CONFEDERATION OF INDUSTRY
OF THE CZECH REPUBLIC

PRAGUE, 1ST NOVEMBER 2021

Suggested changes to the draft Commission regulation (EU) amending Regulation (EU) N. 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

The Confederation of Industry of the Czech Republic welcomes the draft of the GBER Regulation, which clarifies and specifies the setting of individual support schemes while incorporating new areas that need to be supported in line with the climate targets.
The Confederation would like to propose the following changes, which should help the low carbon transition.

1) **Definitions**

- **Article 1(1) (z) – GBER Article 2**
  - suggested change of the point (**102e**):

    "(102e) 'low-carbon hydrogen' means fossil-based hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves life-cycle greenhouse gas emissions savings of at least [73.4 %] [resulting in life-cycle greenhouse gas emissions below 3 tCO_2eq/tH_2] relative to a fossil fuel comparator of [94g CO_2e/MJ (2.256 tCO_2eq/tH_2)]. ~~The carbon content of electricity-based hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid~~;"

    Justification:
    The determination of the hydrogen´s carbon content through the marginal generation unit in the bidding zone is hardly feasible in the real conditions. The definition of "low-carbon hydrogen" shall be reformulated in way to allow the use of guarantees of origin or power purchase agreements (PPA) supplemented by the information about time and location of the electricity generation used for the low-carbon hydrogen production.

    We would also like to mention the alternative emission threshold for low-carbon hydrogen CertifHy, which states a limit of -60% emissions savings instead of -73.4%. See https://ec.europa.eu/jrc/sites/default/files/Vanhoudt%20Definition%20of%20Green%20Hydrogen%20SFEM.pdf

  - point (**102f**), letter a) and c): as Directive 2009/33/EC was amended by Directive (EU) 2019/1161 in 2019, a reference to the amended legal act should be made instead

  - point (**102f**), letter b) and c): as CO_2 emission targets for HDVs apply as of 2025, the definition of clean HDV should be based only on Directive 2019/1161, at least until December 2024.

Also, the definition of "clean HDV" based on Regulation 2019/1242 might be difficult to implement in practice.

- point (**102h**): off-road vehicles and non-road mobile machinery should be included in the "vehicle" definition as well, as incentives for the uptake of vehicles in these categories would be beneficial

- **Article 1(1) (as) – GBER Article 2**
  - point (**124a**): directive 2018/2001/EU provides in article 2 (19) more up to date definition of district heating, reference to this directive should replace directive 2010/31/EU.

  - point (**124b**): instead of the undefined and somewhat misleading term "consumers", the definition should include the term "final customers", which means a natural or legal person who purchases energy for own end use – see article 2 point 23 of directive 2012/27/EU.

- **Article 1 (1) (av) – GBER Article 2 – suggested change of the point (130):**

  "(130) 'energy infrastructure' means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:
  …
  (e) infrastructure used for transmission or distribution of heat/steam from multiple producers or users, based on use of ~~zero or low carbon heat, steam or residual heat from industrial applications or from production processes (waste heat)~~ **energy from renewable sources including green cogeneration or waste heat and cold**;
  Following definition should be included:
  'waste heat and cold' means waste heat and cold as defined in article 2 point (9) of the directive 2018/2001/EU."

  Justification:
  Term 'zero or low carbon heat' is not defined and very ambiguous and should be replaced with clearly defined and tangible terms – namely energy from renewable sources and waste heat or cold. Regarding waste heat or cold definition from directive 2018/2001/EU should be used. It is broader than just residual heat from industrial installations and covers data centers and tertiary sector as well.

2) Notification thresholds

- **Article 1 (2) (g) – GBER Article 4**: Notification threshold for district heating or cooling systems should be increased to 70 million per undertaking per project – the same as for energy infrastructure. There are quite large district heating schemes across EU that will need to be substantially refurbished until 2030, especially in Central and Eastern Europe. It is hard to see why notification threshold for district heating or cooling systems should be lower than the one for energy infrastructure.

