

Review of the General Block Exemption Regulation (GBER)

The Confederation of Swedish Enterprise welcomes the Commission's review of the General Block Exemption Regulation (GBER) for state aid.

GBER plays a central role in state aid control and creates opportunities for the Commission to focus on the potentially most problematic state aid measures. We therefore welcome that GBER will continue to make it possible to handle several smaller state aid measures at Member State level.

At the same time, there is a need to clarify the rules and make them more legally certain for companies, which bear the risk of any mistakes made by granting authorities. The rules also need to be updated to reflect technological developments and political priorities, while continuing to limit the overall use of state aid.

We would therefore like to make the following recommendations to the Commission in its continued work on reviewing the rules:

1. **Update the rules** and improve the structure, without watering down the rules in general.
2. **Address the risk** that GBER entails for aid-receiving companies.
3. Expand the possibilities of granting aid from **"renewable" to "fossil-free"** energy technologies.
4. Revise the **provisions on vehicles and recharging or refuelling infrastructure** to better support the transition of the European vehicle fleet.
5. Ensure better possibilities to safeguard efficient and predictable financing opportunities for **regional airports**.

About the consultation

The Commission briefly states that the purpose of the review is to simplify the rules by:

- Removing overly complex conditions, and
- Including additional types of state aid, based on the Commission's decision-making practice over several years.

In the Commission's "Invitation to comment" document, it is explained in more detail that the conditions in GBER may be too complex and difficult to interpret or apply and may constitute a disproportionate administrative burden for EU Member States when ensuring compliance. It is further stated that recent political developments may need to be reflected in the General Block Exemption Regulation. Finally, it is noted that the structure of the legal text is no longer entirely consistent, and certain legal concepts and definitions need to be updated.

Our general view on state aid and the GBER

The Confederation of Swedish Enterprise advocates a strict state aid regime. State aid should only be used in exceptional cases, particularly where there is a clear market failure and where no other measures are more appropriate. This is due to the distortive effects on competition that state aid typically entails – both

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between individual companies and between countries. In general, the use of state aid is not an effective way to promote long-term competitiveness. It is therefore important that the regulatory framework continues to limit Member States' ability to grant state aid.

At the same time, we support the approach introduced with the modernisation of the state aid rules launched in 2012. Two of the main objectives of the modernisation were to focus the Commission's scrutiny on cases with the greatest impact on the internal market, and to streamline the rules and enable faster decisions. A key element of this strategy was to expand GBER so that more state aid decisions could be taken by Member States themselves, without the Commission having to assess each individual case, provided that the conditions in GBER are met. A prerequisite for delegating more work to Member States was to increase the competence and quality of state aid work at national level.

We would like to point out that **the use of GBER entails a particular risk for beneficiary companies**, unlike when state aid is granted on the basis of an approval decision adopted by the Commission. If granting authorities have applied GBER incorrectly, established case law shows that the beneficiary cannot invoke good faith. The state aid may therefore be considered unlawful and must be repaid at short notice, including interest. Authorities that discover they have made a mistake in applying the rules must, on their own initiative and without awaiting a Commission review, recover the state aid. Thus, companies bear the legal risk and may find themselves in very difficult financial situations when key parts of their financing suddenly disappear.

This does not mean that we reject GBER as a legal basis, but it is a significant drawback. It also makes it even more important to clarify both the provisions in GBER and how they should be interpreted and applied in practice. It also requires Member States to organise state aid work in a way that enables granting authorities to have sufficient expertise and guidance in these matters, which in concrete cases often involve complex assessments when the rules meet real-world situations.

General suggestions for the GBER

Now that the Commission announces a review of GBER, with the direction described, the Confederation of Swedish Enterprise would like to make the following three general points:

1. We welcome the **continued central role of GBER in the state aid framework**. A large share of state aid

should continue to be handled under GBER, allowing the Commission to focus on larger, more problematic cases.

Since the numerous pandemic-related state aid measures in response to COVID-19, the number of notifications to the Commission has increased significantly. The number of cases the Commission needs to handle remains very high, as several crisis packages have been introduced and subsequently forward-looking transition frameworks, most recently CISAF, which require notifications to the Commission.

We are concerned that the Commission appears to have limited resources to monitor the application of the rules and to address unlawful state aid, which can have a highly distortive effect on competition. It would therefore be desirable to maintain the principles of modernisation and to free up more resources for monitoring the application of the rules.

2. We also welcome the ambition to **simplify the structure of the regulation**. There is a need to create a better structure for the rules. The current structure, where applicable rules for a particular state aid measure are found in several disparate parts of the lengthy document, is hardly user-friendly. It would be better to gather all relevant rules for each type of state aid in one place, even if this means repeating the same provisions several times.

