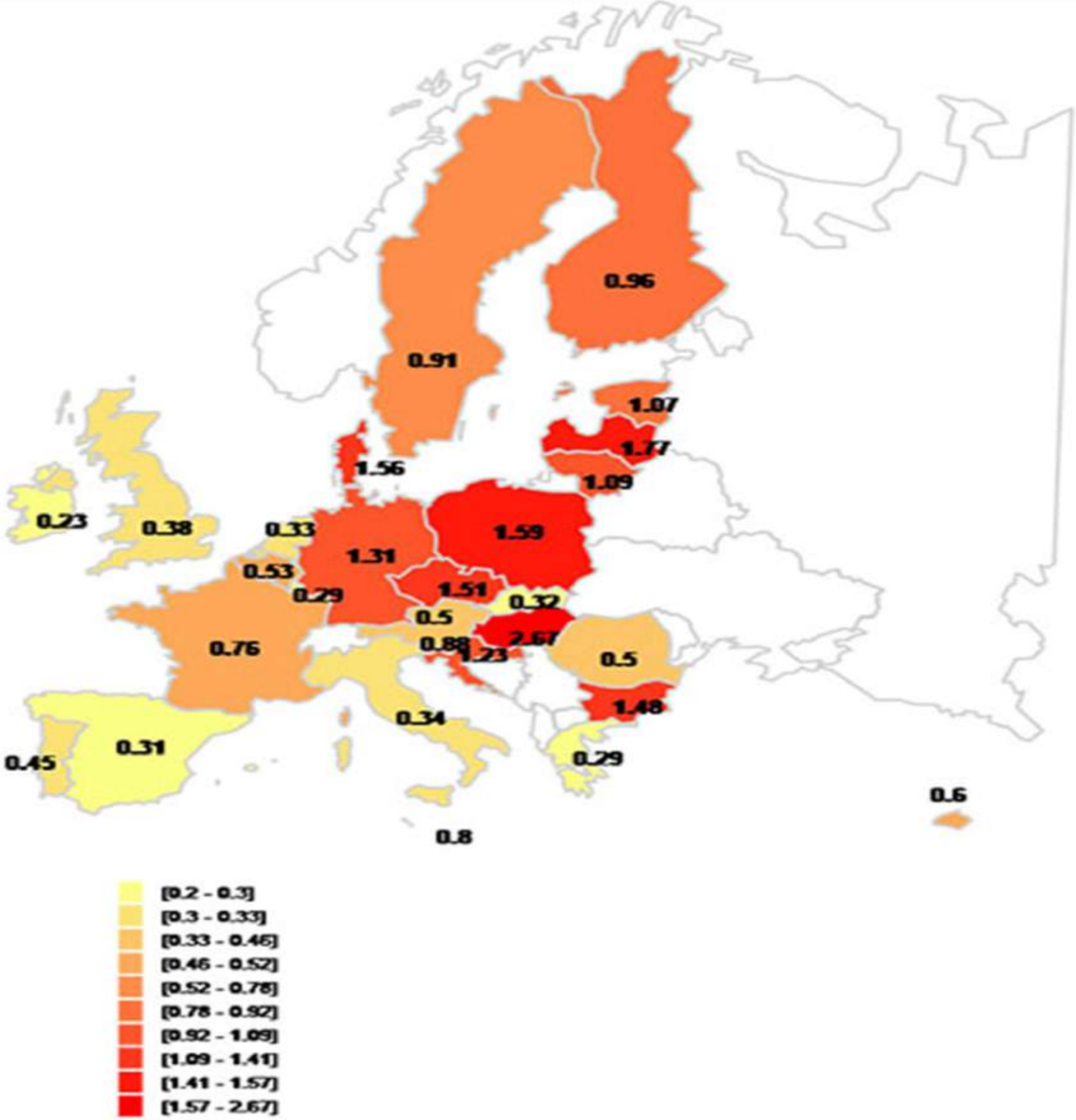
The EEAG

Prof dr L Hancher - Tilburg, FSR - Baker Botts

BAKER BOTTS