3) Aid for research and development projects

- **Article 1 (17) (a) – GBER Article 25**: Due to different needs of various types of state aid schemes we suggest not to mention a concrete limit for flat-rate and consider allowing all types of simplified cost approach. This could simplify the rules for eligibility of indirect costs and could help to target state aid. Limit 15 % is not compatible for example with Horizon 2020 which is a pattern to other state aid schemes.

4) Investment aid for recharging or refuelling infrastructure

- **Article 1 (22) – GBER Article 36a**:

- **GBER Article 36a (2)**: Given there is a need for uptake of hydrogen mobility, aid for refuelling infrastructure using hydrogen created as a by-product (for ex. „waste hydrogen“ from petrochemical processes) should be allowed for a transitional period.

- **GBER Article 36a (3)**: We welcome that eligible costs may also cover storage units for storing renewable electricity or renewable or low-carbon hydrogen so that comprehensive projects covering construction, installation, upgrade or extension of infrastructure, renewable electricity generation and storage are enabled.

- **GBER Article 36a (8)**: We welcome the inclusion of charging and refuelling stations/infrastructure that is not publicly accessible. As for the Czech Republic, for instance, where the share of low/zero-emission vehicles in first registrations is still quite low, measures supporting the development of both public and non-public infrastructure are crucial.

- **Missing LNG/CNG support**: The draft is missing the support for CNG/bioCNG and LNG/bioLNG infrastructure. Its return for HDVs/long-distance transport is desirable. See e.g. the CEEAG draft (point 185): Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%).

- **Article 1 (23) – GBER Article 36b**: We welcome the inclusion of a new article focusing on aid for the purchase and leasing of clean vehicles. Aid in this area is still very much needed considering the development of clean mobility in the Czech Republic, but also in other parts of the EU.
    - On the other hand, the draft is m**issing the support for CNG/bioCNG and LNG/bioLNG HDVs/long-distance transport vehicles**, which is needed. See e.g. the CEEAG draft (point 162): Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%).

5) Investment aid for energy efficiency measures and Investment aid for energy efficiency projects in buildings in the form of financial instruments

- **Article 1 (25) (d) – GBER Article 38 (3a-3d)** – suggested change of the paragraph 3b(f):

“3b. For the buildings referred to in paragraph 3a, 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
…
(f) the connection to a district heating or cooling.

In case of any such combined works, as set out in points (a) to ~~(e)~~ **(f)**, the entire investment cost of the various installations and equipment shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible."

Justification:
Connection of a building to district heating can contribute to primary energy savings and significantly improve level of environmental protection. It typically requires investment also on the side of a building and the equipment is not part of district heating network. This investment should be supported in the same manners as on-site generation of energy from renewable sources.

- **Article 1 (26) (a) – GBER Article 39**: the connection to a district heating or cooling should be included as paragraph 3a(f) as well.

6) Investment aid for the promotion of energy from renewable sources

- **Article 1 (28) (c) – GBER Article 41(2):** Condition regarding the feedstock origin (listed in Part A of Annex IX) in case of the production of biofuels, bioliquids, biogas and biomass fuels should be deleted.
  Annex IX to the Directive 2018/2001 applies to feedstocks for the production of biogas for transport and advanced biofuels, the contribution of which towards the minimum shares referred to in the first and fourth subparagraphs of Article 25(1) may be considered to be twice their energy content and hence is completely irrelevant for heat and electricity production from biomass fuels and article 41 of GBER which does not apply to fuels used in transport.

- **Article 1 (28) (d) – GBER Article 41(4a)**: Exemption from the notification requirement of Article 108(3) of the Treaty in case of natural gas should not be linked to the compliance with the 2030 and 2050 climate targets, but to the "national climate and energy plan".
  Compliance with 2030 and 2050 climate targets cannot be verified on project level (beneficiary of aid). Compliance of the investment with national climate and energy plan which provides for concrete measures to reach climate and energy targets on national level can be ensured.