In practice, GBER is not used as a single long printed reference work, but rather in digital form where users search for the relevant section and article or use links to quickly reach the correct provision.

The ambition to create a more **consistent terminology** and to clarify definitions and conditions is also welcome.

3. We are, however, **more hesitant about the general ambition to simplify the rules in the sense of removing or watering down conditions established to prevent state aid from distorting competition**. In the Commission's call for evidence text, one may get the impression that this is one of the main objectives of the review. Of course, the various conditions and aid intensities should be reviewed. Conditions that are not fit for purpose should be revised, as should aid intensities. But this should be based on a thorough impact assessment, which should be able to conclude that conditions and aid intensities may just as well be added or increased as removed or lowered.

To speak in general terms of simplification when increasing an allowed aid intensity is misleading. It does

not make the process of applying for, assessing, granting, paying out and evaluating state aid any simpler. However, it does make it easier for competition to be distorted. Simplification may mean that certain conditions are streamlined or removed – but this should not be at the expense of undistorted competition.

Change “renewable” to “fossil free”

In several places in the text, **the term “renewable” should be replaced with “fossil-free”** in order to enable investments in all technologies that can eliminate climate emissions and support the transition to a fossil-free society. A restriction to renewable energy sources only, including hydrogen or stored electricity generated from renewable sources, will hinder the broad transition that is absolutely necessary to achieve.

To exemplify:

Article 38a

Investment aid for energy efficiency measures in buildings

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The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a)

the installation of integrated on-site equipment generating electricity, heating or cooling from ~~renewable~~ **fossil free** energy sources, including but not limited to photovoltaic panels and heat pumps;

(b)

the installation of equipment for the storage of the energy generated by the on-site ~~renewable~~ **fossil free** energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation...

The corresponding adjustments should be made to the following articles: 36, 36a, 39, 41-44, 46, 48, 56b, 56c, 56e.

Provisions on vehicles and recharging or refuelling infrastructure

The transition of the European vehicle fleet is progressing far too slowly. This hampers both the European automotive industry’s ability to remain at the technological forefront and the ability of transport

companies and transport buyers to contribute to addressing the climate challenge. A systematic policy effort to support the transition is essential, and **state aid is one piece of the puzzle to create sufficient incentives and opportunities to shift the vehicle fleet.**

The existing possibilities for state aid under GBER Article 36b are too restrictive. Given that the eligible costs consist of *the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with applicable Union standards already in force and would have been acquired without the aid*, it should be possible to cover a larger share of these additional costs with state aid even without an open tendering process than is currently allowed.

We therefore have the following four proposals:

1. Amend the aid limit in Article 36b(6) from 20% to 40% of the eligible cost. This would mean that the maximum aid intensity for electric vehicles would be 50% for large enterprises, 60% for medium-sized enterprises and 80% for small enterprises, as a share of the eligible cost.

2. As a second-best option, the above amendment could be introduced as a **temporary increase**, subject to a time limit or review clause. This could, for example, be modelled on the wording in Article 36a(10) and introduced as a new Article 36b(6a):

“An increased aid intensity shall aim to move the market for the eligible category beyond the establishment phase and into a growth phase. The need for a specific increase in aid intensity [in this case: by an additional 20 percentage points of the eligible costs referred to in the point above] for investments in clean vehicles or zero-emission vehicles and for retrofitting vehicles in the same category as the one receiving aid (e.g. for battery-electric heavy-duty trucks) shall be determined through an open public consultation or an independent market study carried out in advance. The study or the outcome of the consultation shall be available no later than two years after the introduction of the aid. The consultation or study shall aim to determine the need for an extension of the increased aid intensity with regard to the market maturity of the category concerned in the Member State in question.”

3. The aid limits for charging infrastructure under Article 36a should also be reviewed for the same reasons. This would involve a corresponding amendment to the thresholds in Article 36a(6), increasing the basic aid limit from 20% to 40%.

4. The Commission should also **consider including an option to grant operating aid for a limited period under Article 36a**. The market for electric heavy-duty trucks is still in its early stages, and volumes remain low. For operators investing in public charging infrastructure, this often means several years of low utilization and therefore limited revenues. A time-limited operating aid would help ensure the availability of public charging stations, reduce the risk of bankruptcies, and create predictability and stability for both the transport and energy sectors by facilitating an economically sustainable transition to a mature market.

