

FITNESS CHECK OF STATE AID RULES

2. TARGETED CONSULTATION FOR THE EVALUATION OF THE GUIDELINES ON STATE AID FOR ENVIRONMENTAL PROTECTION AND ENERGY 2014-2020 (EEAG)

INTRODUCTION

In 2012, the Commission launched the State aid modernisation with the objectives to: 1) foster sustainable, smart and inclusive growth in a competitive internal market; 2) focus Commission's ex ante scrutiny on cases with the biggest impact on the internal market; and 3) streamline the rules and provide for faster decisions. In view of these objectives, the Commission has since 2013 revised a number of State aid rules, including the State aid Guidelines for environmental protection and energy (EEAG).

In January 2019, the European Commission announced its intention to prolong seven sets of State aid rules for a period of two years and launched a comprehensive policy evaluation in the area of State aid ("Fitness Check"). Part of this exercise is the evaluation of the State aid Guidelines for environmental protection and energy to reflect if the current rules are still fit for purpose.

Besides the general public consultation on the fitness check of EU State aid rules, this targeted consultation aims to ask supplementary questions in order to gather stakeholders' views on the implementation of the State aid Guidelines for environmental protection and energy and the provisions applicable to aid for environmental protection (and energy) (Section 7) of the General Block Exemption Regulation (GBER) and to receive insights about potential gaps, overlaps or excessive regulatory burden.

You are kindly invited to reply to a set of 19 Questions. Please make sure you use the save button as you proceed with the questionnaire to avoid losing information that was already inserted - especially in the case of questions with open replies. At the end of the survey you will have an opportunity to provide broader, more general comments and to upload documents, which you consider as relevant.

The Commission will publish an analysis of the results of the Fitness Check and examine possible follow up actions at the beginning of 2020.

ABOUT YOU

Public, Your personal details (name, organization name and size, transparency register number, country of origin) will be published with your contribution.

- Language of contribution: English
- First name / surname: Dutch authorities: Interdepartementaal Staatssteun Overleg (ISO)
- I am giving my contribution as: Public authority
- Organization name: Dutch authorities: Interdepartementaal Staatssteun Overleg (ISO)
- Scope: National public authority
- Organization size: National public authority
- Transparency register number: not relevant
- Country of origin: The Netherlands
- E-mail (this won't be published): You will receive our e-mail address separately.
- Please describe the main activities of your organization, if applicable: This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.

- Please describe the relevance of State aid rules for you: The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands
- How would you best describe the nature of your understanding and involvement in matters related to State aid rules? The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules and therefore have a broad knowledge and experience with the State aid rules.
- Publication privacy settings: Public
- I agree with the [personal data protection provisions](#)

EFFECTIVENESS

In this section, we would like your opinion on the extent to which the State aid Guidelines for environmental protection and energy (EEAG) and the provisions applicable to aid for environmental protection (which include provisions on energy) (Section 7) of the General Block Exemption Regulation (related GBER provisions) have achieved their objectives and delivered results.

1. Based on your experience, to what extent have the EEAG and the corresponding GBER provisions (e.g. tendering, technological neutrality, market integration) been effective in:

(To a large extent, to some extent, not at all, I do not know)

- Enabling the deployment of renewables while lowering societal costs and reducing the amount of aid needed?
- Facilitating the integration of renewable energy into the electricity market?
- Ensuring financing of support schemes to renewable energy sources, while limiting negative impacts on the competitiveness of EU firms?
- ensuring that capacity mechanisms were necessary and cost-effective in providing security of supply and least-distortive to competition and intra-EU trade?
- ensuring that capacity mechanisms did not negatively impact the objective of phasing out environmentally harmful subsidies including for fossil fuels?
- ensuring that in cogeneration and district heating the most cost-efficient projects could be realised?

To a large extent.

