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The GBER: establishing a supportive State aid framework for renewable energy communities

RESCoop.eu's response to the public consultation on the draft GBER

Introduction

Europe's Green Deal aims to put citizens at the heart of the energy transition by ensuring fairness and inclusiveness. This follows the Clean Energy for All Europeans legislative package (CEP), which acknowledges 'active customers', 'renewables self-consumers', 'renewable energy communities' (RECs), and 'citizens energy communities' (CECs) as distinct market actors in the energy transition. In addition to promoting equality and a level playing field in the Internal Energy Market (IEM), competition policy and State aid rules in particular need to contribute towards the delivery of the Green Deal, as well as guide Member States so they can comply with their legal requirements under the CEP.

The existing 2014 Guidelines on State aid for Environmental Protection and Energy (EEAG) have contributed towards a number of barriers to the development of RECs. Specifically, the EEAG have caused an unlevel and implicitly discriminatory playing field for RECs with its emphasis on competitive bidding for renewables support and its insufficient recognition of the different factual and legal situation of smaller and non-commercial market actors.

The legal framework for RECs created by the CEP intended to remedy market failures and create favorable policy and legal environments, so that RECs can grow at the national level. Alongside the Climate, Environment and Energy Aid Guidelines (CEEAG), the General Block Exemption Regulation (GBER) needs to provide clear and positive guidance, so that Member States are able to innovate in designing renewables support schemes that can help jump-start community ownership of renewables production in their energy markets.

Key Recommendations

In order to bring the EU's State aid framework in line with the Green Deal and the CEP, the revised GBER must:

1) Acknowledge RECs and their unique market position and challenges as non-commercial market actors;

2) Align with the CEEAG to appropriately exempt RECs and other small renewables production installations from having to participate in competitive bidding procedures;

3) Integrate the energy efficiency first principle;

4) Include provisions that support synergies between energy efficiency and renewable energy objectives;

5) Provide clear language to ensure a non-discriminatory treatment for RECs in energy efficiency;

6) Expand the support that Member States may give to RECs for studies and consultancy services;

7) Exclude fossil gas from support; and

8) Limit aid only to renewable hydrogen and under certain conditions.

1. The GBER should acknowledge the unique market position and challenges RECs face as non-commercial market actors

Along with the CEEAG, the GBER needs to facilitate and support Member States' compliance with their legal obligations.

While RECs are undertakings, their non-commercial purpose and other unique characteristics place them at a distinct competitive disadvantage in the market, and particularly in accessing renewables support schemes. The Renewables Directive acknowledges this.

While the draft CEEAG did not make any references to RECs, we take note that they have been explicitly referenced in the draft GBER. Indeed, the preamble (6) cites the need to align to ensure coherency and the need to expand provisions on operating aid for RECs. This is a step in the right direction towards acknowledging the unique role that RECs play as non-commercial market actors in the energy market.

However, it would be good to have further policy justification about why this is important. In addition, it would be useful to recall the obligation for Member States to transpose an enabling framework for them, and to take RECs into account when designing national renewables support schemes, according to the Renewable Energy Directive.

We would also like to acknowledge that the draft GBER incorporates the definition of renewable energy communities from Article 2(16) of the Renewable Energy Directive. We support this reference. We request that, once DG Competition has finalized the GBER and the CEEAG, that it provide additional soft guidance to help Member States understand how they can effectively navigate State aid rules in order to provide support and investor certainty for RECs.

2. The GBER and CEEAG should introduce sufficient thresholds allowing RECs and other small renewable production installations to be exempted from competitive bidding

We welcome the proposal in Article 43 paragraph 2a of the draft GBER of a 1 MW threshold for RECs, which we feel is adequate for solar projects. We also understand that DG Competition is considering whether to raise the thresholds further. We would support this. However, we would like to point out that the threshold still largely overlooks community wind projects. As such, the GBER should include a corresponding threshold for wind projects.

Not only do wind projects make up a significant number of projects developed by RECs, they are also projects that are likely to face more public acceptance issues. From an internal survey, our members said they would not build a turbine under around 2.5 MW. As such, with only a 1 MW, or even a slightly higher threshold, wind technologies would be excluded. We recommend using language from the existing GBER and EEAG, which would provide a threshold of 18 MW for wind projects (i.e. 6 MW or 6 generation installations). This would provide RECs with sufficient space in the short-term to grow along with the scale of wind technology.

