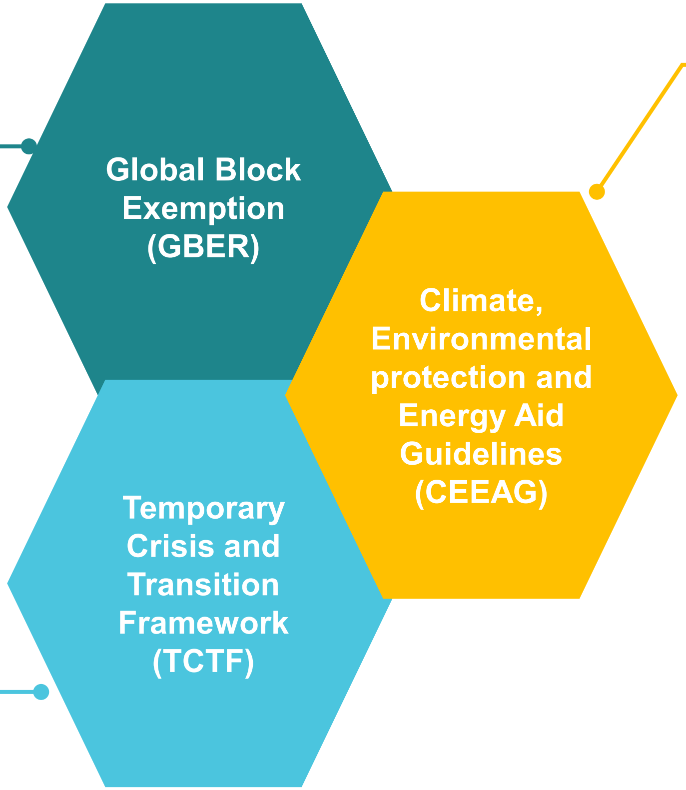
State aid rules for industrial decarbonisation

Focus: GBER, section 4.1 CEEAG and section 2.6 TCTF

State aid rules relevant for decarbonisation under JTF

GBER

- Section 7 relevant for environmental protection aid
- For aid up to EUR 30 million per undertaking/project
- No need to notify to the Commission



CEEAG

- Section 4.1 relevant for aid for industrial decarbonisation and energy efficiency
- Schemes or under certain conditions ad-hoc aid

TCTF

- Section 2.6 relevant for electrification, hydrogen switch, energy efficiency in industry
- Valid until 31 December 2025
- Only for schemes (no ad-hoc aid)

General block exemption Regulation (GBER)

European Commission

GBER – Overview and opportunities

- The GBER allows MSs to grant aid without the need for prior notification to/approval by the Commission if its conditions are met
- It is the quickest way to grant aid that is limited in size and entails minor risks of competition distortions
- Section 7 GBER has been significantly updated by the recent 'Green Deal' GBER revision: higher aid amounts, broader scope, focus on clean investments (e.g., exclusion of fossil fuel technologies)

Is GBER a suitable legal basis?

If yes: no notification for approval. MS can implement the planned aid measure

If no (e.g. aid amount exceeds notification threshold): MS has to identify the suitable legal basis and start contacts with the Commission (DG COMP) as soon as possible

Introduction: ‘Green Deal’ GBER revision

On 23 June 2023, the Commission adopted a targeted amendment to the GBER

Purpose of the revision:

- Ensure possibilities for MS to **mobilise more aid for projects in line with the Green Deal objectives and with the European Industrial and Digital Strategies**, in situations with limited risk of distorting competition.
- Ensure **coherence with the corresponding revised Guidelines:** CEEAG; Research, Development and Innovation Framework; Regional Aid Guidelines; Risk Finance Guidelines; Broadband Guidelines.
- Update the provisions to keep apace with **market and technological developments**

Main changes in Section 7 (Environmental protection):

- Increased notification thresholds (**EUR 30 million**)
- **Broader scope**: Industrial decarbonisation, H2 production, Renewable energy communities, Investment aid for recharging and refuelling infrastructure, Aid in the form of reductions in environmental taxes/levies
- **Stricter conditions on phase out of fossil fuels**, incl. natural gas

A consolidated version of the GBER is available on EUR-Lex - 02014R0651-20230701 - EN - EUR-Lex (europa.eu)

Relevant GBER provisions

	Article 36 GBER Environmental protection (incl. decarbonisation)	Article 38 GBER Energy efficiency (other than in buildings)
Maximum aid amount	**EUR 30 million** per undertaking per project	**EUR 30 million** per undertaking per project
Scope	Investments for environmental protection, incl. decarbonization, in the absence of, beyond or for early adaptation to Union standards, including: • Equipment using renewable hydrogen and hydrogen derived fuels • Equipment using electricity-based hydrogen (at least 70% life-cycle emission reduction) and dedicated infrastructure • CCS/CCU	Investments for energy efficiency measures other than in buildings in the absence of, beyond or for early adaptation to Union standards
Minimum environmental benefit	• No shift in emissions between sectors • Exclusion of equipment using fossil fuels (incl. NG) • Conditions on GHG intensity of hydrogen used	• Exclusion of equipment using fossil fuels (incl. NG)
Aid amount calculation	Alternative methods: • Competitive bidding (up to 100% investment costs) • 30% to 40% of **extra** investment costs + SME/assisted areas/100% emission reduction bonus • 15% to 20% of **total** investment costs + ½ SME/assisted areas bonus • Difference between investment costs and operating profit (+ clawback)	Alternative methods: • Competitive bidding (up to 100% investment costs) • 30% of **extra** investment costs + SME/assisted areas bonus • 15% of **total** investment costs + ½ SME/assisted areas bonus

Relevant GBER provisions (2)

	Article 49 GBER **Aid for studies and consultancy services on environmental protection and energy matters**
Maximum aid amount	**EUR 30 million** per undertaking per project
Scope	• Studies or consultancy, incl. energy audits, directly linked to investments eligible under Section 7 GBER on the aid for environmental protection • Aid can be granted irrespective of whether study/consultancy is followed by an investment • Aid cannot be granted for mandatory energy audits imposed on undertakings by the Energy Efficiency Directive
Aid amount calculation	• Eligible costs: costs of the study or consultancy service (or part thereof) • 60% of the eligible costs • Bonus 20 pp for small undertakings and 10 pp for medium undertakings

Cumulation under the GBER

- RRF, JTF and structural funds are State resources, therefore State aid rules apply
- When **centrally managed Union funding** (e.g. Innovation Fund (IF)) is **combined with State aid**, the total amount of public funding granted in relation to the same eligible costs must not exceed the most favourable funding rate laid down in the applicable rules of Union law
- E.g. for the same project, the total amount of public funding (GBER and IF) should not exceed the highest amount between (i) 60% of the relevant costs as calculated under the IF rules, and (ii) the maximum amount of State aid that can be granted for that specific project under the GBER.
- **GBER aid may be cumulated with other State aid under GBER** (i) as long as those measures concern different identifiable eligible costs, or (ii) for the same eligible costs if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under GBER
- **Commission decisions set out the cumulation rules based on the relevant guidelines which generally follow the same approach as GBER**. Any aid already granted under the GBER for the same eligible cost/project will have to be considered when giving the additional aid under the decision

Guidelines on State aid for Climate, Environmental Protection and Energy (CEEAG)

European Commission

The CEEAG

- Since 27 January 2022, the CEEAG provide the **framework for MS to support the European Green Deal** objectives efficiently and with minimum distortions of competition
- The revised rules finding **the right balance** between:

Widening the possibilities to address Green Deal goals by:

- Widening the scope, increasing flexibility and streamlining the existing rules

Limiting competition distortions to the minimum by:

- Directing aid where it is needed (no crowding-out of private investment)
- Avoiding greenwashing
- Calibrating the aid to the amount needed to trigger the project
- Ensuring cost-effectiveness (minimum cost to the taxpayer in relation to the problem)

Section 4.1 – Aid for GHG emission savings: overview

Scope

- **Measures that contribute to GHG emission reductions**, incl. aid for industrial decarbonisation
- Aid can be granted in the form of **investment or operating aid** (but additional requirements apply in case of operating aid: the aid must incentivise the beneficiary to behave in an environmentally-friendly manner while ensuring that it remains subject to market signals)

Environmental protection

- Aid must not prolong dependence on fossil fuels
- Aid must not shift emissions between sectors and must lead to an overall reduction of GHG emissions
- Aid for decarbonising industrial activity must result in direct emissions reduction from the supported industrial activity

Section 4.1 – Aid for GHG emission savings: overview (2)

Incentive effect and necessity

- Without the aid, the environmental benefit cannot be achieved
- Existing policy and measures, incl. ETS, are not sufficient to incentivise the activity or investment (residual market failure)

Proportionality

- In principle, aid granted through **open competitive bidding processes** based on bids with highest cost-efficiency (possibility to use quality criteria for up to 30% of the total weighting)
- Exception e.g. for cases of limited expected supply/competition (in that case: **funding gap + claw back**)

Competition and trade

- Ad hoc aid & schemes with limited number of beneficiaries: more detailed competition analysis
- Public consultation (since July 2023)
- Transparency of CO2 abatement costs (since July 2023)

Lessons learned

Ad hoc State aid measures require a **very detailed scrutiny** of both **financial** and **competition aspects** of the case	• Use decarbonisation **schemes**, existing or new, to grant the aid, ideally allocating the aid based on competitive bidding to speed up the process
Industrial decarbonisation projects are usually **large and complex** from a technical perspective	• **Initiate contacts with COMP as soon as possible** to allow for sufficient assessment time
Aid amounts significantly below the funding gap call into question the aid's incentive effect or the robustness of the funding gap	• Verify that the aid amount allows to (almost) **close to the funding gap**
Close scrutiny by the MS authorities is essential, contact with COMP case team throughout the procedure is helpful	• Ensure **high quality** and **completeness** of the submissions in order to reduce probability of follow-up questions

Excursus on land preparation and remediation

European Commission

Land preparation

- Ambitious decarbonisation projects may require activities to prepare the land/site for new constructions
- The State aid rules for environmental protection do not include a compatibility legal basis to support the costs of land preparation (e.g., demolition, excavation), taken in isolation
- Where those cost are inextricably linked to a decarbonisation investment, they might be included in the overall project's costs
- NB: **land preparation is not the same thing as decontamination**, for which specific State aid rules exist.

Remediation of environmental damage

The CEEAG and the GBER contain specific rules on State aid for:

- **remediation** of environmental damage
- **rehabilitation** of natural habitats and ecosystems from a degraded state
- **protection or restoration of biodiversity** or of **ecosystems**
- **implementation** of **nature-based solutions** for climate change adaptation and mitigation

Main conditions	Section 4.6 CEEAG	Article 45 GBER
Aid calculation	Up to 100% of the eligible costs **Remediation and rehabilitation**: eligible costs=costs of the works minus increase in value of the land **Biodiversity and nature-based solutions**: eligible costs=total costs of the works	**Remediation and rehabilitation**: up to 100% of eligible costs **Biodiversity and nature-based solutions**: up to 70% of eligible costs + SME bonus Eligible costs: costs of the works minus increase in value of the land
Exclusions	• aid for remediation or rehabilitation following the **closure of power plants and mining or extraction operations** (covered by Section 4.12 CEEAG) • aid to make good the damage caused by **natural disasters**	
Incentive effect & appropriateness	**Polluter pays principle**: where the entity liable for the environmental damage under national law is identified, that entity shall finance the works necessary to prevent and correct environmental degradation and contamination, and no aid shall be granted for the works that the entity or undertaking would be legally required to conduct. MS to take all the necessary measures to identify the liable entity and make it bear the costs	

Section 2.6 - Temporary Crisis and Transition Framework (TCTF)

Temporary Crisis and Transition Framework

23 March 2022:
Temporary Crisis Framework (TCF) adoption

July/Oct 2022:
TCF amendments, incl. new **Sections 2.5** *(Renewable energy)* and **2.6** (*Decarbonisation and energy efficiency*)

9 March 2023:
Temporary Crisis and Transition Framework (TCTF) adoption

20 November 2023:
Adoption of limited prolongation of the TCTF

31 December 2025:
End of validity of Sections 2.5 and 2.6

Accelerating decarbonisation (Section 2.6)

Schemes covering **investments** in:

- Energy efficiency in <u>industrial processes</u>
- Electrification of <u>industrial processes</u>
- Switch to **hydrogen** and **hydrogen-derived fuels** <u>in industrial processes</u>

NB: the scheme does not need to cover all categories

GHG emission reduction of min**. 40%** and energy consumption reduction of min. **20%** <u>compared</u> to current situation (no greenfield investments)

For companies in the ETS: emissions must be below **ETS benchmarks**

Renewable hydrogen or specific types of hydrogen produced from electricity

- Maximum aid amount up to EUR 200 million or 10% of scheme budget
- **Method 1:** 40% of extra environmental costs; bonuses possible; with claw back
- **Method 2:** Competitive bidding process
- **Method 3: Aid intensities**
  - 30% of CAPEX for electrification and energy efficiency
  - 60% of CAPEX for decarbonisation through hydrogen and hydrogen derivatives

- Limited increases in production capacity acceptable if resulting from technical necessity (<2%)
- Implementation deadline (36 months) with penalties

Thanks for your attention!

European Commission

Q&A

Counterfactual scenario (CF)

Art.36 and Art. 38 GBER: as a rule, CF is required to establish the eligible costs. Derogations apply: Art.36(11) and 38(8) allow aid as a percentage of the investment costs.

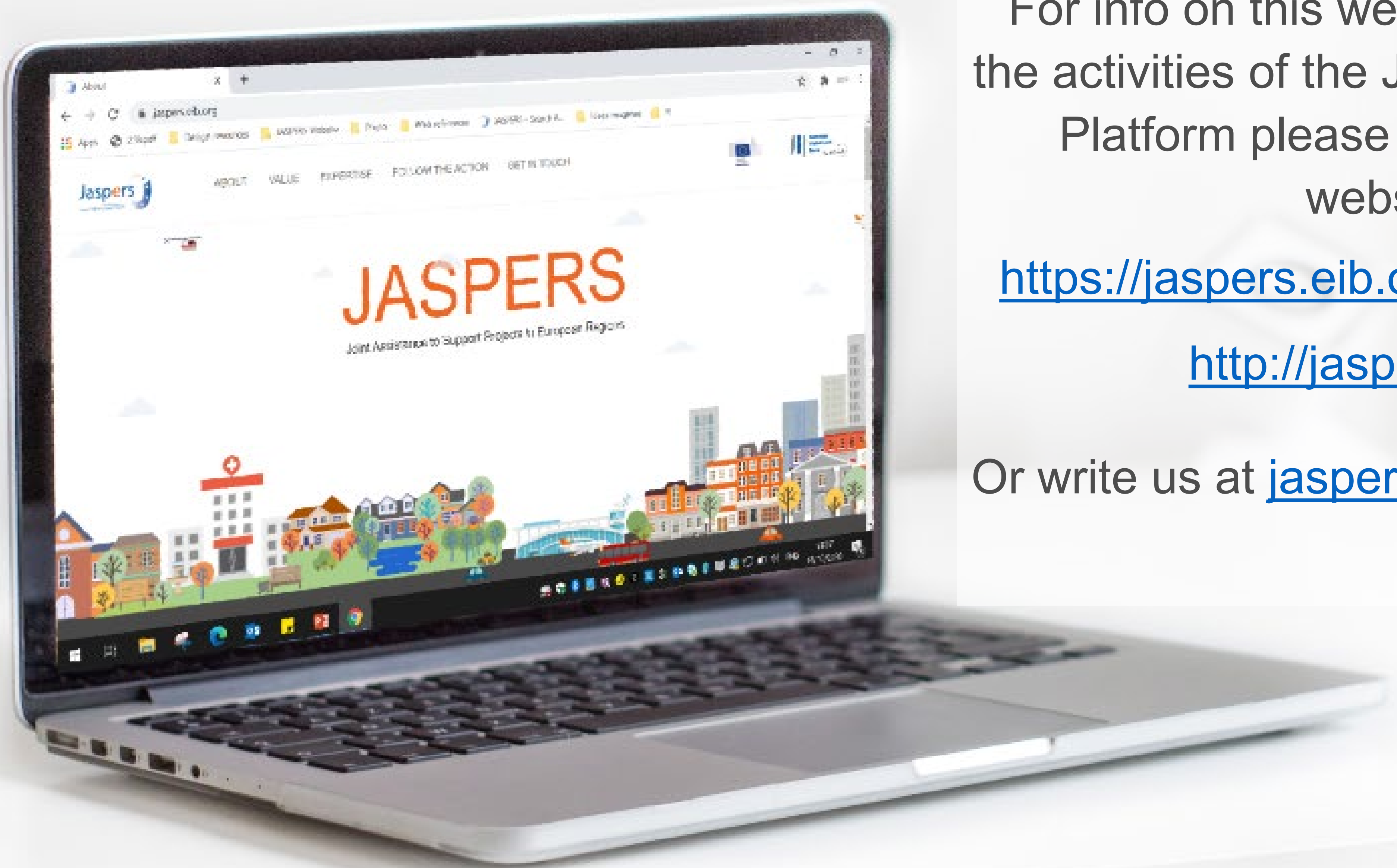
CF always necessary to identify environmental benefits

- less environmentally-friendly investment
- the same investment as in the aided project but at a later point in time or
- maintaining the existing installations

Section 4.1 CEEAG: where aid is granted without a competitive bidding process, the aid is allocated based on the funding gap (i.e., difference between NPV of the factual scenario and CF).

- CF is assessed on case-by-case basis (e.g., less environmentally friendly investment, no investment or delayed investment)
- It must be credible, genuine and related to decision making process of the company regarding the project

Section 2.6 TCTF: BaU CF is presumed for decarbonisation projects; for energy efficiency projects a justification is required



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