27] are met. This specific reference to the Taxonomy Regulation differs from the Commission's approach in the CEEAG that relies on the "loose" concept of avoiding "lock-in" to allow aid.

Similarly, the Commission requires gas infrastructure to be "hydrogen-ready" to comply with the 2030 and 2050 climate targets (see below).

CCUS, a lifeline for fossil gas, is presumed to contribute to the 2030 and 2050 climate targets (see above art. 36). However, the weak conditionality and lack of standards (on capture of CO2, methane leakage, etc.) or any limitation as to its use, may prove problematic to achieve those climate targets.

Energy efficiency measures based on fossil gas, whether inside or outside buildings, are excluded from the GBER (art. 38, 38a and 39). Aid in the form of capacity contracts aiming at increasing gas back-up capacity is also excluded from the GBER, but can be notified to the Commission in line with the CEEAG.

Hydrogen

Mainly **renewable hydrogen** can receive direct support under the GBER. However, more broadly, Member States can grant aid for:

- equipment and machinery using and (dedicated) infrastructure transporting renewable hydrogen, hydrogen-derived fuels or hydrogen produced from electricity (all subject to specific conditions), provided the aid beneficiary commits to use and/or transport only these types of hydrogen during the lifetime of the investment (see above art. 36)
- investment in hydrogen infrastructure subject to third party access[28] (see above art. 48)
- hydrogen refuelling infrastructure for clean mobility (see above art. 36b)
- investment aid or the production of renewable hydrogen, including dedicated hydrogen infrastructure projects, limited to EUR 30 million per undertaking per project (art. 41)

[27] Commission Delegated Regulation 2022/1214 of 9 March 2022 as regards economic activities in certain energy sectors and Delegated Regulation 2021/2178 as regards specific public disclosures for those economic activities.
[28] This includes (i) transmission and distribution pipelines, (ii) storage facilities, (iii) facilities to dispatch, receipt, re-gas or decompress, (iv) terminals, (v) interconnectors and (vi) any equipment essential for the hydrogen system.

- operating aid for the production of renewable hydrogen in small scale installations (see below art. 43)

Renewable hydrogen is defined by reference to the applicable secondary legislation.[29] Support to low-carbon hydrogen[30] is excluded, yet industry can receive support for the use of **hydrogen produced from electricity**[31] to decarbonise.

Similarly to the CEEAG, support to hydrogen is not subject to any further conditions, such as limiting the aid to hard-to-abate sectors.

Small-scale renewable projects and renewable energy communities (art.43)

Operating aid for small-scale renewable energy projects has been extended to also include **renewable hydrogen** and **renewable energy communities** ("REC") have been explicitly recognised. The following projects fall into the scope:

(i) electricity generation, storage or consumption projects up to 1MW capacity

(ii) heat generation and gas production technologies up to 1MW capacity

(iii) renewable hydrogen projects up to 3MW capacity

(iv) projects for the production of biofuels bioliquids, biogas, biomass fuels up to 50.000T/year

However, for projects referred to above under (i) to (iii), the threshold increases to 6MW capacity if it is 100% SME-owned and to 18MW for wind generation if 100% owned by micro or small enterprises (not medium ones).

Separately, REC can benefit from the GBER for renewable energy projects up to 6MW, and up to 18MW capacity for wind projects.

Aid shall be granted over the lifetime of the project as a **feed-in premium or in the form of a contract for difference**. As an exception, power-generating small scale projects (whatever the size or status of the undertaking or organisation) below 400kW, may benefit from feed-in tariffs. This threshold will be decreased to 200kW as from 1 January 2026.

Small-scale hydropower is also included, despite their disproportionate negative impacts on the environment compared to their relatively small energy contribution.

The **notification threshold** that applies for aid under this category is **EUR 30 million** per undertaking per project, the sum of all budgets of all schemes should however not exceed **EUR 300 million** per year.

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[29] It is defined as hydrogen produced from renewable energy in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of nonbiological origin in Directive (EU) 2018/2001.

[30] It was included in the draft revised GBER and was defined as per Section 3.10 of Annex I of the Commission Delegated Regulation 2022/1214.

[31] Hydrogen produced from electricity can receive support if it achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO2eq/MJ (2.256 tCO2eq/tH2). To determine the life-cycle greenhouse gas emissions savings, the greenhouse gas emissions linked to the production of electricity used to produce hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid.

Energy infrastructure (art. 48)

Member States can keep supporting infrastructure for **electricity, gas[32], hydrogen, CO_2, thermal energy and projects of common/mutual interest** (PCI/PMI). However, are **excluded** from the scope (and would need to be notified to the Commission):

(i) Aid for energy infrastructure that is partly or fully exempted from internal energy market rules (third party access or tariff regulation),

(ii) Aid for investments in electricity or gas storage.

Gas infrastructure can only be supported under the GBER if[33]:

(i) the infrastructure is dedicated to the use for hydrogen and/or renewable gases, or

(ii) used for the transport of more than 50% hydrogen and renewable gases.

These conditions are ambiguous as it is unclear how "dedicated" differs from the actual use, and seems to imply that the infrastructure has to be "**hydrogen-ready**". Also, any type of hydrogen (including un-abated hydrogen) can be transported through such supported infrastructure.

The aid amount can go up to 100% of the funding gap of the investment costs. The notification threshold that applies is **EUR 70 million** per undertaking per project.

5. Is there a link with the Temporary Crisis and Transition Framework ?

The revised GBER and the amended TCTF were endorsed together by the Commission. Both are seen as frameworks that will help speeding up investment and financing in "clean" technologies in Europe.