It is important that whatever threshold is adopted, they should align with the CEEAG, so that they are in line with the requirements of the Renewable Energy Directive.

Relatedly, we acknowledge that Article 4 paragraph 1(e) and (f) of the draft GBER set thresholds for overall operating aid that can go towards the promotion of RECs (EUR 20 million per undertaking per project, and EUR 250 million per year, respectively).This should be revisited to make sure that it allows for the integration of a threshold for wind projects in Article 43 paragraph 2a.

3. The GBER should integrate the energy efficiency first principle

The Energy Efficiency First (EE1st) principle is a key pillar of the Energy Union and has been recognised by the Commission as a horizontal guiding principle of European climate and energy governance and beyond, to ensure we only produce the energy we really need. It is unfortunate that the EE1st principle is not mentioned anywhere in the draft GBER. The current context of surge in gas prices makes the application of this principle by the granting authorities even more crucial to move away from fossil fuels and achieve the EU and national climate and energy targets.

Under point (18) of the EE1st Recommendation and its accompanying guidelines,[1] the EE1st principle applies to planning, policy and investment decisions having impact on energy consumption and energy supply. The EE1st Recommendation also applies to the EU institutions, and specifically refers to the leading role of public bodies (page 22, point 3.5.7). This implies that the Commission has a responsibility to lead by example and that it plays an important role in promoting energy-efficient behaviours.

Importantly, the guidelines also recommend removing legal barriers and providing an enabling framework for applying the principle (page 9), as well as ensuring "energy efficiency is eligible, and even preferable, for public support and financing" (page 17). Based on all these policy and legislative developments, we recommend that the future GBER also reflects the EE1st principle.

4. The GBER should promote synergies between the achievement of renewable and energy efficiency objectives

The GBER and the CEEAG should support synergies between the achievement of EU and Member State renewable energy and energy savings objectives. This is relevant particularly in the context of the building sector, which accounts for almost 40% of final energy consumption.[2]

As such, we welcome the possibility to combine aid for energy efficiency with, inter alia, the installation of on-site renewable energy installations generating electricity, heat or cold, and equipment for the storage of energy generated by on-site renewable energy installations in Article 39 paragraph 2a.

We also welcome that for residential buildings and buildings dedicated to the provision of education or social services, among others, eligible costs would be equal to the total costs of the efficiency project as well as relevant investment costs in on-site renewables and storage.

This criteria will provide a good basis for linking support for investment by individual citizens, RECs and local authorities in energy efficiency, renewables and digital technologies.

[1] Commission Recommendation on Energy Efficiency First: from principles to practice. Guidelines and examples for its implementation in decision-making in the energy sector and beyond. C(2021) 7014 final.
[2] Commission Recommendation (EU) 2019/1019 of 7 June 2019 on building modernisation, C/2019/4135, OJ L 165, 21.6.2019, p. 70–128

5. The GBER should include clear language to ensure non-discriminatory treatment of energy communities in energy efficiency

DG Competition states in paragraph 5 of article 39 of the draft GBER that where the aid is granted to an energy efficiency or renewable energy fund or another financial intermediary, the Commission will verify that certain conditions are in place. In particular, Member States must ensure that financial intermediaries, including energy efficiency or renewable energy funds are subject to a due diligence process to verify that commercially sound investment strategies are applied. This is in slight contrast to paragraph 136 of the draft CEEAG, which stated that intermediaries must be managed on a commercial basis and should ensure profit-driven financing decisions.

We are worried that the provisions in the CEEAG could create unfavorable conditions for RECs that participate in energy efficiency. More specifically, it is not clarified what the terms 'energy efficiency or renewable energy fund or another financial intermediary' mean. For this reason, we are unsure whether or how RECs might be impacted by this provision. It is important to mention, however, that RECs are not traditional commercial market actors and they are not profit oriented. Based on our member's business models, it seems that the language in paragraph 136(b) could result in direct discrimination against RECs.

As the language in the GBER is more neutral, we would prefer if the language of the CEEAG aligned with the text in the GBER.