In the Netherlands the main aid instrument for renewables (the SDE+) is an operating (feed-in-tariff) subsidy. Producers receive a guaranteed payment (subsidy) for the energy they generate from renewable sources. The production of renewable energy is not always profitable because the cost of production is higher than for fossil energy. SDE+ compensates only for the difference between the cost price of renewable energy and the market value of the energy supplied: the *unprofitable component*. The amount of the subsidy depends on the technology used and the amount of renewable energy produced. Cornerstones of the SDE+ are 1) **one budget for all technologies taken together**: the budget is distributed to project applications involving the lowest production costs (base amount) first in order to achieve the most cost efficient production of renewable energy); 2) a **phased release of funds**: each round of applications is divided into several phases. This phased release of funds maximizes cost-effectiveness of renewable energy production; 3) a **maximum base amount**: for each technology there is a maximum base amount and a maximum number of full-load hours per year above which no subsidy is paid. Technologies that are able to produce renewable energy for the maximum base amount or less are eligible for aid in the SDE+ scheme and finally 4) **an open category**: an applicant can also apply for a lower subsidy than the maximum base amount for the technology in question. This allows applicants to tailor their subsidy application more closely to

their specific project. The amount of subsidy applied for in the 'open category' must be lower than the maximum phase amount in the SDE+ and higher than the base price for energy.

The main difficulty experienced in the past years in applying EEAG and GBER in the case of subsidies for renewables has been the fact that, although the basic tenets of the aid scheme did not change and fitted very well in the basic principles of the EEAG and GBER, any change or increase in budget necessitated a complete scrutiny of the aid scheme, which resulted in risks for the planning and release of the new scheme and hence in attaining the policy goals for the energy and climate transition. We would welcome an open minded approach where the necessary state aid scrutiny would be limited to fundamental changes of a scheme and not every aspect of it. This would make us more flexible in adjusting the system to developments in technology or markets.

At the moment, new and urgent policy measures to combat climate change are being developed, new mechanisms for stimulating greenhouse gas reduction technologies are being explored: the present guidelines do not provide a proper basis to fit such a broadening of the scope. EEAG and GBER work with terms and definitions e.g. on stimulating production of renewables or improving energy efficiency. There is no framework for a mechanism based solely or primarily on greenhouse gas reduction as such. More specifically, we are now developing a new measure with new characteristics:

1. Broadening of the scope of our SDE+-scheme, to include greenhouse gas reduction technologies that do not produce renewable energy (e.g. CCS)
2. Competition between technologies based on €/tCO₂ instead of €/kWh, to ensure fair competition;
3. In the calculation of the unprofitable component for greenhouse gas reduction technologies, the base energy price will become the floor price which includes the ETS price for greenhouse gas emissions.

In the framework of such a broader support scheme the limitations on aid for energy-efficiency measures to a maximum of five years (EEAG pt. 149), provide an obstruction since this is a much shorter period than currently envisaged for other technologies. We would welcome a change to the EEAG and GBER that will help such an approach.

2. Based on your experience have Member States created a level playing field for imported and domestically produced biofuels and/or biomass energy when providing support (for instance by supporting a specific type of domestically produced biofuels and/or biomass energy, but not other types of biofuels and/or biomass energy with similar costs or greenhouse gases emissions)?

Yes.

Please explain (max 1000 character(s)): in the SDE+ scheme there is a level playing field for different types of biomass. The origin of the biomass does not matter. For wood pellets we have sustainability criteria, which include the total CO₂-emissions in the supply chain. This is based on the production, transport and use of the biomass and builds on the BIOGRACE model.

3. Based on your experience, to what extent has the GBER ensured public support for waste recycling while limiting the amount of aid to the minimum and limiting distortions of competition to the minimum?

To some extent.

Please explain (max 1000 character(s)):

Article 47 of the GBER helps to support waste recycling projects. Article 47 states that:

The eligible costs shall be the extra investment costs necessary to realize an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.

The reference to be used creates in practice some difficulties. For the waste recycling company that has a certain way of recycling as its core business, there is mostly no realistic alternative investment as meant in point 73 of the MESK. Therefore it seems more effective to be able to compare the aid initiative (and eligible costs) of the beneficiary with the situation what otherwise would happen with the waste (disposal in an environmentally unfriendly manner), instead of what the waste recycling company would otherwise invest in. Incineration of the waste could then for example be a realistic alternative scenario. Also difficult are projects in which the recycling process leads to the creation of more than one feedstock, whereby the recycling process might also create feedstocks that can serve as feedstock for chemical processes in industry as well as as fuel for energy purposes (the latter not being allowed to support).

More detailed feedback: article 47, point 3 of the GBER mentions: "The recycled or re-used materials treated...". We think this should be: "The materials to be recycled or re-used..." since the materials won't be disposed of if they have been recycled or re-used. Point 5 of this article is difficult to read and control, and for the beneficiary to substantiate.

4. Based on your experience, to what extent has Article 39 GBER allowed aid through financial instruments for energy efficiency measures in buildings while limiting distortions of competition at the level of the financial intermediary and the funds involved?

