



**RAP**

Energy solutions  
for a changing world

# How will the new Community Guidelines on State Aid for Environmental Protection impact future clean energy policy?

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# ELEMENTS OF FUTURE CLEAN ENERGY POLICY

Energy  
efficiency

Low-carbon  
technologies

Resource  
adequacy

Infrastructure

Demand  
response

# SOME OF THE MEANS TO GET THERE ...

- **Low carbon technologies**: support for renewables (feed-in tariffs, renewables obligation schemes, investment in wind power development projects, green certificates , electricity tax exemption for biofuels), investment in CCS, ...
- **Supporting energy efficiency**: Investment aid for modernisation of district heating network, energy saving allowance for landlords, Green Investment Bank, white certificates, ...
- **Infrastructure**: Construction of an electricity cable, funding of construction of waste-fuelled power station, construction and modernisation of electricity connection networks for renewable energies, construction of interconnection and cross-border power line, ...
- **Resource adequacy**: capacity/capability payments, ...
- **Demand Response**: Compensation for instant interruptibility services, ...

# ... (MIGHT) DISTORT COMPETITION

- Free competition is one of the pillars of a good functioning internal market
- Competition might be distorted through:
  - Dumping, abuse of dominant position, merger, ... **state aid**
- Anti-competitive behavior is, in principle, prohibited

# EU STATE AID REGIME: WHEN DOES IT APPLY AND WHAT ARE THE CONSEQUENCES?

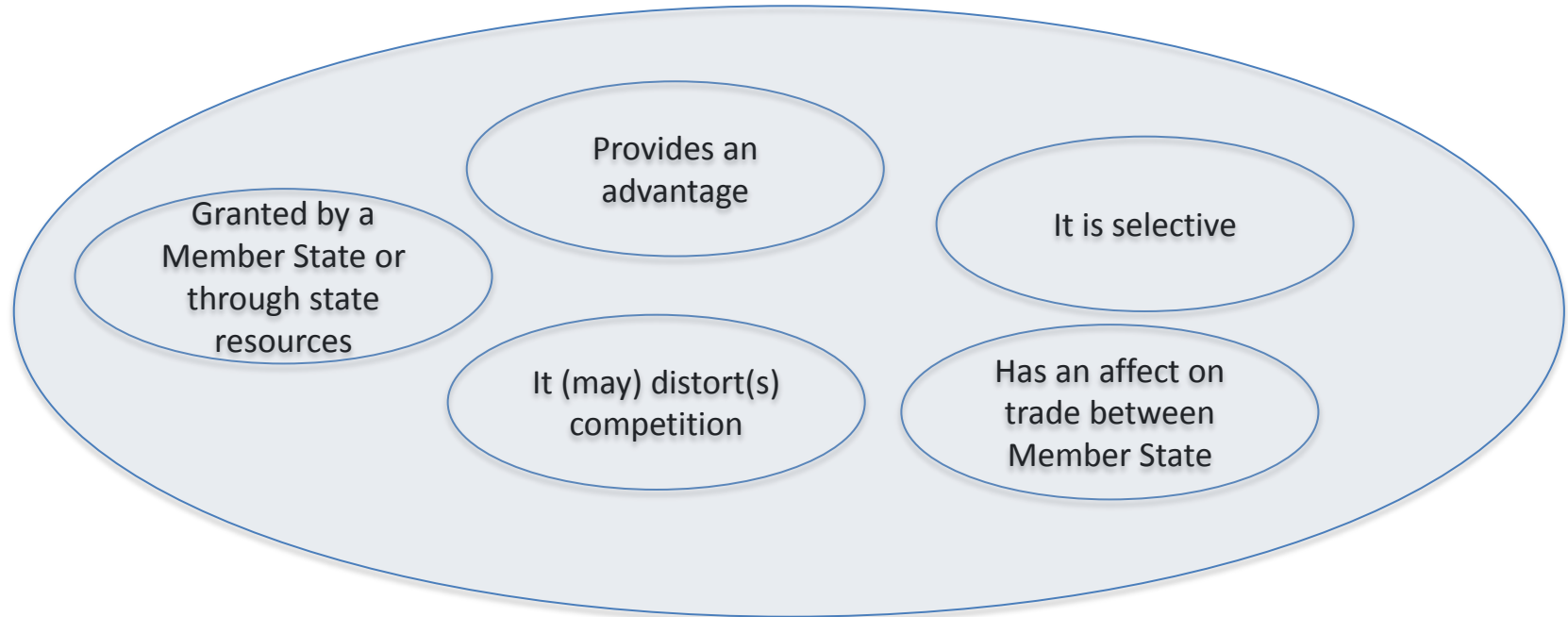
# THE IMPORTANCE OF BEING AN UNDERTAKING

