

## ANSWER TO CONSULTATION

### Targeted revision of the General Block Exemption Regulation (GBER)<sup>1</sup>

08 December 2021

## The targeted revision of the GBER should provide Member States with strong options to support production and use of biogas

### Aid to renewable energy production

1. In Articles 41 and 43, block exemption for investment aid and operation aid for the production of biogas should not be conditional on the exclusive use of Annex IX – Part A of the Renewable Energy Directive 2018/2001 (RED II). This condition is based on a biased understanding of sustainability requirements set in the RED II.

- The Renewable Energy Directive 2018/2001 (RED II) introduces sustainability and GHG emission saving criteria (Article 29) that biogas production has to comply with in order to be counted towards renewable targets, be eligible for support, etc. **The RED II thus distinguishes primarily between biogas which is compliant with these criteria ("sustainable biogas") and non-compliant biogas.**
- Annex IX – Part A refers to a category of feedstock types for a production of "advanced biofuels" and "biogas for transport" that is not capped. Therefore, **it is restricted to one end-use of biogas, where installations that could be aided under Articles 41 and 43 can provide biogas for different end-uses: on-site combined heat and power, off-site combined heat and power, power generation, transport or heating** (whether the upgraded biogas is injected in the gas networks or not). The category of "advanced biogas for transport" in the RED II cannot be taken as such to create a so-called more environment-friendly category of biogas. It was originally created to:
  - promote the use of waste and residues in the manufacture of biogas for transport
  - support the production technology of 2<sup>nd</sup> generation biofuels, i.e. give a spur to the production of 2<sup>nd</sup> generation biofuels compared to the 1<sup>st</sup> generation biofuels made from crops with land-use change effects.
  - In the RED II (adopted in 2018), "advanced biofuels" and "advanced biogas" are said to be made through "*technology [that] is more innovative and less mature and therefore needs a higher level of support*" (Recital 91 of the RED II): an additional reason why specific feedstocks were originally listed in an annex of the RED II (they "*should, in particular, be included in an annex to this Directive*", Recital (91)).

The same applies for Article 44 "Aid in the form of reductions in taxes under Directive 2003/96/EC".

2. Under Article 43, the threshold for granting block-exempted aid to small-scale installations would be limited to projects below 400 kW installed capacity. This would threaten existing State's support scheme or support scheme under development or under legislative process.

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<sup>1</sup> COMMISSION REGULATION (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

The current GBER permits operating aid for biofuel production plants with an installed capacity of less than 50,000 tonnes per year. **This provision should remain in place for the production of biogas and other renewable gases, and be extended to apply to all its uses, rather than exclusively to transport or heating.**

**3. Regarding operating aid for the promotion of renewable electricity (Article 42), technological-specific aid should be the rule, not the exception.**

The GBER proposal specifies the framework of bidding processes and maintains the rule “technology neutral” for granting aid.

“Technology neutral” bidding processes can have the opposite effect of limiting the access to different technologies and the development of less mature technologies that could, when mature, be more effective. We maintain the position that **the rule should be changed to “technology specific” to allow the Member States to develop better their potential of renewable energy.**

MS should be free to choose appropriate technology specific remuneration mechanisms in order to accelerate the deployment of the most appropriate mix of renewables in all sectors. Each technology has its own characteristic in terms of performance for the power system beyond the criteria of energy as system services and capacity guarantee. Technology neutral tenders are not able to deal with these requirements.

**Aid for resource efficiency**

The proposed changes to Article 47 (Investment aid for resource efficiency and for supporting the transition towards a circular economy) imply difficulties to aid for waste recovery operations that generate both energy and additional material, like anaerobic digestion and gasification can do.

- Anaerobic digestion is a mature technology to process waste efficiently and in an environmental-friendly way. It produces energy and useful material, that is the digestate as an organic fertilizer and biogenic CO2 as a feedstock of renewable origin for fuel production, chemistry, the food and beverage industry and other applications.
- Gasification is a mature technology (TRL 8) that recover energy and material from waste that is either non-recoverable in the form of material, or technically and economically difficult to process in other sectors into energy. It processes dry organic waste, such as wood-derived residues, and solid non-organic waste

Under Union law, waste recovery operations based on Anaerobic digestion and Gasification are considered recycling of waste, and therefore **these activities fall under Article 47 of the GBER.**

**1 draft provision would prevent these activities to be subject to block-exempted state aid under Article 47 and 2 other draft provisions would prevent Member States to use these aids to support the upgrading of the environmental performance of existing facilities.**

Paragraph 10 introduces a new provision “10. Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards.”. This may prevent MS to grant investment aid to existing biogas plants in order to improve their environmental performance and meet the expected revised sustainability requirements of the RED II.

Current GBER	Proposed targeted revision	EBA’s recommendation
Article 47(3). The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.	3. Aid for waste disposal and waste recovery operations to generate energy shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.	<b>This new wording is not appropriate for anaerobic digestion and gasification, since these two types of activities do generate energy while having other valuable outputs. They cannot be treated like incineration is. We urge the European Commission to rewrite this paragraph accordingly.</b>