(To a large extent, To some extent, Not at all, I do not know)

To some extent.

Please explain (max 1000 character(s)):

To some extent, although art.39 GBER focuses on a fund and a fund manager and sets out several conditions that make solutions possible for non-undertaking end-users difficult. We would prefer more possibilities to help owner-occupants (citizens) to take energy-efficiency measures through various constructions where people are helped out with various steps to be taken in this process.

Moreover, for owners Associations of an apartment building with a small amount of dwellings to be property of a private landlord (e.g. 30%), it would be preferable the owners Association can rely on the rules for owner-occupants because it is one association. To set different rules for the members of the owners Association is not helpful to reach the environmental goals to take more energy-efficiency measures, esp. in dwellings.

Furthermore it would be helpful if the first loss (art.39.8 sub c GBER) can be more than 25%. We see no problem in terms of distortion of competition, considering all the other conditions for a fund, to raise the first loss to a maximum of 50%.

5. Based on your experience, has State aid granted under the EEAG or the GBER generally achieved the relevant climate and environmental protection objectives while maintaining a competitive internal market?

(To a large extent, To some extent, Not at all, I do not know)

To a large extent.

Please explain (max 1000 character(s)):

To a large extent. However maintaining a competitive internal market means that the principle that state aid should not be granted for or linked to relocation of jobs or activities between Member States is important. Energy and environmental investments in a non assisted area should not be hampered because of (too) high aid intensities for energy and environmental investments located in assisted areas.

6. Based on your experience, has State aid granted under the EEAG or the GBER generally achieved the relevant energy objectives while maintaining a competitive internal market?

To a large extent. However:

The State aid framework needs to be reformed so that it contributes to and does not counteract the development towards a fossil-free society as well as the implementation of the Paris Agreement . This includes enabling Member states with better tools to combat climate change, including improving the public financing tools at a level necessary for enabling the transition of the fossil fuels based industry into more climate friendly technologies, such as CC (U) S . In line with this, the framework must also contain a phasing out of aid harmful to the fossil-free society, while ensuring European industry stays internationally competitive in its transition towards a sustainable and climate-neutral economy.

In such a climate adaptation of the State aid framework, it is necessary that regions and sectors in Europe are not left without the possibility to participate in the necessary transition, enabling cross-border infrastructure and transport involved with the carbon neutral economy. It should neither bring about unbearable financial burden to the local population nor to industries in their transition to a fossil-free society nor have unacceptable impact on areas such as energy security, and would enable just transition of the workforce to other areas of activity. In such a climate adaptation of the State aid framework new forms of projects caused by the circular economy concept should be taken on board. Better design and use of products and better re-use of materials already in circulation will reduce the consumption of fossil resources and thus emissions.

We would suggest a possible new State Aid tool in the form of a Guideline or Notice based on Art. 107 (3)(c) enabling Member states to take the political decisions necessary to pursue climate-friendly goals, including to support new value chains and structures and new employment possibilities as a substitute for the ending of functioning value chains .

7. Based on your experience, have there been any unexpected or unintended results from the implementation of the EEAG and the corresponding GBER provisions?

To some extent. The main bottleneck in the implementation is the requirement in the definition of environmental protection which states that the environmental protection should be realized by the beneficiary's own activities.

For the purposes of these Guidelines the following definitions apply:

'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy

However in some cases the environmental protection is realized by the activities of other stakeholders/undertakings, who are not the direct beneficiary of the aid. In some cases environmentally friendly investments realized by the (potential) beneficiary of the aid only remedy or prevent damage to physical surroundings or natural resources or lead to more efficient use of natural resources, through other companies or consumers not benefitting directly from the aid. A new definition of environmental protection should take this into account.

8. Are there sectors (at NACE 4 level and products (at Prodcom 8 level) which, were included in the list of eligible sectors and products for reductions under section 3.7.2. of the EEAG (c.f. Annex 3 and Annex 5 of the EEAG), but which, according to your experience, were not particularly affected by the financing costs of renewable energy support and therefore were not put at a significant competitive disadvantage?

(Yes, No, I do not know)

NO

If you replied Yes to the question above, please list those sectors and subsectors and substantiate your answer (max 1000 character(s)):

9. Are there sectors (at NACE 4 level) or products (at Prodcom 8 level) which, according to your experience, were particularly affected by the financing costs of renewable energy support and therefore were put at a significant competitive disadvantage, but were not included in the list of eligible sectors for reductions under section 3.7.2. of the EEAG (c.f. Annex 3 and Annex 5 of the EEAG)?