*“(...) the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed (...)”* (Höffner/Elsner, ECJ, C-41/90, para. 21)

- Only undertakings can receive state aid.
- They can receive it directly or indirectly

# STATE AID CRITERIA

## Article 107 (1) TFEU



State aid only if ALL criteria are fulfilled

# NOT CLASSIFIED AS STATE AID IF:

- Not all criteria fulfilled
  - E.g. No Advantage: Altmark
  - E.g. Not granted by state or through state resources: (PreussenElektra)
- De minimis aid
  - General: EURO 200.000 per undertaking over three fiscal years
  - SGEI: EURO 500.000 per undertaking over three fiscal years



# STATE AID

- Notification requirement
  - Implementation of aid before notification: aid = unlawful
- No implementation before COM Decision
  - Depending on complexity, decision between 2 – 20 months
  - European Commission will assess:
    - Whether the measure constitutes state aid.
    - If it does constitute state aid, whether it can be exempted
  - **Only the European Commission can grant an exemption.** No exemption => the measure cannot be implemented!
  - Implementation non-exempted aid: aid has to be recovered

# ASSESSMENT: TWO QUESTIONS

1. Is there state aid?
2. If yes, can it be exempted?

Important: Question 1 is objective, question 2 is subjective!

# CAN IT BE EXEMPTED?

Article 107 (3) TFEU

Further specified in:

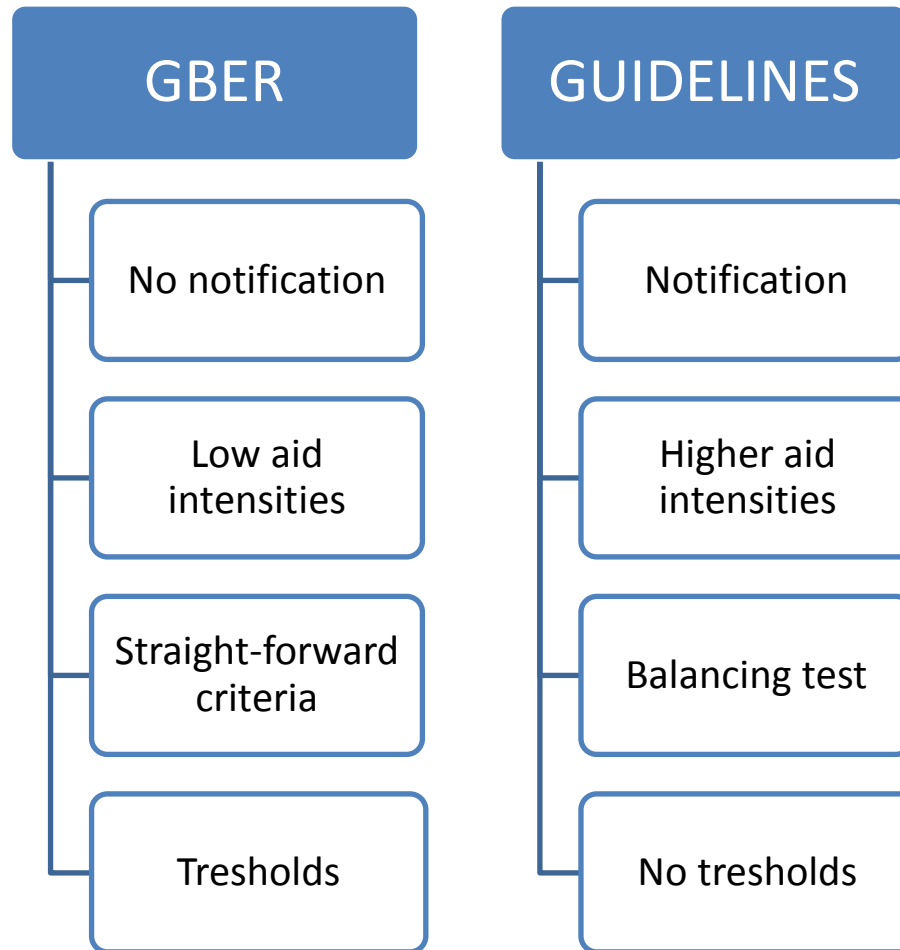
- General Block Exemption Regulation (GBER)
- Guidelines
- Communications