Article 2 – definitions, (102f)

The current **GBER definition of “clean vehicle”** excludes gas-fuelled vehicles capable of running on biomethane (bio-CNG/bio-LNG), despite their proven commercial deployment in heavy-duty fleets. Evidence shows that biomethane can deliver substantial – and in some pathways even negative – GHG emissions reductions. With production expanding across Europe and private investment accelerating, biomethane represents a pragmatic near-term abatement solution for HDVs. To reflect this potential, GBER’s definitions should be updated so that “clean vehicles” explicitly include vehicles certified to operate on sustainable biomethane.

Article 2 – definitions, (102g) (c)

The current **GBER definition of a zero-emission heavy duty road vehicle** is problematic as it excludes hydrogen-powered vehicles equipped with internal combustion engines. This exclusion is not consistent with existing EU CO₂ legislation (regulation (EU) 2019/1242), which explicitly defines a zero-emission heavy-duty vehicle as including a heavy-duty motor vehicle with an internal combustion engine that emits not more than 3 g CO₂/(tkm). The inconsistency arises because the GBER definition refers to Article 4, point (5), of Directive 2009/33/EC, rather than to Article 3, point (11), of Regulation (EU) 2019/1242. This reference should be corrected to ensure coherence with the EU’s CO₂ standards.

Such alignment is crucial: both AFIR and the CO₂ standards clearly highlight the important role of hydrogen vehicles in decarbonising road transport. This includes both fuel cell vehicles and internal combustion engine vehicles, with the latter expected to reach the market first. To enable their effective deployment, it must be possible to grant state aid for these vehicles under the GBER. To achieve this, the GBER should amend the definition of zero-emission vehicle for heavy-

duty road vehicles so that it no longer refers to Directive 2009/33/EC but instead to Article 3, point (11), of Regulation (EU) 2019/1242.

Aid for regional airports

Aviation plays a crucial role for Swedish businesses by facilitating international trade and business travel. Airports serve as important hubs for companies’ logistics and supply chains, contributing to regional economic growth. Airports are part of the fundamental transport system and are essential for business accessibility. In more sparsely populated countries such as Sweden, where there is no railway network of the same scale as on the European continent, air transport plays a central role in enabling the movement of both people and goods. It is therefore important that there are sufficient conditions for public authorities to finance airports, where necessary, in the same way as investments in roads and railways are financed.

The current regulations provide insufficient conditions to finance smaller airports with an annual passenger number over 200,000. This is the upper limit for operational aid within the General Block Exemption Regulation (GBER). The guidelines do not offer permanent possibilities to grant operational aid; there is only a possibility to give operational aid to airports with up to 700,000 annual passengers during a transitional period. The end date for the transitional period has been gradually pushed forward, and the current date is April 3, 2027, when aid can no longer be granted. Additionally, restrictive conditions apply regarding the amount of aid that can be granted.

At the same time, it has been shown that airports with between 200,000 and 700,000 passengers rarely have the conditions to cover their costs. In the evaluation of the state aid rules carried out by the Commission in 2020, it is stated that 31 percent of airports with between 200,000 and 700,000 passengers cannot cover their costs in 2024. The same study shows that these airports on average have a negative EBITDA per passenger during 2010- 2018 and have limited growth opportunities. A study by Oxera (Oxera (2019) *The European Commission’s consultation on the 2014 Aviation State Aid Guidelines, An economic analysis of airports’ profitability*) shows the same thing.

Nevertheless, these airports are in practice given no possibility to receive state aid outside the SGEI regulation, which has proven to be applicable only in certain specific cases. The application of the SGEI regulation is also unpredictable and administratively burdensome. It is therefore desirable to change other

parts of the regulation so that the SGEI rules can be avoided.

The same study by the Commission also shows that the reason why so few airports have notified aid according to the guidelines is that they have ignored the regulations and thus likely paid out illegal aid. This is yet another indication of the deficiencies in the design of the current regulations.

It is therefore absolutely necessary **to raise the limit in the GBER for operational aid so that airports with an annual passenger number of up to 700,000 passengers are covered.** This is needed to achieve long-term conditions for the operation of airports, and so that they can dare to make necessary investments for increased safety, sustainability, and growth.

In the guidelines, consideration could be given to the possibility of providing aid during a transitional period for airports with between 700,000 and 1,000,000 annual passengers. Such airports should have the possibility to submit a business plan to the Commission and show a plan for how they can achieve profitability during the transitional period. Some airports may have special circumstances that result in higher costs. Swedish airports, for example, have higher costs for heating and snow removal than many other European airports. At the same time, this should only be possible if the airport does not duplicate existing infrastructure, i.e., is located close to another airport's catchment area.

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