(Yes, No, I do not know)

NO

If you replied Yes to the question above, please list those sectors and subsectors and substantiate your answer (max 1000 character(s)):

10. Based on your experience, have the minimum own contributions of the full electricity surcharges of 15 % of the full renewable surcharge, and 4 % and 0.5 % of the Gross Value Added of the undertaking concerned (see points 188 and 189 of the EEAG) been adequately set to ensure a sufficient financing basis for the underlying energy policy?

(Too high, Too low, Adequate, I do not know)

- 15% of the full renewable surcharge:
- 4% of the Gross Value Added:
- 0,5% of the Gross value Added:

Please substantiate your answer: (max 1000 character(s)):

Not relevant:

In the Netherlands there is no specific surcharge for financing renewable energy support, because this would be inconsistent with the Dutch budget rules with its strict separation of government's revenues and expenditures. Therefore the specific restrictions as mentioned above for this type of surcharge are not relevant for The Netherlands.

11. Based on your experience, have the reductions in electricity surcharges given to energy-intensive users (EIUs) created market distortions?

(Yes, No, I do not know)

Please substantiate your answer: (max 3000 character(s)):

No, the European level playing field was not distorted.

12. Based on your experience, what impact have reductions granted to energy intensive users had on renewable energy charges and other relevant charges paid by non-energy intensive industrial consumers and households?

(Excessive, Adequate, I do not know)

Please substantiate your answer: (max 3000 character(s)):

In the Netherlands from 2013 the energy tax is increased by a separate surcharge which however must be considered as a regular increase of the energy tax. According to the Dutch budget rules there is a strict separation between fiscal revenues and government's expenditures. The existing reductions in the energy tax are fully granted in the surcharge as well. As a result 50% of the fiscal income comes from households and 50% from industries.

13. Based on your experience, has the higher aid intensity allowed under point 78 of the EEAG been adequate to address the double market failure linked to the higher risks of innovation and the environmental aspects of the project without creating unnecessary distortions of competition?

(Yes, Not adequate (too low aid intensity), Not adequate (too low aid intensity), I do not know)

Please substantiate your answer: (max 1000 character(s)):

As for point 78 a: However maintaining a competitive internal market means that the principle that state aid should not be granted for or linked to relocation of jobs or activities between Member States is important. Energy and environmental investments in a non assisted area should not be hampered because of (too) high aid intensities for energy and environmental investments located in assisted areas.

The Commission should take into account that more developed industrial areas in Europe have higher costs when investing in innovation and environmentally friendly projects than less developed industrial areas.

EFFICIENCY

In this section, we would like to know your opinion about the efficiency of the EEAG and the related GBER provisions.

14. Based on your experience, to what extent are the different compatibility conditions and methodologies included in the EEAG and the GBER related provisions sufficiently clear and easy to apply:

(Yes, No, I do not know)

- In general terms? YES, however. For several years we see complex projects being proposed that fit our policy goals of climate and energy transition but where the own activities of a beneficiary do not in itself lead to environmental protection such as defined in (19) of the EEAG. E.g. the aid helps to finance investments in certain infrastructure but the environmental protection comes into existence when consumers benefit from energy savings or efficiency. The general rules regarding energy infrastructure do not always apply. Therefore, the GBER-section concerning the aid for environmental protection should be extended in order to grant aid for investments that will contribute to the EU's environmental and climate goals. Recently the Commission approved public support for the installation of CO2 capture technology. Companies will be able to use excess waste CO2 instead of using primary energy sources that produce CO2. This will benefit the environment not only by means of energy saving but as well as by disposing the waste CO2.
- As regards the methodology for calculating eligible costs for investment aid to go beyond standards, in the absence of standards and early adaptation to standards under Article 36 of the GBER and points 73 to 75 of the EEAG? YES. However we would like to mention that Opex costs caused by the temporary shut down of a running production process, because of an investment under article 36 GBER, are not eligible. In cases where a rapid energy transition is necessary because of climate goals, it sometimes is

