



**RAP**

Energy solutions  
for a changing world

# State Aid Guidelines – Legal background for well justified state aid

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# SOME OF THE MEANS TO PROMOTE RENEWABLES ...

- Feed-in tariffs;
- Feed-in premium
- Renewables obligation schemes;
- Investment in RES development projects
- Green certificates;
- Electricity tax exemptions
- ...

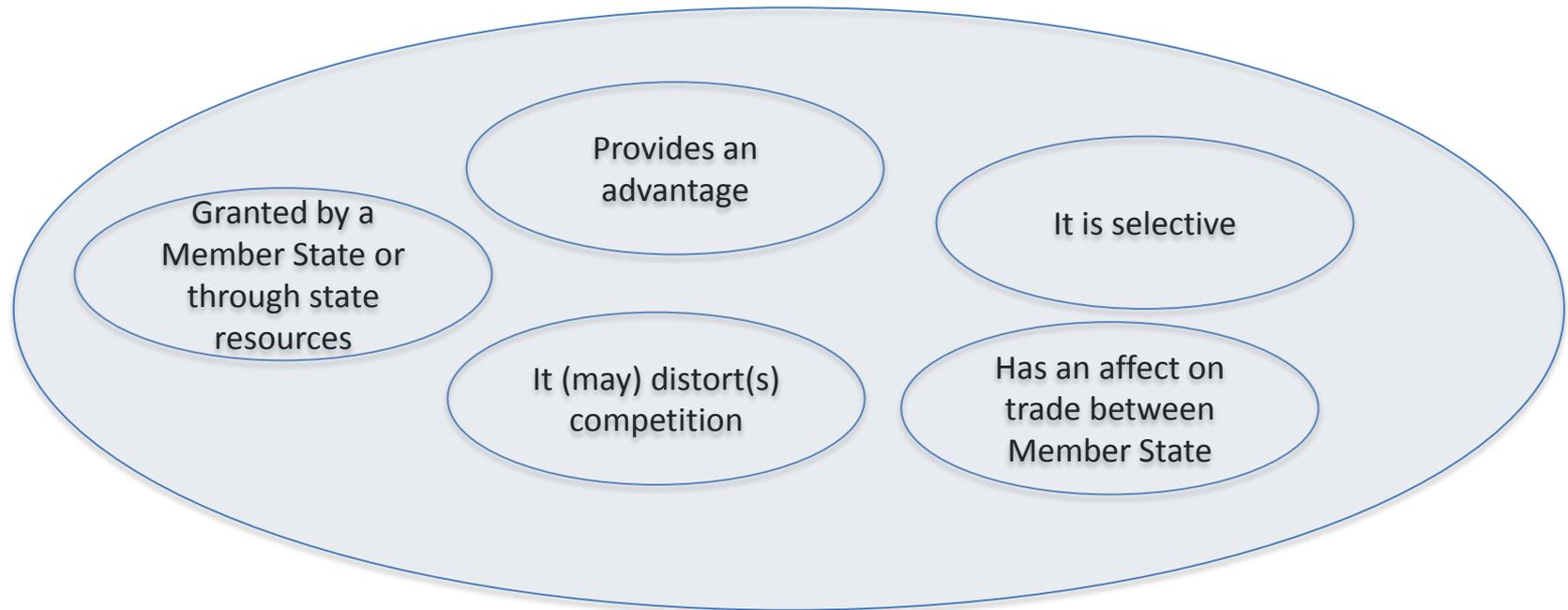
# ... (MIGHT) DISTORT COMPETITION

- Free competition is one of the pillars of a good functioning internal market
- Competition might be distorted through:
  - Dumping, abuse of dominant position, merger, ... **state aid**
- Anti-competitive behavior is, in principle, prohibited

# EU STATE AID REGIME: WHEN DOES IT APPLY AND WHAT ARE THE CONSEQUENCES?

# STATE AID CRITERIA

## Article 107 (1) TFEU



State aid only if ALL criteria are fulfilled

# NOT CLASSIFIED AS STATE AID IF:

- Not all criteria fulfilled
  - E.g. No Advantage: Altmark
  - E.g. Not granted by state or through state resources: (PreussenElektra)
- De minimis aid
  - General: EURO 200.000 per undertaking over three fiscal years
  - SGEI: EURO 500.000 per undertaking over three fiscal years