Total State aid expenditure as % of GDP in 2017, less railways



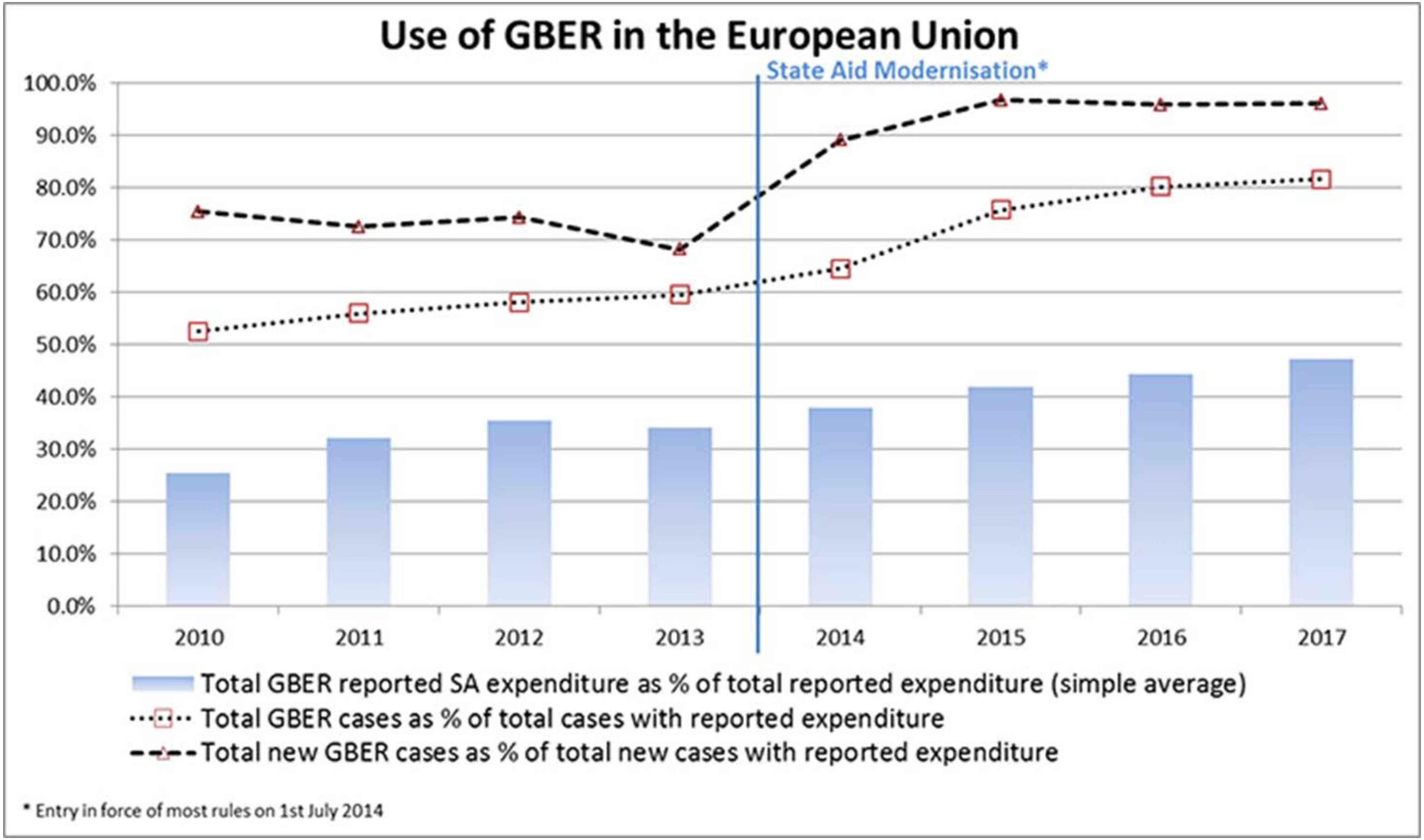
State Scoreboard 2017