- inevitable that running production processes temporary have to shut down in order for a new investment to take place. Could the Commission reflect on this?
- As regards the criteria for limiting bidding processes for renewables to specific technologies (see EEAG point 126 and GBER Article 42.3)? To a certain extent: during the notification process of the SDE+ in 2014 we were able to use the arguments provided for in article 42.3 for the special regime regarding wind off shore.
 - As regards the methodology for calculating eligible costs for investment aid to renewables and co-generation (CHP) projects? I do not know
 - As regards the methodology to assess proportionality of aid based on levelized cost of energy (see point 131 of the EEAG and Article 43, paragraphs 5 and 6 of the GBER)? I do not know
 - As regards the provisions for demonstration projects (as defined in point 19 paragraph 45 of the EEAG) and for the new and innovative renewable energy technologies (see Article 42.4 of the GBER)? In the Netherlands aid for demonstration projects as defined in point 19 paragraph 45 of the EEAG is not often being granted. For new and innovative renewable energy technologies often investment aid (article 41 of the GBER) is being granted. Operational aid is granted based on a separate approval of the Commission, not the GBER. Article 41 is not specifically suited for innovative technologies, but mostly it works. Problems may occur when defining the reference technology (is the innovation more environmentally friendly), especially when innovation is aimed at cost reduction. Because of our operational aid scheme, some technologies may be considered standard, but may still not have a sound business case if cost reduction is realized. In these cases investment aid is not easy to apply (no extra costs relative to the counterfactual scenario). We would appreciate a definition of "small installation" in article 41, point 6, sub c, of the GBER.
 - As regards the methodology to assess eligible costs for energy-efficiency investment aid under Article 38 of the GBER? Although the definition of energy efficiency causes a lot of discussion (only energy savings in the company, or also in the production chain/indirect savings?), the methodology to assess eligible costs works fine for simple cases. Problems occur when companies choose more complex ownership constructions to realize an energy efficiency project. In some sectors, for example industry, we see more and more that companies would like to invest in environmental protection measures in a way that does not affect their balance. This has several advantages for the company, among which a better return on total invested capital and better financing conditions due to a better equity position (solvency). Investments that affect their balance would make them less attractive to financiers. These companies are, however, willing to invest in environmental protection measures.

For example: Company A has a heat surplus. Company A would like to invest in a measure to store that heat, so it can use the heat later on in another process in the same facility. However, they want to do so off-balance. Therefore they establish a new undertaking B, together with the developer C of the heat storage facility. Company A takes a minority interest in company B. The new undertaking will invest in the heat storage facility. Company A will buy the heat from undertaking B and will pay a yearly fee for that. In this way, company A realizes energy-efficiency.

The eligible costs in the case of energy efficiency are the extra investment costs necessary to achieve the higher level of energy efficiency, according to article 38 of the GBER. Point 72 of the EEAG further details this by mentioning that the eligible costs for environmental aid are the extra investment costs in tangible and/or in intangible assets which are directly linked to the achievement of the common objective. The GBER and EEAG furthermore define environmental protection as any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's *own activities*, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy.

If we apply this to the above mentioned example:

Company A is the party that realizes a higher level of environmental protection, because heat from their processes that otherwise would leave the chimney is used later on, preventing heat

production later on. However, company A does not invest in tangible or intangible assets, so cannot be directly supported. Company B invests in tangible assets but cannot be supported either: the aid does not increase its own level of environmental protection, but the level of environmental protection caused by the activities of company A. We consider this a coordination failure and would like to be able to support these types of projects. We would think that due to the yearly fee company A pays to company B, we can be certain that company A will indeed increase its own level of environmental protection due to the investments made by company B. It therefore seems fair to compensate company B for the otherwise unprofitable investments in tangible assets, but article 38 of the GBER does not offer a sound basis for that. The next question would be , whether the fact that company A takes a minority interest in company B is relevant? An example where this is not the case, is for example when energy service companies invest in energy efficiency measures.

- As regards the compatibility conditions (in particular the full passing on, the leverage condition, the conditions imposed on the financial intermediaries) for energy efficiency projects in buildings (see paragraphs 4 to 10 in Article 39 of the GBER)? The conditions imposed on the financial intermediaries are quite numerous. Furthermore, in art.39.8 sub c, GBER the maximum of 25% first loss should be raised in order to make more projects possible (we refer to the answer under point 4).
- As regards the compatibility conditions for aid for Resource Efficiency (section 3.5.1 of the EEAG read in combination with section 3.2 of the EEAG)? In the climate adaptation of the State aid framework new forms of projects caused by the circular economy concept should be taken on board. Better design and use of products and better re-use of materials already in circulation will reduce the consumption of fossil resources and thus emissions.
- As regards the compatibility conditions (in particular the "state of the art" requirement, the "polluter pays principle" and the "treatment of the waste of others") for waste management projects under 47 of the GBER and section 3.5.2 of the EEAG? We refer to the answer under question 3.
- As regards the methodology for calculating eligible costs for waste management projects under Article 47 of the GBER and section 3.5.2. of the EEAG? . We refer to the answer under question 3.
- Other (please specify)
- Please explain (max 5000 character(s):