7) Operating aid for the promotion of energy from renewable sources in small scale installations

- **Article 1 (30) (b) – GBER Article 43(2a-2b) –** suggest to delete the paragraph 2a:
  (b) the following ~~paragraphs 2a and 2b are~~ **paragraph 2a is** inserted:
  "~~2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity of less than 1 MW undertaken by entities falling with the definition of renewable energy community.~~
  ~~2b.~~ 2a. Operating aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen.";

  Justification:
  We do not see reason for different maximum capacity for renewable energy communities. The same rules should apply to all projects serving the same purpose regardless of who is the owner. Renewable energy communities cannot be preferred against other owners of projects because that would create serious distortion of competition on internal market.

8) Investment aid for energy efficient district heating and cooling

- **Article 1 (33) – GBER Article 46** – suggested change of the paragraph 1b, 1c point (c), 3 and 4:
  "…
  1b. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation may be

granted only where compliance with ~~the 2030 and 2050 climate targets~~ **national climate and energy plan** is ensured.

1c. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:

…

(c) in case of an upgrade to the storage or network distributing heating and cooling generated from ~~natural gas, compliance with the 2030 and 2050 climate targets~~ **fossil fuels compliance with national climate and energy plan** is ensured.

…

3. The aid intensity shall not exceed 30 % of the eligible costs **for production plants and 60 % for the network**. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

4. The aid intensity may be increased by 15 percentage points for investments using ~~only~~ **at least [60 %]** renewable energy sources, including green cogeneration **or waste heat or cold or combination thereof**.

Following definition should be included:

'waste heat and cold' means waste heat and cold as defined in article 2 point (9) of the directive 2018/2001/EU."

Justification:

Compliance with 2030 and 2050 climate targets cannot be verified on project level (beneficiary of aid). Compliance of the investment with national climate and energy plan which provides for concrete measures to reach climate and energy targets on national level can be ensured.

Paragraph 1c. refers to storage and distribution networks that transmit heating and cooling generated based on fossil fuels. Letter (c) in paragraph 1c. should therefore also refer to fossil fuels in general and not specifically to natural gas. It is not realistic to expect that the only fossil fuel used in district heating networks will be natural gas. However, transition to cleaner fuels in compliance with national climate and energy plan should be ensured.

Aid intensity of 30 % in paragraph 3 is grossly insufficient in case of refurbishment of district heating networks or construction of new networks. District heating networks are highly capital-intensive and much higher aid is typically needed to trigger necessary investment. Calculation using paragraph 5 can be difficult and clear aid intensity limit in paragraph 3 would provide more certainty and would significantly improve applicability of the whole article.

Utilisation of waste heat can provide even bigger environmental benefits than renewable energy sources and it should be included in paragraph 4. It is also not realistic to expect that district heating system will use only energy from renewable energy sources or waste heat. District heating systems with very high share of renewable energy or waste heat should get the green bonus.

9) Investment aid for energy infrastructure

- **Article 1 (35) – GBER Article 48(3)** – suggested change of the paragraph 3:

"Article 48

…

3. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, ~~or mainly~~ **partially** used for the transport of hydrogen and renewable gases **and smart gas grids**."

Justification:

In case of mainly used infrastructure for the transport of hydrogen and renewable gases will be not exempted from notification requirement, support of blending 0-50% H_2 in natural gas will be much more difficult. This will slow down opening of H_2 market.

Smart gas grids – EEAG point 206 - „The Commission considers that for Projects of Common Interest as defined in Regulation (EC) No 347/2013 (91), for smart grids, and for infrastructure investments in assisted areas, **the market failures in terms of positive externalities and coordination problems are such that financing by means of tariffs may not be sufficient and State aid may be granted**."

10) Conditions for aid involved in financial products supported by the InvestEU Fund

- **Article 1 (37) (d) – GBER Article 56e(8)** – suggested change of the paragraph 8, point (b):

"(v) investments in green roofs and equipment for the recovery of rain water~~.~~**;**
(vi) the connection to a district heating or cooling."

Justification:
Connection of a building to district heating can contribute to primary energy savings and significantly improve level of environmental protection. It typically requires investment also on the side of a building and the equipment is not part of district heating network. This investment should be supported in the same manners as on-site generation of energy from renewable sources.