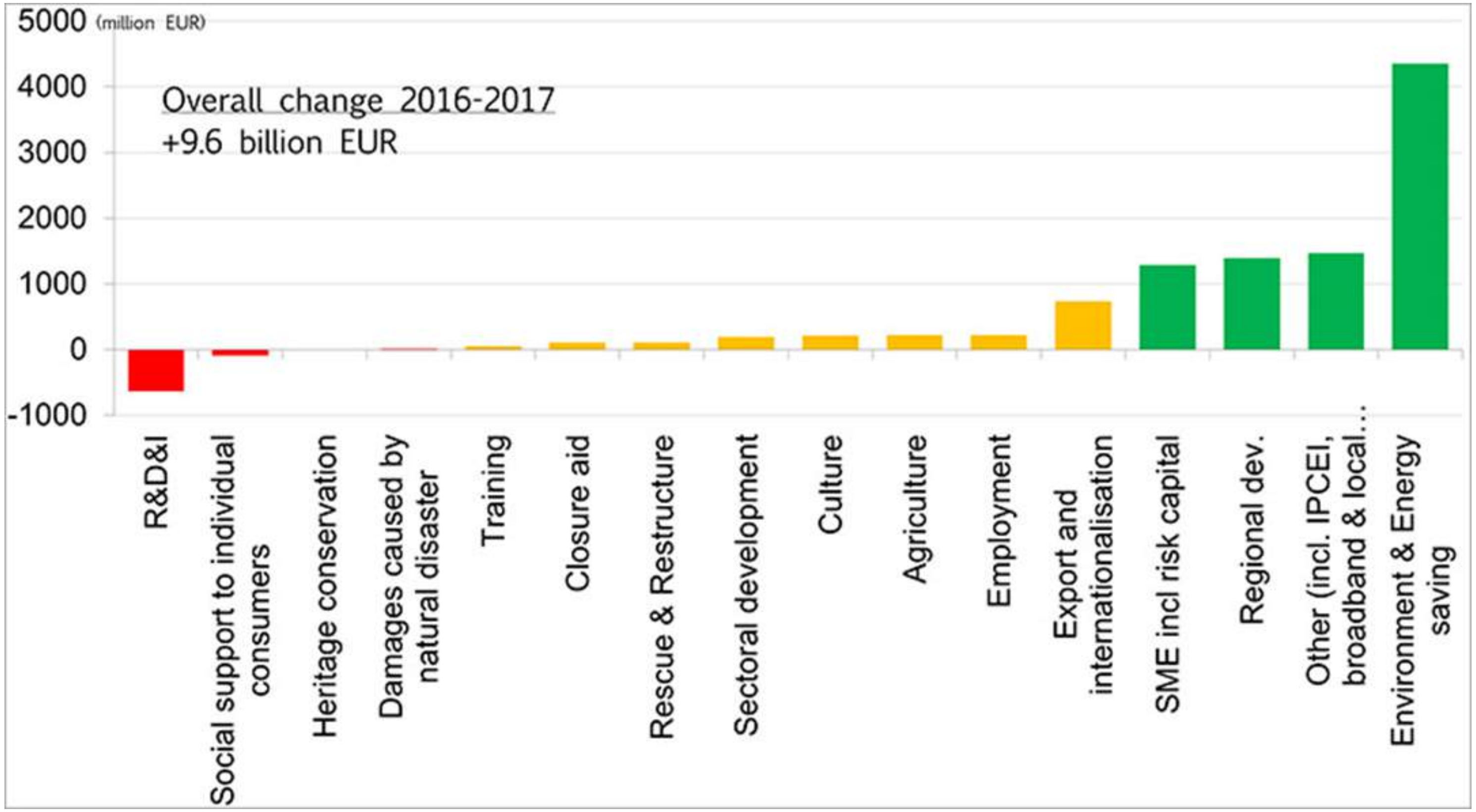
Member States granted EUR 105 billion of State aid to manufacturing and services.