In addition, as regards the calculation of maximum aid for investments in energy efficient district heating or cooling, the wording of article 46 GBER poses a problem: Art 46, point 6, GBER (investment aid for energy efficient district heating and cooling) states that:

"The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The **operating profit** shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism."

The term operation profit is defined in de GBER as:

"the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, **but exclude** depreciation charges and **the costs of financing if these have been covered by investment aid**. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made".

This seems to suggest that, in calculating the maximum (investment) aid, the aid itself has to be taken into account when looking at the eligible costs, which is difficult to do. Could this point be clarified e.g. do they only strictly relate to financing such as bank fees or legal costs? There is no definition of *costs of financing* in the GBER.

15. Based on your experience, how do administrative costs incurred by the aid application under the EEAG and GBER related provisions compare with the actual amount of compensation received?

The simplification of the calculation of the eligible costs for investment aid in the GBER (without having to calculate operational costs and benefits) certainly helped to lower administrative costs incurred by the aid application. We suggest that this simplification could also be applied to articles 48 and 56 of the GBER.

Please rate from very low (administrative costs representing less than 1% of the actual amount of compensation received) to very high (administrative costs representing more than 20% of the actual amount of compensation received):

The administrative costs differ a lot, depending on the aid scheme that is applied and the maximum subsidy that is available per project. As an example, the DEI+ scheme has an administrative burden of 1-2% of the available budget. More than 5% would be unacceptable in the Netherlands.

Proportion of administrative costs in total actual amount of compensation received: (Very low (less than 1%, Low (between 1% and 5%), Intermediate (between 5% and 10%), High (between 10% and 20%), Very high (more than 20%), I do not know

No remarks

Please explain (max 1000 character(s):

RELEVANCE:

16. Based on your experience, have the EEAG and GBER adequately addressed recent market developments or technological changes such as:

(Yes, No, Partially, I do not know)

- Storage: No
- Zero subsidy bids:
- Repowering:
- Renewable energy power purchase agreements:
- Renewable self consumption and/or active consumers:
- Citizens energy communities and/or renewable energy communities:
- Hydrogen, synthetic fuels and low carbon gas: No
- Alternative fuel infrastructure (publicly accessible or dedicated infrastructure):
- Low or zero emission vehicles:
- Carbon Capture, Storage and/or Utilisation: Partially.
- Nearly-zero-energy building:
- Smart energy technologies (e.g. in buildings):
- Energy services (e.g. energy performance contracting):
- Advanced technology for water reuse (e.g. membranes and UV):
- Other (please specify): advanced biofuels, biobased feedstocks/circular economy, heat networks/storage/exchange; electrification technologies (no)

Please explain (max 1000 character(s):

Storage

Without prejudice to the fact that public support for some energy infrastructure does not always constitute state aid, the definition of energy infrastructure is too narrow and does not fit current developments, to be able to support investments in innovative (large scale) energy storage and flexibility for the energy system in cases where the R&D framework is not applicable. The restriction in article 48 that aid can only be applied in assisted areas does not help to stimulate necessary initiatives that constitute state aid either. The Innovation Fund seems to have a broader scope than the GBER and EEAG.

Hydrogen

- GBER and EEAG do not have sufficient possibilities to support investments in other sustainable energy carriers like hydrogen and ammoniac, though hydrogen is expected to

play an important role in realizing a carbon neutral economy. State aid for green hydrogen production is not addressed in the EEAG.

Carbon Capture, Storage and/or Utilisation

For carbon capture and storage (CCS) the provisions in the EEAG are clear. Carbon capture and utilization (CCU) is also an important measure to realize the CO₂-reduction goals but is not mentioned at all in the EEAG or GBER. There are 2 possible situations for CCU:

- the delivery of CO₂ as a raw material to be used in products, whereby a net CO₂-reduction takes place because the CO₂ has been captured in the product for a long period of time;
- the delivery of CO₂ whereby the CO₂ replaces the use of fossil fuels, like natural gas. In these cases emission of CO₂ is reduced, as for example is the case with delivering CO₂ to greenhouses.

