



## State aid in the energy sector

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Summer  
School  
in European  
Environmental  
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# OVERVIEW

1. Introduction
2. Support to renewables
3. Support to energy-intensive users
4. Support to national resources, to energy infrastructure, and to energy consumers
5. Conclusion



# 1. Introduction: State aid and the Energy Transition



- **State aid: Article 107 TFEU, GBER, CEEAG**

- 107(1) TFEU: 4 criteria

- *107(3)(c) TFEU*

- *GBER (General Block Exemption Regulation 651/2014)*

- *CEEAG (Climate, Energy and Environmental Aid Guidelines)*



## 2. Support to renewables



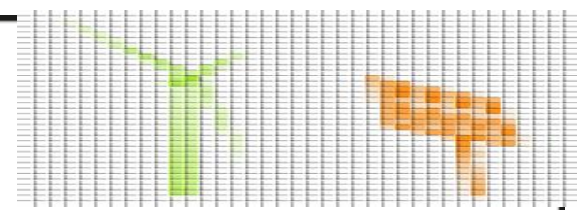
- **Modern Policies = More State aid (incl. direct subsidies, loans)**

- ❖ REPowerEU:

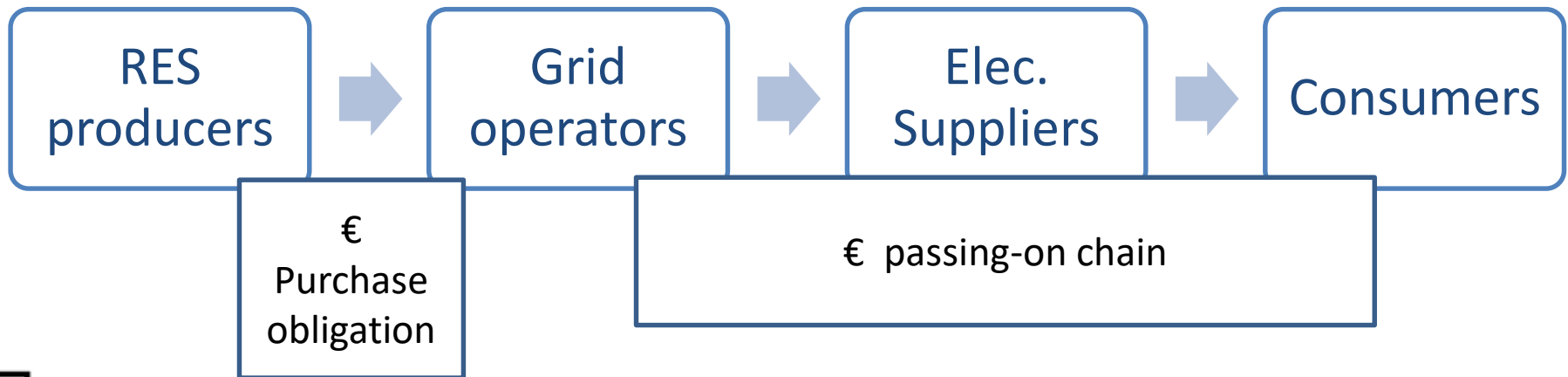
- A massive speed-up and scale-up in renewable energy in power generation, industry, buildings and transport
- 45% renewables by 2030
- Offshore wind, (rooftop) solar PV, geothermal and solar thermal, biomethane
- (renewable) hydrogen



## 2. Support to renewables



- ❖ Direct Subsidies
- ❖ Loans
- ❖ Guaranteed tariffs or bonus payments to the energy producers



## 2. Support to renewables



- Regulatory transfer of private resources or transfer of resources by way of a State concession?
  
- **Case law (e.g. PreussenElektra, Vent De Colère!, EEG2012, FVE Holýšov)**
  - ❖ Not a clear, doctrine-based answer
  
- **But**
  - ❖ Auctions?
  - ❖ After high energy prices?



## 2. Support to renewables



- **GBER 651/2014**

- Investment Aid [Article 41]

- only to new installations, for the extra costs, under aid-intensity rules (e.g. 45% of the costs), and with a threshold of 50M € per undertaking, per investment project

- Operating Aid [Article 42]

- only in the form of premiums, allocated after technology-neutral, competitive bidding (with exceptions → LCOE, counterfactual);
- balancing responsibilities for beneficiaries
- no incentive to generate under negative prices



## 2. Support to renewables

- **CEEAG, compatibility conditions**
- Positive-effect economic activity
- Incentive effect: The beneficiary to change behaviour because of the aid (*lato sensu*; see AG Rantos on C-470/20)
- Necessity → market failure analysis
- Appropriateness → Aid as an ultimum refugium
- Proportionality → limited to the minimum needed
  - Direct price support: premiums + technology-neutral, competitive bidding (with exceptions)
  - Possible use of quotas and green certificates





### 3. Support to energy-intensive users

- Relieve energy-hungry industries from the obligation to contribute to the financing of renewables
  
- Advantage?
  - A compensation for the reduction in their international competitiveness?
  