58% (EUR 61 billion) supported environmental protection and energy efficiency. The amount of aid granted by

Germany alone = EUR 36 billion (59% of all total EU aid devoted to environmental protection and energy efficiency) : 88% of total state aid budget finances schemes for protecting the environment, increasing the efficiency of energy consumption, generating energy from renewable sources and reducing energy taxes on energy-intensive users.

In 2013-14 EUR 35 billion additional reported aid following GC ruling in Case T47/15, Germany v European Commission [EEG case]


Use of GBER in the European Union
State Aid Modernisation*
100.0%
90.0%
80.0%
70.0%
60.0%
50.0%
40.0%
30.0%
20.0%
10.0%
0.0%
2010
2011
2012
2013
2014
2015
2016
2017
Total GBER reported SA expenditure as % of total reported expenditure (simple average)
Total GBER cases as % of total cases with reported expenditure
Total new GBER cases as % of total new cases with reported expenditure
* Entry in force of most rules on 1st July 2014


5000 (million EUR)
4000
3000
2000
1000
0
-1000
Overall change 2016-2017
+9.6 billion EUR
R&D&I
Social support to individual consumers
Heritage conservation
Damages caused by natural disaster
Training
Closure aid
Rescue & Restructure
Sectoral development
Culture
Agriculture
Employment
Export and internationalisation
SME incl risk capital
Regional dev.
Other (incl. IPCEI, broadband & local...
Environment & Energy saving

Evaluations

- Evaluations are required for certain aid schemes, both under the GBER, when the annual aid budget exceeds EUR 150 million, and State aid guidelines.
- **Aim**: provide evidence on both the direct and indirect impact of the aid on its beneficiaries, as well as on the proportionality and appropriateness of the aid measure. The results of the evaluations will be taken into account when designing new aid schemes or when prolonging existing schemes.
- Ultimately, the body of State aid evaluations will contribute to better policy-making.
- Up to date, **46 evaluation plans** have been sent to the EC and 41 have been approved.
- The Commission has now received the first interim and final evaluation reports.
- The vast majority of reports is expected in the first semester of 2020.

Statistics on recovery (2007-2018)

- Recovery decisions adopted: 133
- Average time of implementation: 2.7 years
- Aid recovered: EUR 18,1 billion (excluding Apple)
- Aid lost in insolvency: EUR 1,6 billion
- Recent decisions have been implemented faster (within 2 months from adoption)

Draft Recovery Notice

EC recommends the establishment of a coordinating authority for the implementation of recovery decisions, as "experience shows that a central, coordinating body contributes to the immediate and effective execution of recovery decisions ". Para 68

The EC recommends the establishment of "fast-track, specialised administrative procedures" for the implementation of recovery decisions.
[According to ECJ jurisprudence, recourse to civil law and the ordinary courts is also possible if procedure chosen guarantees the immediate and effective enforcement of the Commission decision on a case-by-case basis (see ECJ, C-527/12 - Commission / Germany] Para 70
The EC “considers that the Member State must challenge any decision adopted by its national courts in breach of Union law". Para 133
Member States "should make use of any existing provision in their legal order allowing their authorities to order an interim payment of the aid, even when that provision is not designed for the specific purpose of recovering State aid ". Para 120
“irrespective of the peculiarities of the relevant national legal system, standardised forms and procedures for the service of recovery orders may contribute to a timely and effective execution of recovery decision . Para 112

FITNESS CHECK

- 7 January 2019: launch of the evaluation of the rules, which were adopted as part of the State aid Modernisation. The evaluation takes the form of a "fitness check".
- To decide whether to prolong or possibly update the rules.
- The evaluation will cover the following rules:
  - General Block Exemption Regulation (GBER)
  - De minimis Regulation
  - Guidelines on regional State aid
  - Framework for State aid for research and development and innovation (RDI)
  - Communication on important projects of common European interest (IPCEI)
  - Guidelines on State aid to promote risk finance investments
  - Guidelines on State aid to airports and airlines
  - Guidelines on State aid for environmental protection and energy
  - Guidelines on State aid for rescuing and restructuring