Article 36 of the GBER does not apply in a lot of cases, because a company capturing CO₂ with the purpose of utilization by another company, does invest in tangible assets to capture the CO₂, but does not realize an environmental effect by its own activities, as the definition of environmental protection requires. The environmental effect of the aid would be realized by the change in behaviour of another company that uses the CO₂, for example greenhouses using the captured CO₂ instead of the use of natural gas to produce their own CO₂. The public support of CO₂-capturing measures for purposes other than permanent storage should be made possible under the State aid framework.

Electrification technologies

- Operational aid for electrification technologies that reduce CO₂-emissions, such as heat pumps and electric boilers, is not adequately addressed in the EEAG. They technically do not fall under renewable energy sources nor energy efficiency options.
- The limitation of 5 years operational aid for energy efficiency options impedes market development of these technologies by operational aid, if they have large investment costs (such as in industry).

Advanced biofuels

The EEAG offers clear possibilities for support of advanced biofuels. Article 41 of the GBER offers possibilities for support only for biofuels which are not subject to a supply or blending obligation. Reason for this is that a supply or blending obligation may provide sufficient incentive for investments in these types of renewable energy. We feel that this is too strict in the case of advanced biofuels, certainly when there are no specific quantities of specific biofuels defined in the blending obligation in place. We see that new, advanced biofuels are too expensive and cannot compete with common fuels (first generation). We would like to see also possibilities for investment aid in the GBER for these cases where advanced biofuels are more expensive than first generation biofuels or when no alternative is available yet.

Biobased feedstocks/circular economy

Using biomass for energy production is covered by article 41 of the GBER. Biomass can also be used to make materials or feedstocks that can substitute fossil feedstocks. By doing so (and by planting new biomass) a significant reduction of CO₂-emissions can be achieved compared to the use of fossil feedstocks (to be proved by a life cycle analysis). However, the investment in a biobased production process will in many cases remedy the direct environmental impact of the activities of other companies in the production chain, such as natural gas suppliers, while the CO₂-emissions from the chimney of the investing company will not really change. The environmental effect will in the end be realised by use of the product produced. This does not fit with the definition of environmental protection. Therefore aid under GBER or MESK is not allowed.

In both cases (energy production and biobased materials) the material will (in the end) be converted into CO₂. Biomass as energy source will be burned in a boiler or engine, biobased materials will at the end of their life cycle be burned in a waste incineration plant or composted. Preferably we would like to cascade biomass; i.e. first use the fractions with the highest added value, for example for materials, and then use the remaining fractions for energy production. This does not occur in the market automatically. Reason for this is the cost price of the biobased materials that is a lot higher than the cost price of the fossil based alternatives. Take for example plastics. Fossil based plastics cost about €850-1450/ton, bioplastics €2000-5000/ton, depending on the quality and application possibilities. Another example is the use of rapeseed to produce proteins instead of using animal proteins. Moreover, point 15 sub a of the EEAG states that the Guidelines do not apply to the design and manufacture of environmentally friendly products, machines or means of transport with a view to operating with fewer natural resources. Reason for that is according to footnote 14 that environmental aid is generally less distortive and more effective if it is granted to the consumer/user of environmentally friendly products instead of the producer/manufacturer of the environmentally friendly product.

Environmental aid for the company producing the biobased or environmentally friendly product (in this case under article 36 of the GBER) would help them change their behavior and invest in production processes for more environmentally friendly products.

Heat networks, heat storage and heat exchange

(Biobased and Waste) Heat and Power Plants connected to [district heating](#) networks or Horticulture are recognized as a very good opportunity to increase the share of [renewable sources](#) into energy systems. However, these plants are profitable only if a sufficient [heat demand](#) is available throughout the year. On the other hand, these plants often have to work for baseline operations and back-up [boilers](#) are used to supply the [peak demand](#). To extend the use of these plants and reduce costs, [conventional fuel](#) use and emissions, it is necessary to integrate heat production and demand systems and combine them with storage and sometimes even with a CO₂ grid to achieve considerable cost effectiveness.

At this moment there are still many uncertainties regarding the use of Biomass and Waste in heat and networks and storage. Since heating infrastructure has a particularly long useful life, special care must be taken when considering huge investments in innovative transport and storage solutions. Government support can play a decisive role. GBER does not apply in most cases. Enhanced Government support is needed to invest in innovative solutions and processes for more intelligent and efficient CO₂ reduction by re-using heat.