# STATE AID

- Notification requirement
  - Implementation of aid before notification: aid = unlawful
- No implementation before COM Decision
  - Depending on complexity, decision between 2 – 20 months
  - European Commission will assess:
    - Whether the measure constitutes state aid.
    - If it does constitute state aid, whether it can be exempted
  - **Only the European Commission can grant an exemption.** No exemption => the measure cannot be implemented!

# ASSESSMENT: TWO QUESTIONS

1. Is there state aid?
2. If yes, can it be exempted?

Important: Question 1 is objective, question 2 is subjective!

# CAN IT BE EXEMPTED?

Article 107 (3) TFEU

Further specified in:

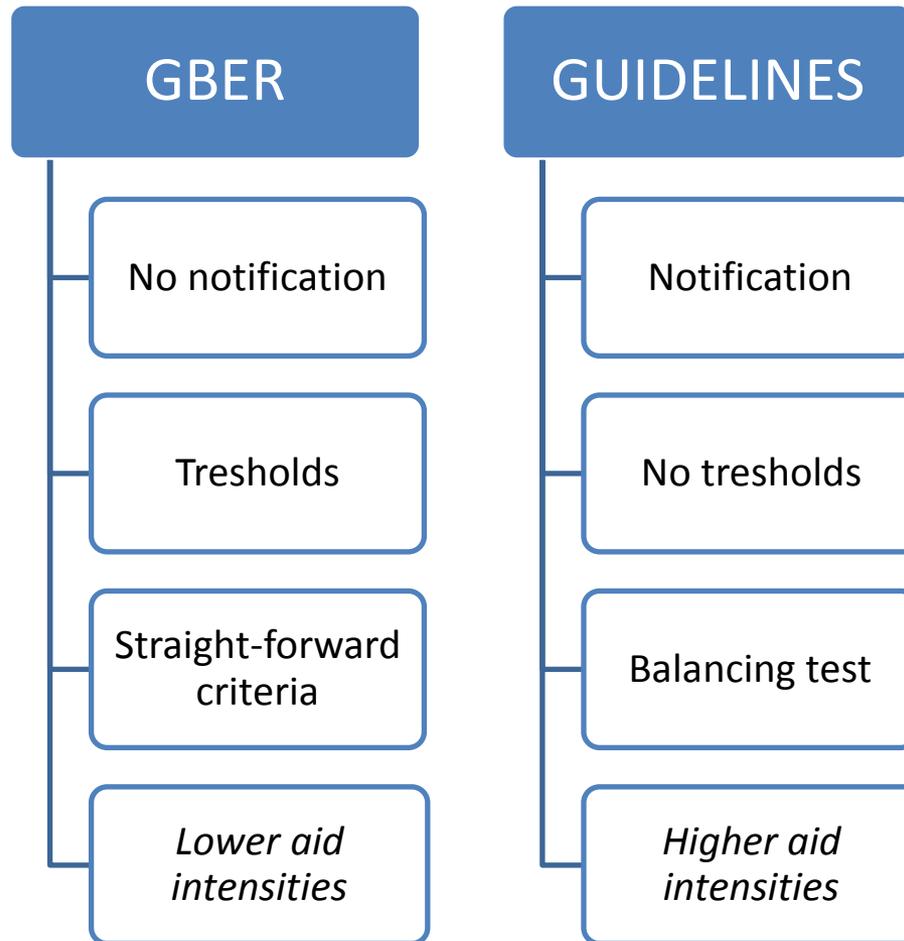
- General Block Exemption Regulation (GBER)
- Guidelines
- Communications

Article 106 (2) TFEU (Service of General Economic Interest)