- **Case law (T-47/15, EEG 2012 General Court)**
  - ❖ The argument admits the existence of an advantage
  - ❖ Mitigating structural disadvantages does not mean no State aid



### 3. Support to energy-intensive users



#### **But it is compatible State aid**

#### ➤ **GBER, Article 43, and Temporary Crisis Framework for State Aid**

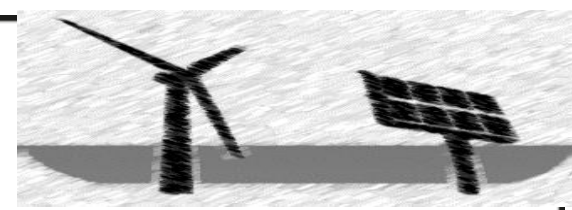
- Reductions in environmental taxes
- possibly with requirements for more energy efficiency, increased use of green energy, diversification

#### ➤ **CEEAG section 4.11**

- For sectors at significant risk and at risk, as per Annex I of the CEEAG
- The beneficiaries should still pay at least 25% (or 15%) of the costs of the levies (with exceptions, incl. a higher aid intensity if policies that reduce the carbon footprint are adopted)
- The reductions should not result in a levy below 0,5 €/MWh
- Aid is granted as a reduction in levies or as a refund



## 4. New challenges: Support to energy infrastructure, national/conventional resources



### ➤ REPowerEU

- targeted investments for **security of supply in gas** infrastructure and very **limited changes to oil infrastructure** [...]. some of the **existing coal capacities might also be used longer** than initially expected, with **a role for nuclear power and domestic gas** resources too.
- 10B € by 2030 for gas infrastructure, including LNG import terminals and pipelines
- 2B € for alternative supply routes for oil (ports, pipelines) and upgrading petroleum product refineries
- 29B € for power grid investments



## 4. New challenges: Support to energy infrastructure, national/conventional resources

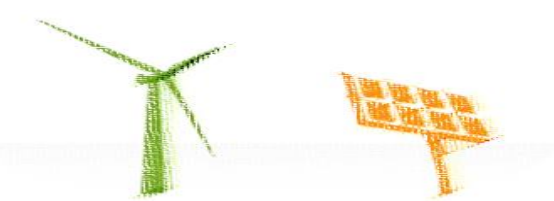


- **BUT ....**
- CEEAG paras 128-129:
  - new investments in energy or industrial production based on the most **polluting fossil fuels**, such as coal, diesel, lignite, oil, peat and oil shale, **increase the negative environmental externalities** in the market. They will not be considered to have any positive environmental effects.
  - **Similarly with natural gas, unless MS explain how** new investments can have positive environmental effects
- Other funds:
  - Recovery and Resilience Plans, InvestEU, Innovation Fund



....

## 4. New challenges: Support to consumers



- Temporary Crisis Framework for State Aid
  - Direct payments **to non-commercial energy consumers**  
≠ State aid
  
  - Aid to undertakings is compatible if
    - Granted **by 31.12.2022**
    - Is **proportionate** (aid intensities, ceilings), but it can have many forms (direct payments, tax advantages, loans etc)
    - **Eligible costs** under this measure are calculated based on the increase in natural gas and electricity costs linked to the Russian aggression against Ukraine (technical calculations + ceilings)



## 4. New challenges: Support to consumers



### ➤ Toolbox (October 2021)

- Price caps and temporary tax breaks for vulnerable energy consumers, or vouchers and subsidies for consumers and businesses;
- Reduced (VAT) rate on energy products
- Lump sum compensations for vulnerable households
- Financing of renewable support schemes from sources outside the electricity bill.
  
- **Measures of a general nature, equally helping all energy consumers ≠ State aid**
- **More targeted support measures should be technology neutral and not be discriminatory**



## 5. Conclusion



- Market-based approach
  - Market premiums
  - Competitive bidding procedures
  - Market failure analysis
  
- Flexibility in favour of national choices
  
  
- Emergency situation



**Thank you very much!**

**- Questions, comments, thoughts.... ?**

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