Article 106 (2) TFEU (Service of General Economic Interest)

# RELEVANT EXEMPTIONS FOR ENERGY

- Guidelines for state aid for environmental protection (EAG), and Draft Guidelines for energy and environmental state aid measures (EEAG)
- General Block Exemption Regulation (also under revision)
- Article 107 (3)(c) TFEU
- Article 107 (3)(b) TFEU (cross-border energy infrastructure)
- Communication on compensation granted for Services of General Economic Interest (SGEI)
- Guidelines on State aid measures in the context of the EU ETS post 2012
- Guidelines on State aid for Research, Development and Innovation (R&D&I)

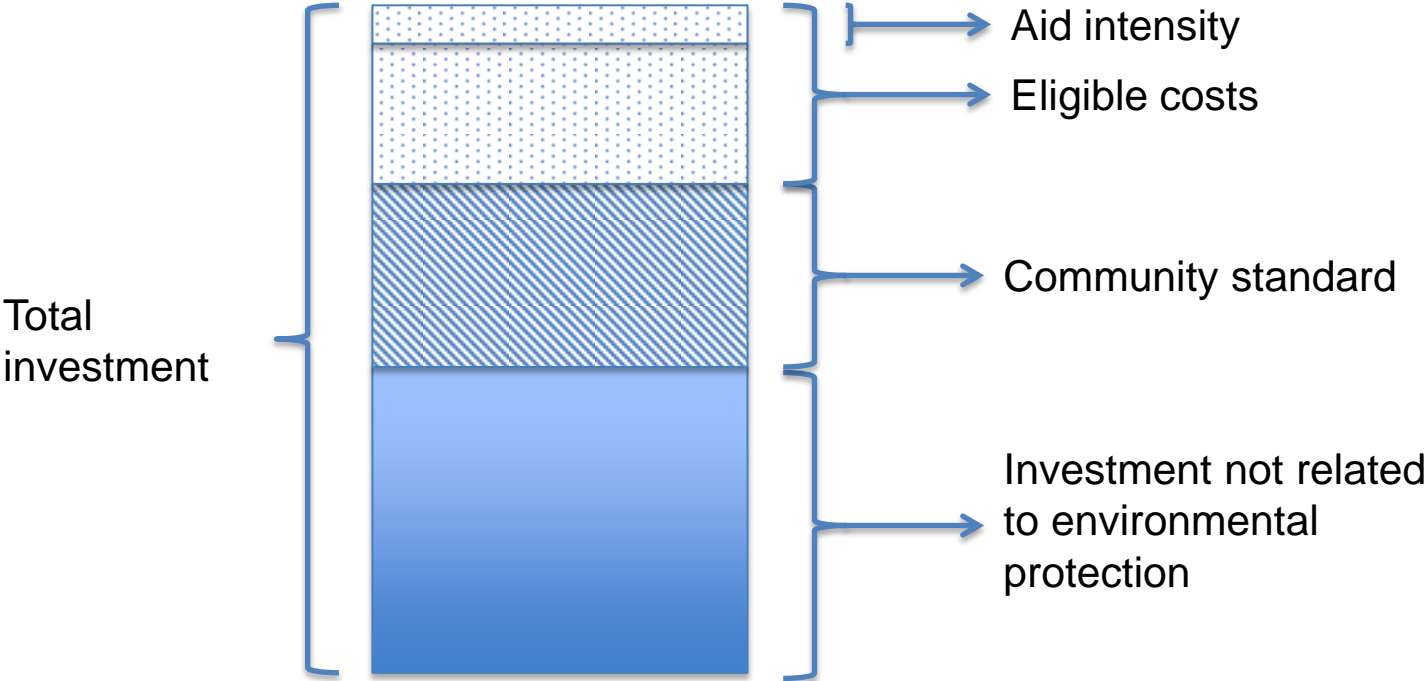
# GBER V. GUIDELINES: CHOSING THE RIGHT BASIS FOR EXEMPTION?