The TCTF[34] was adopted in March 2022 to enable Member States to support the economy following Russia's war against Ukraine. It was then amended in July and October 2022 to implement **RepowerEU[35]**:

(i) by introducing the possibility to grant aid to accelerate green investments, such as the roll-out of renewable energy (incl. hydrogen) and industrial decarbonisation, and

(ii) by supporting mandatory/voluntary gas reductions and the filling of gas storage facilities.

The March 2023 amendment revolves around the implementation of the **Green Deal Industrial plan**:

(i) the conditions for aid to accelerate "green" investments have been simplified, and

(ii) the possibility for aid to support investment in strategic equipment as well as the production of key components and for the production and recycling of related critical raw materials has been introduced.

[32] This includes fossil gas, biogas (including biomethane), renewable gas of non-biological origin.
[33] Support to gas infrastructure under the CEEAG (para. 382) is broader.
[34] It used to be called the Temporary Crisis Framework or "TCF".
[35] The Commissions RepowerEU plan, 18 May 2023.

Aid schemes to accelerate green investments and strategic equipment can be implemented **until 31 December 2025**. Other parts of the TCTF that have as a prime objective to support the economy due to the war in Ukraine will normally expire at the end of 2023.

Member States thus have **several frameworks** at hand to support “green” investments. It must be kept in mind that aid schemes that fall into the scope of application of the GBER are exempted from notification to the Commission, whereas **aid schemes pursuant to the TCTF need to be greenlighted by the Commission** before being put in place. The approval of these TCTF schemes are however fast-tracked by the Commission compared to the regular aid measures that are assessed pursuant to regular guidelines or frameworks (such as the CEEAG) or directly under the Treaty provisions.

6. What is next ?

The revised GBER has been endorsed by the Commission but it still needs to be published in the Official Journal of the EU to enter into force.

Existing aid schemes exempted under previous versions of the GBER will have to be aligned with the revised GBER. Member States benefit from an **adjustment period of six months following the entry into force of the revision to amend existing aid schemes**, if needed. Those amendments do not apply retroactively to aid that has been granted before the entry into force of the revised GBER.

As aid measures under the GBER are exempted from prior Commission approval, the GBER needs to be a **straightforward tool** for national and regional State aid granting authorities. To clarify certain aspects, the Commission may in the coming months, as it did before, provide additional guidance on the application of the GBER in a FAQ[36].

The revised GBER is the final piece in the long process to adapt the State aid rules on energy and environmental protection with the Green Deal. The revised GBER will **apply until the end of 2026**. The CEEAG on the other hand were adopted in January 2022 and, although they do not have an end date, will be evaluated as of 31 December 2027. Depending on the circumstances, the Commission may decide to prolong the GBER and/or to do a targeted revision of certain parts of the GBER. The same applies to the TCTF, of which certain parts expire at the end of the 2023 whereas other parts only at the end of 2025, that could be prolonged and/or amended in the coming months.

7. Conclusion – ClientEarth’s views on the revised GBER

To reflect the changes needed to speed up the EU's energy transition, it is clear that revising parts of the GBER that focus on energy and the environment to align it with the Green Deal were necessary.

*O*verall, the revision contains **several positive developments**. It maintains the possibility to support **renewable energy** with investment and operating aid, including small scale installations. It rightly values **renewable energy communities** by providing an explicit support framework. The newly introduced possibility to provide investment aid for the protection or restoration of biodiversity and for clean mobility are also welcome additions to the GBER, although with certain caveats for clean mobility. Efforts have

[36] General Block Exemption Regulation (GBER) Frequently Asked Questions.

also been made to further support energy efficiency measures in buildings, outside of buildings and through energy performance contracting.

However, the revised GBER also contains **areas of serious concern and missed opportunities**. The maintained support to **fossil gas** is the major point of contention of the revised GBER. Although support is more limited now than before the revision, direct support remains possible for high-efficiency cogeneration and district heating/cooling networks. The Commission's view that compliance with the 2030 and 2050 climate targets can be reached by subjecting investments to the technical screening criteria of the Taxonomy Delegated Regulation is flawed, as the latter's sustainability label should be considered unlawful in the first place.[37] Similarly, assuming that fossil gas infrastructure complies with the climate targets if it is "hydrogen-ready" is a slippery slope given the complete lack of guidance on that condition.

With respect to **hydrogen**, the focus of the support rightfully mainly lies on renewable hydrogen, but is unfortunately not limited to (or targeted at) hard-to-abate sectors. Also, non-renewable hydrogen is indirectly supported through aid that can be given to hydrogen infrastructure.

Although the possibility to support **industrial decarbonisation** can be welcomed as a matter of principle, it includes the possibility to support **CCUS** without any strong standards and without limiting it to hard-to-abate sectors. This provides another unjustified lifeline to fossil gas, instead of reserving CCUS as a last resort option for industrial decarbonisation. On the upside, unlike initially suggested, no specific regime to support energy intensive users in the form of reductions in taxes under the Energy Taxation Directive was added to the GBER.

Finally, failing to include the **energy efficiency first principle** as a guiding principle to be applied before considering whether to grant aid is a missed opportunity.

The GBER provides the **enabling legal framework** for Member States to grant aid without any prior notification to the Commission. Member States are ultimately the ones responsible for setting public funding priorities and have to self-assess compliance with the conditions set out in the GBER. It is important to be wary of the loose concepts and lack of conditionality for certain **environmentally harmful activities**, besides the poor transparency and monitoring of the aid granted – forewarned is forearmed.

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[37] ClientEarth, together with WWF, Transport & Environment and Bund launched a legal procedure in April 2023 before the Court of Justice of the European Union against the European Commission's refusal to remove fossil gas from the EU's sustainable finance Taxonomy against the European Commission in April 2023.