AIMS

- The aim is to analyse the **effectiveness, efficiency, coherence** and **relevance** of the State aid rules and their contribution to achieving the pre-established EU policy objectives
- The scope will be to assess whether the **State aid rules are fit to contribute to the EU priorities post 2020** and whether **further simplifications or updates are needed** while safeguarding the principle of minimising distortions of competition
- **Topics to be covered:** interaction between GBER and guidelines (notification thresholds and scope of the rules, de minimis threshold, definition of companies in difficulty), coherence of the state aid architecture (common principles, transparency, evaluation), coherence with other policies, relevance of SAM objectives in view of EU priorities

Q. 16 Based on your experience, have the EEAG and GBER adequately addressed recent market developments or technological changes such as:

- Storage
- Zero subsidy bids
- Repowering
- Renewable energy power purchase agreements
- Renewable self consumption and/or active consumers
- Citizens energy communities and/or renewable energy communities
- Hydrogen, synthetic fuels and low carbon gas
- Alternative fuel infrastructure (publicly accessible or dedicated infrastructure)
- Low or zero emission vehicles
- Carbon Capture, Storage and/or Utilisation
- Nearly-zero-energy buildings
- Smart energy technologies (e.g. in buildings)
- Energy services (e.g. energy performance contracting)
- Advanced technology for water reuse (e.g. membranes and UV)
- Other (please specify)

Q.18 Based on your experience, to what extent are the EEAG and the related GBER provisions coherent with relevant EU policies and legislation such as:

A long list!

- Renewable Energy Directive
- Electricity Directive
- Electricity Market Regulation
- Risk-preparedness Regulation
- Energy Performance of Buildings Directive
- EU Waste legislation
- Water Framework Directive
- Air Quality Directive
- EU ETS Directive
- Industrial Emissions Directive
- Alternative Fuels Directive
- Energy Efficiency Directive
- Birds Directive
- Habitats Directive
- ERDF Regulation
- Other (please specify)

Storage - new rules in the recast Directive

Definition of storage – very wide and vague - Directive EU 2019/844 defines 'energy storage' in the electricity system as 'deferring an amount of the electricity that was generated to the moment of use, either as final energy or converted into another energy carrier'Article 2 (59)

Storage and TSOs. – unbundling of ownership
Storage and DSOs - unbundling of legal organisations and accounts

Storage is regulated as a liberalized asset (Art 36, Art 54)

MS shall provide the regulatory framework to fully integrate energy storage facilities in the new Electricity Market design (energy, flexibility and services).

Energy network operators shall not be allowed to own, manage or operate energy storage facilities.

There is an exception only for fully integrated network components and the regulatory authority has granted its approval:

where other parties following an open, transparent and non-discriminatory tendering procedure, have not interest.

the exception is revised at regular intervals by regulatory authorities in order to assess the potential availability and interest of other parties in investing in such facilities

Incentives for the use of flexibility in distribution networks (Art 32 of recast Directive)

- DSO should be able to procure such services from providers of distributed generation, demand response or energy storage.
- The network development plan shall also include the use of demand response, energy efficiency, energy storage facilities or other resources that the distribution system operator is to use as an alternative to system expansion.

Storage can participate in all the markets, including where appropriate, the capacity markets, in a level playing field (Art 1, Art 2, Art 6, Art 8, Art 13, Art 20, Art 22, Art 23…)

Market rules shall enable the efficient dispatch of generation assets, energy storage and demand response.

Short –term electricity markets should value flexibility and capacity markets should value the firmness provided.

Storage and the EEAG - up to date?

Storage in the current State Aid Guidelines should be dealt in accordance with the new Directive ??