# CONTENT OF STATE AID GUIDELINES

- Contain criteria for exemption of certain state aid measures
- Definition of measures falling within the scope of the Guidelines
- Definition of eligible costs
- Aid intensity
- Detailed description of balancing test for certain measures

# ELIGIBLE COSTS AND AID INTENSITIES



# THE EEAG: PROPABLE CONTENT AND CRITICAL ISSUES



# AIM AND SCOPE

## Main objectives:

- Addressing market failures in relation to environmental protection and energy infrastructure
- Balancing achievement of these objectives against competition

## Scope:

- Energy aid measures aiming at environmental protection [including energy efficiency, renewables, CCS (Carbon Capture Storage)]
- Energy infrastructure aid measures
- Capacity mechanisms

# LET'S BALANCE

Addressing  
market failure

Distortion of  
competition

Incentive effect

Necessary

Appropriate

Proportional

No undue distortion of competition

# CAPACITY MECHANISMS

- State aid?
  - No, if:
    - Not all state aid criteria fulfilled
    - No, if SGEI covered by Altmark
  - Yes, if:
    - Yes, if all state aid criteria fulfilled
    - Yes, if SGEI not covered by Altmark
- If yes, how will they be evaluated?
  - Draft copy:
    - Demand-side measures are seen as an alternative. (To be evaluated by case-handlers at DG COMP !)
    - However, proportionality test focus on supply-side

# ENERGY EFFICIENCY

Defined as: „an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure (...)“

Aid measures fall within the scope of EEAG

But, lower aid intensities for investment aid compared to current EAG:

EAG			EEAG		
Small Enterprise	Medium Enterprise	Large Enterprise	Small Enterprise	Medium Enterprise	Large Enterprise
80%	70%	60%	40%	30%	20%
Competitive bidding procedure: 100%					

# RENEWABLES ???

# EEAG: A GOOD INSTRUMENT FOR FUTURE CLEAN ENERGY POLICY?

- Energy efficiency measures included but major decrease in aid intensity for investment aid: Is this enough to incentivize necessary investment in energy efficiency?
- Renewables: at the moment unclear
- Capacity mechanisms: no incentive for equality between supply-side and demand side mechanisms
- General: balancing test leaves room for interpretation.
- EEAG defines content of environmental and energy state aid till 2020 !

## About RAP

The Regulatory Assistance Project (RAP) is a global, non-profit team of experts that focuses on the long-term economic and environmental sustainability of the power and natural gas sectors. RAP has deep expertise in regulatory and market policies that:

- Promote economic efficiency
- Protect the environment
- Ensure system reliability
- Allocate system benefits fairly among all consumers

Learn more about RAP at [www.raonline.org](http://www.raonline.org)



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