17. To what extent do recent economic developments – such as the falling renewable energy costs and possible changes to trade intensity and electro intensity of the sectors concerned – impact the relevance of the rules which apply to reductions for energy-intensive users (EIUs)?

(To a large extent, To some extent, **Not at all**, I do not know)

- Falling costs of renewable energy producers:
- Changes to the trade intensity of the sectors listed in Annex 3 and 5 of the EEAG:
- Changes of the electro intensity of the sectors listed in Annex 3 of the EEAG:
- Other (please specify):

Please explain (max 3000 character(s): Simply put, falling renewable energy costs will have an effect on the need for state intervention since it could lead to the conclusion that market failures need not be corrected. Para 3.2.2. EEAG gives an adequate basis for such an analysis. Member states much be critical regarding this point.

COHERENCE

In this section, we would like to know your opinion on the extent to which the EEAG and the related GBER provisions are coherent with other EU policies and legislations.

18. Based on your experience, to what extent are the EEAG and the related GBER provisions coherent with relevant EU policies and legislation such as:

(Yes, No, Partially, I do not know)

- Renewable Energy Directive: no remarks
- Electricity Directive. This directive is under review. The latest text can be consulted on: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0380\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0380(COD)&l=en)
- Electricity Market Regulation This regulation is under review. The latest text can be consulted on: no remarks.
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0379\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0379(COD)&l=en) : no remarks
- Risk-preparedness Regulation This directive is under review. The latest text can be consulted on: no remarks
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0377\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0377(COD)&l=en)
- EU ETS Directive: No
- Industrial Emissions Directive: no remarks
- Alternative Fuels Directive: no remarks
- Energy Efficiency Directive: no remarks
- Energy Performance of Building Directive: we have not received information that EEAG and GBER provisions are not coherent.
- EU Waste legislation: no remarks
- Water Framework Directive: no remarks
- Air Quality Directive: no remarks
- Birds Directive: NO
- Habitats Directive: NO
- ERDF Regulation: no remarks
- Other (please specify):
- Regarding the Birds and Habitats Directive: Some activities related to nature (conservation) are non economic in nature. Public funding thereof may therefore not constitute State aid. However in case economic activities for nature goals would constitute state aid, the Commission is encouraged to provide for a proper base in the GBER or otherwise.
- Regarding the Renewable Energy Directive : we have not received information that EEAG and GBER provisions are not coherent.
- Regarding the Directives with no remarks: we have not received information that EEAG and GBER provisions are not coherent.

19. Have the EEAG and GBER rules on exemptions or reductions from energy taxation produced inconsistencies with other EU rules? (Yes, No, Partially, I do not know)

- Energy Taxation Directive:
- Other (please specify):
- It seems that the Energy Taxation Directive gives more room to grant exemptions and reductions than the EEAG rules allow. So, following the possibilities in this Directive does not mean that state aid rules are automatically met. The restrictions in the EEAG limit the application of the Directive. It would be ideal when strict application of the Directive is considered as "no state aid".

Please explain (max 1000 character(s)):

FINAL COMMENTS AND DOCUMENT UPLOAD

If there is anything else you would like to say which may be relevant for the evaluation of the EEAG and the related GBER provisions, please feel free to do so:

(max 1000 character(s))

If you wish to attach relevant supporting documents for any of your replies to the questions above, please feel free to do so.

Climate change is one of the largest global challenges the EU faces. Living up to the Paris agreement means European climate neutrality by 2050. This target must be accompanied by concrete policy measures and all sectors have a role to play in achieving it. There are opportunities for innovation, new businesses and the creation of new jobs. Ambitious climate targets can lead to economic growth even without the inclusion of the benefits of avoided damage of climate change and related adaptation costs.¹

This transition means decarbonising the energy system and building up a strong and competitive low-carbon industry based on new technologies, fostered by innovation and green markets. New coherent regulations on products and production will accelerate the development of the circular economy, while more stringent standards for vehicles and infrastructure will lead to sustainable mobility. Circular agriculture should be accompanied by redesigning the financial incentives in the Common Agricultural Policy towards sustainability. Horizontally, the European budget should become Paris proof and climate change should be a cornerstone in foreign, trade and development relations of the EU.

State aid rules should take this transition into account.

Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes