



Factsheet
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Energy efficiency financial instruments combined with grants - State aid aspects



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Abbreviations

Abbreviation	Full name
CEEAG	Climate, Energy and Environmental Aid Guidelines
CPR	Common Provisions Regulation
ECJ	European Court of Justice
EIB	European Investment Bank
EIF	European Investment Fund
EU	European Union
FI	Financial Instrument
FIs	Financial Instruments
GGE	Gross Grant Equivalent
GBER	General Block Exemption Regulation
IFI	International Financial Institution
MA	Managing Authority
NPB / NPBs	National Promotional Bank(s)
OJ	Official Journal (of the European Union)
SCO	Simplified Cost Option
SGEI	Services of General Economic Interest
SME / SMEs	Small and Medium-sized Enterprises
TFEU	Treaty on the Functioning of the European Union



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Introduction

Financial instruments (FIs) often involve multi-layer structures through which the State aims to create incentives for economic operators to provide financing to final recipients.

State aid rules may apply to FIs with a grant component to support energy efficiency. In accordance with Article 107(1) TFEU, for a FI to entail State aid, the following cumulative conditions must be met:

- there must be a use of State resources;
- an advantage must be granted to an undertaking (i.e. an entity engaged in an economic activity);
- the advantage must be selective;
- there is (a risk of) competition distortions and trade between Member States must be affected.

FIs (including those with a grant component) may entail State aid at multiple levels:

- at the level of the final recipient of the FI;
- at the level of the financial intermediaries and/or holding/specific fund managers (together called “bodies implementing the FI” or “implementing bodies”);
- at the level of the independent private co-investors (if any).



Situations in which State aid can be excluded

Exclusion of State aid at the level of the bodies implementing the FI (i.e. financial intermediaries and/or fund managers)

State aid at the level of the bodies implementing the FI with a grant component can normally be excluded if the following cumulative conditions are fulfilled:

- The **remuneration** of the implementing bodies reflects the current market remuneration in comparable situations (i.e. it is market-conform). This is notably the case when the bodies implementing the FI have been selected through a competitive, transparent, non-discriminatory and unconditional selection procedure¹. If there is no competitive, transparent, non-discriminatory and unconditional selection procedure, the market conformity of the remuneration may still be shown by other means.
- The **advantage of the public contribution to the FI with a grant component is quantified and then fully passed on**² by the implementing bodies to the final recipients (for instance in the form of an interest rate reduction compared to the market-conform interest rate³ or a decrease in collateral requirements on the loans to final recipients).
- If a body implementing the FI invests alongside the MA, its investment is made on *pari passu* terms⁴ with that of the MA. However, **in the presence of a grant component**, the respective investments of the MA and the body implementing the FI which is co-investing are **unlikely to be *pari passu*** in the present context (as an MA will typically offer preferential terms to address a market failure, and a co-investing implementing body will normally not provide a grant component like the MA).

1 However, bodies covered by Article 59(3) of the Common Provisions Regulation (CPR) to which an MA may directly award a contract for the implementation of the FI (e.g. EIB or national promotional banks (NPBs)) are not selected through a competitive tender. However, if the implementation of the FI combined with a grant is entrusted to an NPB, the EIB, the European Investment Fund (EIF) or an international financial institution (IFI), then such bodies are not considered State aid beneficiaries if: (i) they act exclusively within the public remit (in the case of NPBs); (ii) they do not co-invest or provide funding (i.e. they merely act as an implementing vehicle); (iii) they are not overcompensated for the service they provide; (iv) the fee they receive does not spill over to their commercial activities (if any).

2 Full pass-on of the advantage requires a quantification of the aid that is contained in the FI and then passed on to the final recipients via sub-commercial financing terms (such as an interest rate below the market rate). The gross grant equivalent (GGE) of aid contained in support provided to final recipients should be the same or higher than the GGE of aid contained in a financial instrument provided to bodies implementing the FI (e.g. financial intermediaries) to demonstrate that all aid has been passed on to the final recipient and no aid remains behind at the level of the bodies implementing the FI.

3 The market-conform interest rate can either be determined on the basis of the Commission's Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6–9), or on the basis of an appropriate market benchmark for the specific sector and risk.

4 Investments by a private and public investor can be considered *pari passu* if: (i) the investments are made under the same terms and conditions (i.e. private and public investors are exposed to the same risks and rewards and are subject to the same level of subordination in case of a layered funding structure); (ii) the investments are done simultaneously; (iii) the private investment is economically significant (as a rule of thumb, it should represent minimum 30% of the total investment made); (iv) the private and public investor should be in a comparable starting position with regard to the investments. For further guidance, see section 4.2.3.1 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946, OJ C 262, 19.7.2016, p. 1–50.



Exclusion of State aid at the level of the independent private co-investors (if any)

State aid at the level of independent private co-investors (other than the aforementioned financial intermediaries also acting as bodies implementing the FI) can be excluded if those private investors' investments are made on *pari passu* terms with those by public investors (e.g. the MA). However, this **condition is unlikely to be fulfilled** in the present context (as an MA will typically offer preferential terms to address the market failure that is hampering investments in energy efficiency improvements, and independent private co-investors will normally not provide a grant component like the MA).

In the absence of *pari passu* terms (e.g. the private co-investors enjoy preferential returns or reduced exposure to losses), **aid at the level of independent private co-investors cannot be excluded**. However, such aid at the level of the private co-investors **can still be considered compatible under Article 39 GBER** if the applicable conditions in that article are met **and the grant component is fully passed on to the final recipients** (as Article 39 GBER does not cover indirect aid in the form of a grant to private co-investors), or based on a prior notification to and approval by the Commission.

Exclusion of State aid at the level of the final recipient

State aid at the level of final recipient in relation to the FI with a grant component can normally be **excluded** in the following situations:

- The final recipients are **natural or legal persons which are not carrying out an economic activity**, i.e. they are not offering goods or services on the market and therefore fall outside the scope of State aid control. This would normally be the case when final recipients are households obtaining a loan and/or grant for energy efficiency investments in their own residence and they do not use the residence to carry out an economic activity.

It should be noted that **if the final recipient of the FI with a grant component is the owner of a multi-apartment building, State aid** might be involved if the owner is carrying out an **economic activity** (which may be the renting out of the apartments to tenants or another economic activity). However, it is not implied that State aid provided to the owner of the multi-apartment building would lead to (indirect) aid to the tenants in the building, irrespective of whether the tenants use their respective apartments for an economic activity themselves.

- If the **final recipient is a purely local business** acting on a purely local market, an assessment can be made **whether the support is liable to affect trade** between Member States. There will **likely not be any impact on trade** between Member States if the following cumulative conditions are fulfilled:
 - the support is granted directly to the final recipient (owner of the building or tenant);
 - the final recipient uses the building to supply goods or services only to local customers which are likely to look only for local service providers;
 - the services concerned are unlikely to attract customers from other Member States; and
 - it is expected that the measure will have a marginal effect on the conditions of cross-border investments or establishments.

If it is concluded that there is no impact on trade, the support to the final recipient also falls outside the scope of the State aid rules. The "*Marinvest*" decision of the ECJ⁵ provides an example of the type of businesses that in this way fall outside the scope of State aid control.

5 See Judgment of the General Court of 14 May 2019, *Marinvest v European Commission*, T-728/17.



- A distortion of competition and an effect on trade can also be excluded in cases of very limited amounts of aid (so-called “*de minimis* aid”). **Aid is considered to be *de minimis*** if the total amount of aid granted per Member State to a single undertaking **does not exceed EUR 300 000 over any period of three fiscal years** and the other conditions laid down in the *De Minimis* Regulation⁶ are respected. Notably:
 - The aid **must be “transparent”** within the meaning of Article 4 of the *De Minimis* Regulation, i.e. it must be **possible to calculate precisely the gross grant equivalent (GGE) of the aid** ex ante without a need to undertake a risk assessment.
 - The EUR 300 000 *de minimis* threshold must be respected in case of **cumulation** with any other public support granted to the same beneficiary under the *De Minimis* Regulation.
 - The cumulation rules set out in the *De Minimis* Regulation must be complied with.

To verify compliance with the *de minimis* threshold, the total GGE of the FI with a grant component should be calculated as follows:

$$GGE_{FI} = \text{present value of the grant} + \text{GGE of the loan}$$

For the calculation of GGE_{FI} :

- The present value of the grant equals the discounted value of the grant.
- To calculate the GGE of the loan, the sum of the discounted values of the difference in interest payments stemming from the difference between the market-conform interest rate⁷ and the actually applicable interest rate should be calculated.
- Present values should be calculated by using the reference rate⁸ applicable at the moment as discount rate. To that end, the base rate, increased by a fixed margin of 100 basis points, has to be used.

The list above is not exhaustive as the presence of State aid may be also excluded based on other reasons or legal bases.

Use of off-the-shelf instruments

The Commission has developed standard terms and conditions for certain types of FIs, including for renovation loans for energy efficiency and renewable energies in residential buildings⁹. The latter is designed as a State-aid-free instrument, so if its terms and conditions are fulfilled, State aid can be excluded at all levels.

⁶ Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L, 15.12.2023, p.1.

⁷ The market-conform interest rate can be determined on the basis of the Commission's Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6–9.

⁸ As meant in the Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.01.2008, p.6.

⁹ See Article 8 of Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments, OJ L 271, 12.9.2014, p. 16.

How State aid can be compatible

If State aid cannot be excluded, compliance with the applicable State aid rules must be ensured so that the State aid can be considered compatible with the internal market. The following scenarios can occur:

- **Scenario 1:** The State aid complies with all applicable rules of the General Block Exemption Regulation (GBER)¹⁰ (or another block exemption regulation) so that Member States are exempted from the obligation to notify the aid to the Commission.
- **Scenario 2:** State aid can be declared compatible under the guidelines on State aid for climate, environmental protection and energy aid (CEEAG)¹¹ (or another set of State aid guidelines¹²), upon notification to the Commission. This option should be used if the applicable GBER conditions are not fulfilled.

Scenario 1: application of the GBER

Disclaimer

The explanations in this section are based on the consolidated version of the GBER of 1 July 2023 which incorporates the targeted amendment to the GBER formally adopted by the Commission on 23 June 2023. However, at the time of publication of this factsheet, the Commission has launched another review of the GBER, in line with the EU's Competitiveness Compass and the Clean Industrial Deal. The adoption of the revised GBER is planned for the end of 2026, with the entry into force on 1 January 2027. When the revised GBER enters into force, the explanations in this section might no longer be valid and might have to be revised. More information on the ongoing GBER review is available at https://competition-policy.ec.europa.eu/state-aid/gber-review_en.

As far as the GBER is concerned, compliance need to be ensured each time with the common (i.e. general) GBER conditions¹³ as well as the specific conditions set out in the respective GBER articles (in particular the applicable maximum aid ceilings and intensities).

The following GBER articles are particularly relevant for support for energy efficiency investments:

- **Article 38a GBER concerns investment aid for energy efficiency measures in buildings.**
 - The article only covers **investment aid** to final recipients in the form of a **grant or another form for which a gross grant equivalent (GGE) can be calculated**.
 - The article could in principle also cover aid given to final recipients through FIs, but it **does not cover aid to bodies implementing the FI**. Consequently, in case of a financial instrument involving implementing bodies, for this article to be used, it **should be demonstrated** that the remuneration of the bodies implementing the FI is market-conform and that **the implementing bodies fully pass on the financial advantage** of the public contribution to the FI to the final recipient. Market-conform remuneration can be assumed in particular if the implementing bodies are selected through a competitive, transparent, non-discriminatory and unconditional procedure.

¹⁰ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

¹¹ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1–89.

¹² E.g. State aid rules for the assessment of public compensation for services of general economic interest (SGEI).

¹³ See Chapter I of the GBER.



Full pass-on of the advantage can only be demonstrated by verifying that the GGE of the aid flowing from the MA to the implementing bodies equals the GGE of the aid flowing from the implementing bodies to the final recipient.

- The article sets out a **closed list of investments that may be combined with the energy efficiency investment** (so-called “combined works”)¹⁴.
- The eligible costs are the total investment costs directly linked to the achievement of a higher level of energy efficiency in the building (including the additional investment costs in the context of allowed combined works).
- The standard **maximum aid intensity is 30% of the eligible costs** (with some deviations under certain conditions). The **maximum aid amount** (which can be exempted from notification under the GBER) is **EUR 30 million** per undertaking per project.
- The article does not allow support for equipment using fossil fuels, including natural gas. Therefore, also **gas boilers which are at least A-rated or have a seasonal efficiency of 90% or better are not eligible** for support under this article. The **article does also not apply to cogeneration**¹⁵.
- **Article 39 GBER** concerns investment aid for energy efficiency projects in buildings specifically in the form of financial instruments.
 - The **article presupposes the involvement of bodies implementing the FI** (i.e. financial intermediaries and/or fund managers). These bodies receive aid from the MA in the form of an endowment, equity, loan or guarantee.
 - The **implementing bodies are required to pass on the aid to the largest extent possible** (i.e. not fully) to final recipients in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates. Consequently, **this article is to be used if aid at the level of the implementing bodies cannot be excluded** (e.g. when the market conformity of the remuneration of implementing bodies could not be established or when full pass-on of the aid based on GGE calculations cannot be demonstrated). **As opposed to Article 38a GBER, a GGE calculation to precisely quantify the aid is not needed under Article 39 GBER.**
 - It is **required that the repayment** by final recipients to the financial intermediary or energy efficiency fund **shall not be less than the nominal value of the loan. Consequently, this article cannot cover aid in the form of grants.**
 - Similar to Article 38a GBER, the article sets out a **closed list of investments that may be combined with the energy efficiency investment** (so-called “combined works”)¹⁶.
 - The eligible costs are the total costs of the energy efficiency project (including the additional investment costs in the context of allowed combined works).
 - The **maximum nominal value of loans to final recipients is EUR 25 million** per final recipient and per project (and EUR 30 million in the case of combined works).
 - The article **does not allow support for equipment using fossil fuels**, including natural gas. Therefore, also gas boilers which are at least A-rated or have a seasonal efficiency of 90% or better are not eligible for support under this article.

¹⁴ Such combined investments include the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources and related storage equipment, the connection to an energy efficient district heating and/or cooling system and related equipment, the construction and installation of recharging infrastructure for use by the building users and related infrastructure, the installation of equipment for the digitalization of the building in particular to increase its smart-readiness, investments in green roofs and equipment for the retention and use of rain water.

¹⁵ Investments in high-efficiency co-generation are covered by Article 41 GBER.

¹⁶ See footnote 9.



- The article **requires the aid to leverage additional investment from independent private investors for minimum 30% of the total financing** provided to an energy efficiency project. Independent private investors must be selected through an open, transparent and non-discriminatory call. If they are not selected in this way, a fair rate of return to the private investors must be established by an independent expert selected via an open, transparent and non-discriminatory call. This ensures the compatibility of any aid at the level of independent private investors.
- **Article 18 GBER** concerns aid for consultancy specifically in favour of SMEs.
 - The eligible costs shall be the costs of consultancy services provided by external consultants. The maximum aid intensity is 50% of the eligible costs.
 - The article is in this context only applicable if the consultancy services concern support for energy efficiency improvements in buildings.
- **Article 41 GBER** concerns investment aid for the promotion of energy from renewable sources, of renewable hydrogen and of high-efficiency cogeneration.
 - The eligible costs shall be the total investment cost. The maximum aid intensity is 45% of the eligible costs for investments in the production of renewable energy sources and 30% of the eligible costs for any other investments covered by this article (with some deviations under certain conditions).
- **Article 49 GBER** concerns aid for studies and consultancy services on environmental protection and energy matters.
 - The eligible costs shall be the costs of the study or consultancy service. The maximum aid intensity is 60% (i.e. less than 100%) of the eligible costs (with some deviations under certain conditions).
 - The aid should not be granted for energy audits carried out to comply with the Energy Efficiency Directive¹⁷.

The following sub-sections discuss how these GBER articles can be applied to the four possible combinations of a FI with a grant component.

Combination 1: loan combined with a technical support grant

The following situations can be distinguished:

- Where the technical support grant is provided as a cash grant to the final recipient, the following applies:
 - Both Article 38a or Article 39 GBER can cover the aid element in the loan to the final recipient (however, for Article 38a it has to be demonstrated that the advantage stemming from the FI is fully passed on to the final recipient).
 - Article 49 or Article 18 GBER can cover the aid element in the technical support grant to the final recipient^{18, 19}.

In the case of a technical support grant, the grant component and loan component relate to different eligible costs. Therefore, no cumulation issue arises.

¹⁷ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, OJ L 315, 14.11.2012, p. 1–56.

¹⁸ Alternatively, Article 38a GBER could also be used. However, the maximum aid intensity under Article 38a GBER is lower than under Article 18 and 49 GBER, and the EUR 30 million aid ceiling would remain unchanged.

¹⁹ Alternatively, it would also be possible to consider the technical support grant as *de minimis* aid (if the applicable conditions in the *De Minimis* Regulation are fulfilled), while the aid element in the loan to the final recipient would remain covered by one of the applicable GBER articles.



- Where the technical support grant is provided as a cash grant for the benefit of the final recipient that obtains technical support from a service provider selected by the body implementing the FI, or where the technical support grant is paid as a fixed amount to or for the benefit of the final recipient with a methodology based on estimated costs of such activities verified as part of an ex ante assessment or in another document, the same GBER articles remain relevant.

If the eligible costs of the technical support are calculated in accordance with a simplified cost option (SCO), i.e. when the grant is paid as a fixed amount based on the estimated costs of the technical support (instead of the actual costs), the MA must ensure that the categories of costs for which SCOs are established are eligible under the GBER and that the aid fulfils all conditions under the GBER. Article 7 GBER states that the amounts of eligible costs may be calculated in accordance with a SCO, provided that an operation is at least partly financed through a Union fund that allows the use of SCOs and that the category of costs is eligible according to the relevant GBER provision.

Combination 2: loan combined with an interest rate subsidy

Both Article 38a or Article 39 GBER can cover the aid element in the subsidised loan to the final recipient. However, under Article 38a GBER, it has to be demonstrated that the advantage is fully passed on to the final recipient.

Combination 3: loan combined with a capital grant for households with low income

As households are in this case the final recipient of the capital grant (low-income households) and of the loan (other households), there is in principle no State aid at the level of the final recipient.

Article 39 GBER can cover any aid stemming from the loan component at the level of the bodies implementing the FI. However, Article 39 GBER does not cover aid stemming from the grant component at the level of the bodies implementing the FI, so a full pass-on of the advantage stemming from the grant component must be ensured.

Combination 4a: loan combined with a capital rebate linked to performance

Only Article 38a GBER can cover this situation²⁰. However, this article requires in turn the exclusion of aid at the level of the implementing bodies (i.e. they must be remunerated in a market-conform way and there must be a full pass-on of the advantage to final recipients).

Furthermore, to verify compliance with the aid intensity ceilings set out in Article 38a GBER, the total **GGE of the FI must be calculated**. The formula set out above could be used:

$GGE_{FI} = \text{present value of the grant} + \text{GGE of the loan}$

In the context of a **capital rebate**, the normal approach is to consider the nominal value of the convertible part of the loan as a grant²¹. For the present value of the grant, the maximum possible capital rebate should thus be assumed. **Under the GBER, it is not possible to revise down this calculation** if eventually the capital rebate is not earned due to non-achievement of the energy efficiency targets²². For the GGE of the loan, only the non-convertible part of the loan should be taken into account.

²⁰ Article 39 GBER cannot cover a loan of which a part will be converted into a grant upon achievement of certain energy efficiency targets, as this article requires the full loan principal to be repaid.

²¹ The convertible part of the loan can be considered a repayable advance within the meaning of Article 2(21) GBER: “repayable advance” means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project”.

²² Under the *De Minimis* Regulation, as opposed to under the GBER, it is possible to adjust the aid amount after the granting of the aid when the initial aid amount does not correspond to the aid amount actually disbursed. For the Member States using the *de minimis* register at EU level (eAid Register for *de minimis* aid), the tool allows for corrections of aid awards already granted. Member States should ensure that *de minimis* aid granted does not exceed the relevant ceiling.



Combination 4b: loan combined with a capital grant linked to performance

If, thanks to the FI, the loan is provided at terms which are more favourable than market terms, there will be an aid element in both the loan and the capital grant. The aid element in the loan can be covered under Article 38a or Article 39 GBER (however, for Article 38a it has to be demonstrated that the advantage stemming from the FI is fully passed on to the final recipient). Conversely, only Article 38a GBER can cover the capital grant to the final recipient, provided that it is demonstrated that the grant is fully passed on to the final recipient.

Scenario 2: application of the CEEAG

Member States also have the option to seek the compatibility of the aid embedded in this type of combination of an FI with a grant component under the CEEAG. In particular CEEAG Section 4.2 on the aid for the improvement of the energy and environmental performance of buildings may be relevant. In that case, they are however not exempted from notifying the FI to the Commission.



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