Aids for generation adequacy already consider that storage should be allowed to participate in capacity mechanisms.(3.9)

Aids for energy infrastructures can be granted to storage facilities directly connected to high-voltage transmission lines (TSOs grids) (3.8)

Conclusions

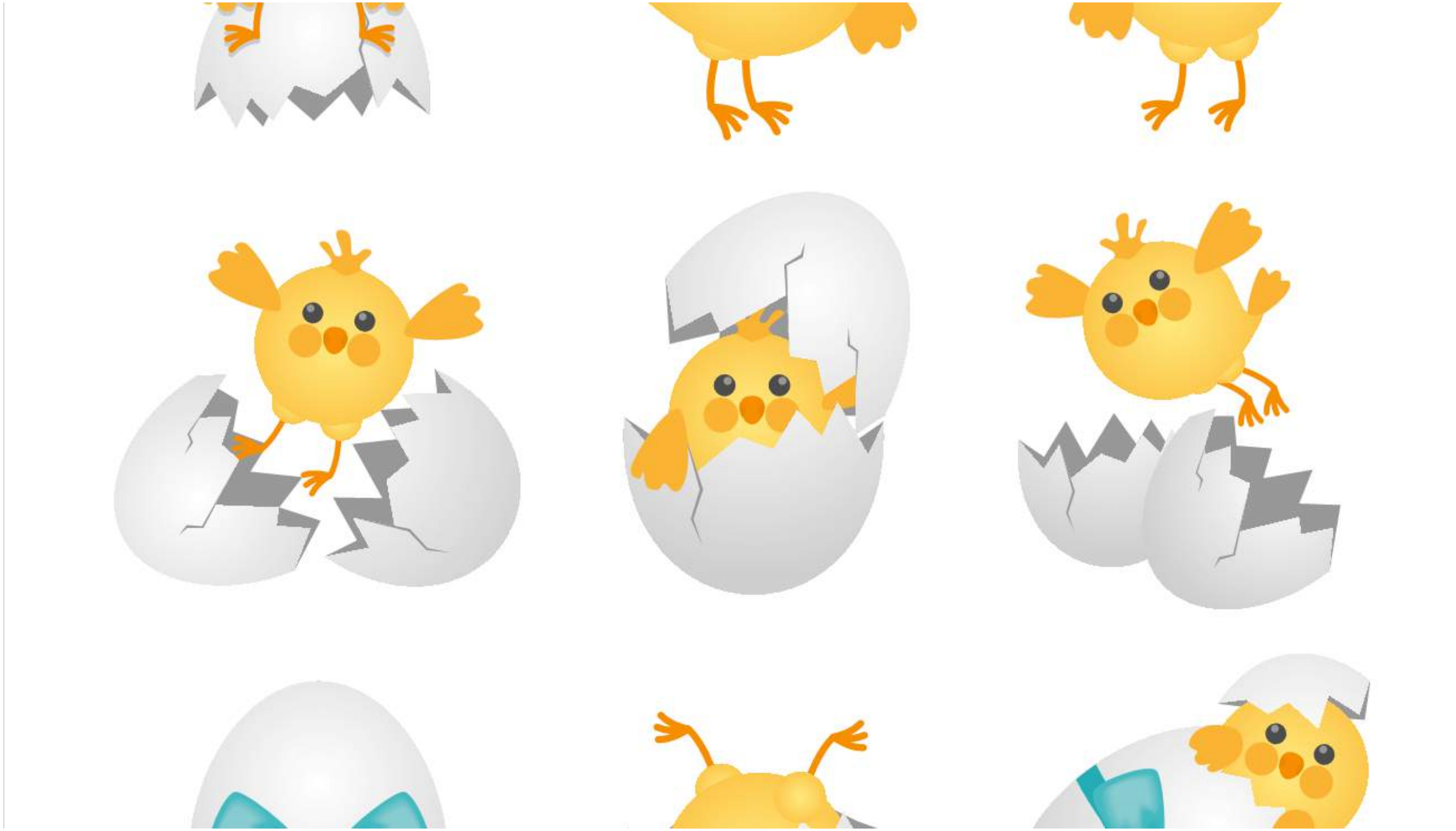
The Commission will look backwards in order to go forward - fitness check is back-casting!

Unlikely to amend the EEAG 2014 before 2020.

New issues will be decided ad hoc – case by case in interim

Note the missing subject matter – support for fossil fuels - nuclear - but not covered directly by EEAG

Support for the energy transition – a chicken and egg situation?



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