<p>Article 47(6). The investment shall go beyond the state of the art.</p>	<p>6. The investment shall go beyond economically profitable or established commercial practices that are generally applied throughout the Union and across technologies. From a technological perspective, the investment should lead to a higher degree of recyclability or to a higher quality of the recycled material as compared to normal practice.</p>	<p>This paragraph should be amended to consider specificities of anaerobic digestion and gasification. We propose the following change:</p> <p><i>6. The investment shall go beyond economically profitable or established commercial practices that are generally applied throughout the Union and across technologies. From a technological perspective, the investment should lead to a higher degree of recyclability, <b>more efficient recycling processes (in terms of energy and water input and/or yield of recycled outputs), or to a higher quality of the recycled material as compared to normal practice.</b></i></p>
	<p><i>New provision</i></p> <p>10. Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards.</p>	<p>If the definition of “Union standards” provided in GBER, Article (102) encompasses levels of performance associated with environmental requirements set <i>in Union legislation</i>, this new draft paragraph would prevent Member States to support the improvement of existing anaerobic digestion plants aiming to comply with more stringent sustainability requirements set in Union legislation.</p> <p>The argument is the same for the existing facilities willing to invest, with the support of state aids, to achieve revised emissions levels associated with <i>Best Available Techniques (AEL-BAT)</i> under the IED 2010/75/EU.</p> <p>We recommend allowing for this and amending this paragraph as appropriate.</p> <p>Additionally, we oppose the deletion of Article 37 "Investment aid for early adaptation to future Union standards".</p>

### Aid for Carbon Capture and Utilisation

We recommend a slight but significant modification to the definition of ‘carbon capture and utilisation’ to ensure it includes a greater range of use cases. Indeed, biogenic CO<sub>2</sub> can be captured from biogas, purified (i.e. processed) and even liquefied on-site before it is transported to a CO<sub>2</sub>-consumption site.

<i>Proposed targeted revision</i>	<i>EBA’s amendment</i>
<p>Article 2(131b) ‘carbon capture and utilisation’ or ‘CCU’ means a set of technologies that captures the CO<sub>2</sub> emitted from industrial plants based on fossil fuels or biomass, including power plants, and transports it to a CO<sub>2</sub>-consumption site;”</p>	<p>Article 2(131b) ‘carbon capture and utilisation’ or ‘CCU’ means a set of technologies that captures the CO<sub>2</sub> emitted from industrial plants based on fossil fuels or biomass, including power plants, <b>processes it, possibly liquefies it,</b> and transports it to a CO<sub>2</sub>-consumption site;”</p>

## Aid for energy infrastructure

1. Article 2(130) defining “energy infrastructure” (this relates to Article 48 Investment aid for energy infrastructure) should be modified to match better with the reality of infrastructure for gas, including biogas.

“Energy infrastructure” for gas and hydrogen should not be limited to pipelines for the distribution and transmission of gas. In Member States that do not have an extensive national gas grid, gas is mainly distributed in liquid form via infrastructure other than gas networks; it can be also compressed in tanks and transported by road.

2. In Article 48 on “Investment aid for energy infrastructure”, the phrase “upgrade of energy infrastructure” should be more explicit.

## Renewable hydrogen

The definition of renewable hydrogen should:

- Explicitly include renewable hydrogen of biological origin
- Make reference to GHG emission savings requirement set in the Renewable Energy Directive 2018/2001 for renewable hydrogen of non-biological origin: Article 25(a) in current RED II (Article 29a(1) and (2) in the proposal of revision)

## Transport

We urge the European Commission to include vehicles using biogas in the provisions addressing aid for refueling infrastructure (article 36a) and aid for “the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles” (article 36b). Otherwise, the revised rules run the risk of being inconsistent with the environmental performance of biogas in vehicles, as well as with the contribution of biogas production and uses to the Green Deal’s policy objective of transitioning to a circular economy.

1. That is why we recommend that the definition of “clean vehicle” in Article 2(102f) should be modified accordingly. We suggest “sustainable vehicles” as a more relevant term, avoiding confusion around the notion of “clean” (i.e. no energy is 100% clean on a life cycle basis today; “clean” regarding GHG emissions or pollutants or both?; clean by considering tailpipe or lifecycle emissions?).

The integration of requirements in draft Article 2(102f) are taken directly for the Climate Taxonomy Delegated Act poised to enter into force in 2022:

- These definitions and requirements have never been assessed in terms of market and technological relevance as well as impact on the market and R&D&I.
- The definitions and requirements for water, sea and coastal vessels often use reference to Regulation 2019/1242 on heavy-duty road vehicles, which is not an appropriate piece of legislation to refer to in the case of these transport modes.

The tailpipe approach does not provide a level playing field between fuels and electricity. It does not take into account for the origin of electricity (fossil or renewable origin) in the climate impact.

Biogas can be sustainably produced and used in transport under the sustainability and GHG emission savings requirements set out in the RED II.

2. As a consequence, Article 2(102b) ‘refuelling infrastructure’ must be amended too.

<i>Proposed targeted revision</i>	<i>EBA’s amendment</i>
Article 2(102b) ‘refuelling infrastructure’ means a fixed or mobile installation supplying vehicles with hydrogen for transport purposes;	Article 2(102b) ‘refuelling infrastructure’ means a fixed or mobile installation supplying vehicles with <b>hydrogen or sustainable biogas</b> for transport purposes;

3. Article 36a (Investment aid for recharging or refuelling infrastructure) and Article 36b (Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles) should

**urgently allow Member States to support infrastructure and acquisition of vehicles set to use biogas/biomethane.**

It would be consistent with the Alternatives Fuel Infrastructure Directive, the target on “advanced biofuels and biogas for transport” in the Renewable Energy Directive, and proposals about the use of biogas in transport made in the Fit-for-55 Package.

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## About the EBA

The **European Biogas Association** is the voice of renewable gas in Europe since 2009. EBA advocates the recognition of biomethane and other renewable gases as sustainable, on demand and flexible energy sources that provide multiple knock-on socio-economic and environmental benefits. Supported by its members, EBA is committed to work with European institutions, industry, agricultural partners, NGOs and academia to develop policies which can enable the large-scale deployment of renewable gases and organic fertilisers throughout Europe, supported by transparent, well-established sustainability certification bodies to ensure that sustainability remains at the core of the industry. The association counts today on a well-established network of over 200 national organisations, scientific institutes, and companies from Europe and beyond.