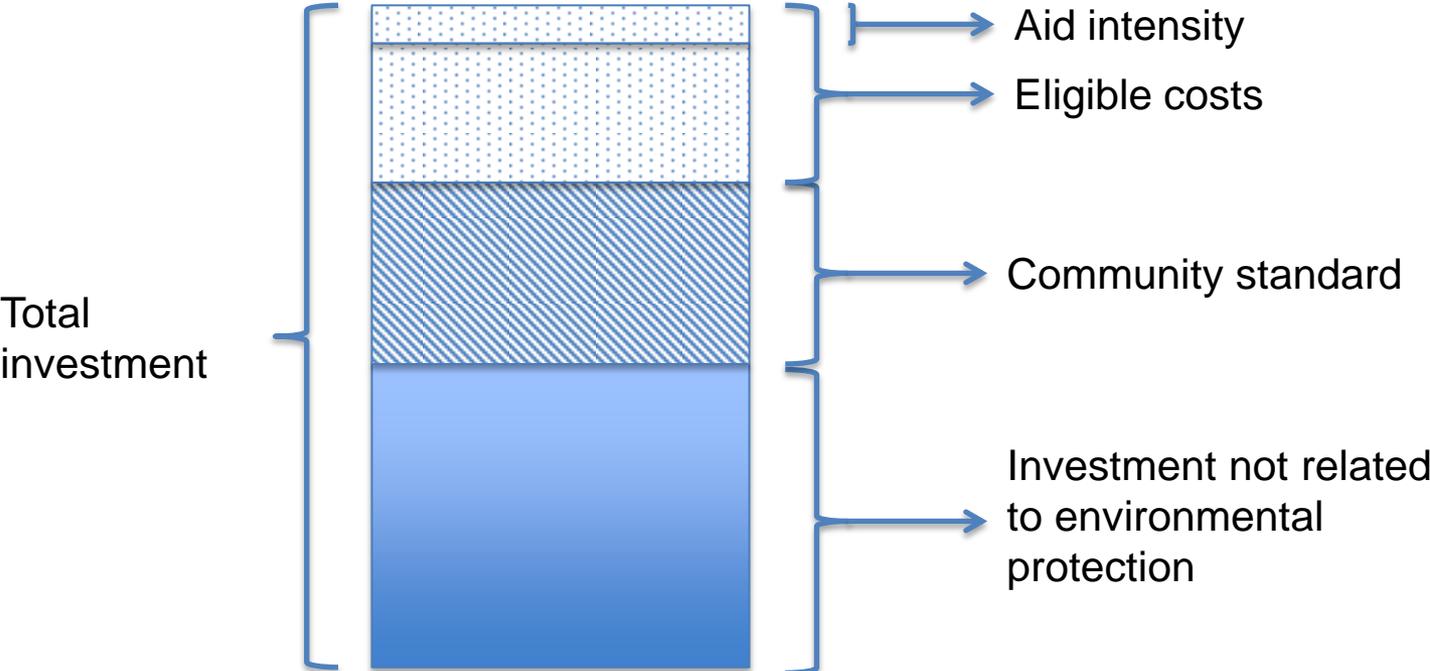
# RELEVANT EXEMPTIONS FOR ENERGY

- Guidelines for state aid for environmental protection (EAG), and Draft Guidelines for energy and environmental state aid measures (EEAG)
- General Block Exemption Regulation (also under revision)
- Article 107 (3)(c) TFEU
- Article 107 (3)(b) TFEU
- Communication on compensation granted for Services of General Economic Interest (SGEI)
- Guidelines on State aid measures in the context of the EU ETS post 2012
- Guidelines on State aid for Research, Development and Innovation (R&D&I)

# GBER V. GUIDELINES: CHOSING THE RIGHT BASIS FOR EXEMPTION?



# ELIGIBLE COSTS AND AID INTENSITIES



# LET'S BALANCE

Addressing  
market failure

Distortion of  
competition

Incentive effect

Necessary

Appropriate

Proportional

No undue distortion of competition

## About RAP

The Regulatory Assistance Project (RAP) is a global, non-profit team of experts that focuses on the long-term economic and environmental sustainability of the power and natural gas sectors. RAP has deep expertise in regulatory and market policies that:

- Promote economic efficiency
- Protect the environment
- Ensure system reliability
- Allocate system benefits fairly among all consumers

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