6. Member States should be allowed to support RECs for studies and consultancies related to renewable energy projects

Many new RECs rely on support in order to undertake feasibility studies to see whether they have a viable project or not. Many RECs, due to their inexperience, also rely on pro bono consultancy services (legal, accounting, technical) to develop a successful project. In order to finance such activities, energy communities must raise social capital from members, which is often difficult to do in the early stages of a project. Otherwise, community projects must search for public funding.

Some governments already provide such support. For instance, Ireland provides both upfront funding for feasibility studies and targeted expertise for communities. The Netherlands also currently has a working national fund that supports the development of new REC projects through this type of assistance.

Article 49 of the draft GBER allows for such support, as long as the aid intensity does not exceed 60% of the eligible costs. This may be raised by an additional 20% for small enterprises, and 10% for medium enterprises. While this provision may be useful to Member States that are looking to support RECs through supporting the provision of expertise and funding necessary studies, it could compromise existing arrangements that exist, for instance in the Netherlands. To ease the ability for RECs to access public funding for such assistance, we recommend the threshold be raised to allow a 30% increase in aid intensity for REC-owned projects.

7. The GBER should exclude support from fossil gas

Support to fossil gas has no place in the GBER. The International Energy Agency (IEA) has clearly signaled that the net-zero by 2050 pathway requires the immediate and massive deployment of renewables and no more investments in fossil fuels.[3] Similarly, in the framework of the 8th Environmental Action Program [update when adopted], the European Parliament has called for the phase out of all direct and indirect fossil fuel subsidies by 2025.[4]

However, throughout the draft GBER (like in the draft CEEAG), fossil gas is distinguished in its treatment from the so-called "most polluting fossil fuels". The draft GBER keeps supporting fossil gas directly as an energy efficiency measure in buildings, in high-efficient cogeneration, in district heating/cooling and energy infrastructure, as well as indirectly through CCUS and low-carbon hydrogen.

State aid rules for environmental protection should support aid for activities that actively contribute to the achievement of EU policies and EU goals to reach at least a 55% reduction of GHG emissions in 2030 and carbon neutrality in 2050 - which simply is not the case for fossil gas. We strongly urge DG Competition to exclude aid measures for fossil gas in the GBER altogether.

On the other hand, there is a need to define renewable gas in the GBER, in the same way renewable electricity has been defined in article 102d. This will help ensure legal clarity with reference to rules that apply to renewable gas, such as relevant sustainability and greenhouse gas emissions saving criteria that apply in article 23 of Directive 2018/2001 (the Renewable Energy Directive). At the moment, renewable gas is mentioned in Articles 48 and 49. Without a proper reference, support could be allowed for technologies that do not comply with relevant criteria under the Renewable Energy Directive.

8. Aid for hydrogen should be limited only to renewable hydrogen and subject to conditions

Due to its notable inefficiencies and high costs compared to direct (renewables-based) electrification, renewable hydrogen can only be a solution for hard-to-abate sectors.

[3] IEA report of May 2021, "Net Zero by 2050: a roadmap for the Global Energy Sector"
[4] The European Parliament adopted the ENVI Committee Report unamended as its negotiating position for the trilogues on 8 July 2021.

There is a great deal of hype from vested interests around hydrogen, but independent experts emphasise that it is not a silver bullet for the energy transition and risks diverting limited resources away from where they are most needed. As such, any State aid for hydrogen should be heavily conditioned and handled with extreme caution. Supporting low-carbon hydrogen, even if not with direct investment or operating aid for the production, but through supporting its use or enabling infrastructure, would be a mistake, economically and climatically.

We urge the Commission to amend the draft GBER to exclude any direct or indirect support to hydrogen that is not renewable, including infrastructure used to transport or store low-carbon hydrogen. Furthermore, we urge the Commission to apply the following requirements to supporting renewable hydrogen (i.e. aid-granting conditions for eligibility):

- Hydrogen will only be for use in hard-to-abate priority sectors, where alternatives are not readily available;
- Support to electrolysed hydrogen should be matched with additional renewable energy ("additionality"), which should either be available when the project launches or available within a very short binding timeframe; and
- An emissions assessment shall be provided to ensure that the electricity to produce hydrogen will be renewable in accordance with the additionality requirement.