

6 July 2020

Remarks of the Polish Electricity Association (Polski Komitet Energii Elektrycznej - PKEE) to the draft Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

No	Commission	PKEE	Comments
1	<p>Recitals</p> <p>(8) (...) The Commission points out that State aid for research and development activities at TRL 9 level is considered to go beyond the scope of the definition of experimental development and would consequently be excluded from the scope of this Regulation.</p>	<p>Recitals</p> <p>(8) (...) The Commission points out that State aid for research and development activities at a level exceeding TRL 9 level is considered to go beyond the scope of the definition of experimental development and would consequently be excluded from the scope of this Regulation.</p>	<p>The current wording excludes the final stage of experimental work, as well as work consisting in testing the product and preparing it for marketing, from the scope of aid. Consequently, the full scope of a research and development project will not be eligible for co-funding.</p>
2	<p>Recitals</p> <p>(10) Financial products supported by the InvestEU Fund may involve funds controlled by Member States, including EU shared management funds, in order to increase leverage and support additional investments in Europe. For instance, Member States have the possibility to contribute a part of Union shared</p>	<p>Recitals</p> <p>(10) Financial products supported by the InvestEU Fund may involve funds controlled by Member States, including EU shared management funds, in order to increase leverage and support additional investments in Europe. For instance, Member States have the possibility to contribute a part of Union shared</p>	<p>The Polish version of the draft Regulation is not translated correctly, with the translation changing the meaning of the recital and contradicting other language versions. We suggest that the Polish version be amended to reflect the intention of the English version:</p>

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	management funds to the Member State compartment of the EU guarantee under the InvestEU Fund. Moreover, Member States could finance the financial products backed by the InvestEU Fund through their own funds or national promotional banks. Such financing may qualify as 'State resources' and may be imputable to the State if the Member States have discretion as to the use of those resources. Conversely, when Member States have no discretion as to the use of the resources or <u>as to acting</u> in line with normal market conditions, the use of those funds may _ constitute State aid. In respect of such cases, the Commission intends to provide further guidance on the typical scenarios supported under the InvestEU Regulation.	management funds to the Member State compartment of the EU guarantee under the InvestEU Fund. Moreover, Member States could finance the financial products backed by the InvestEU Fund through their own funds or national promotional banks. Such financing may qualify as 'State resources' and may be imputable to the State if the Member States have discretion as to the use of those resources. Conversely, when Member States have no discretion as to the use of the resources or act in line with normal market conditions, the use of those funds may not constitute State aid. In respect of such cases, the Commission intends to provide further guidance on the typical scenarios supported under the InvestEU Regulation.	<i>Conversely, when Member States have no discretion as to the use of the resources or act in line with normal market conditions, the use of those funds may not constitute State aid” (In the Polish version, “or act” is translated as “or as to acting”, and the word “not” is omitted altogether)</i>
3		<p>Recitals</p> <p>It is suggested that recital 13 be added after recital 12, reading as follows:</p> <p>“Due to the growth of the market and the increasing role of decentralised electricity production from renewable sources, and considering changes in the current roles of market participants, the means that integrate, with the grid, on-site renewable energy sources in residential buildings and in buildings dedicated to the provision of activities related to social services, need to be considered to</p>	<p>In connection with the draft provision of Article 56c(7)(b) GBER</p> <p>“(b) insofar as the aid measure relates to measures improving the energy efficiency in residential buildings and buildings dedicated to the provision of activities related to social services, it may also be granted for measures that simultaneously improve the energy efficiency of the residential building and integrate installations generating renewable energy on-site the residential building concerned</p>

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		<p>constitute aid in the meaning of Article 107(1) of the Treaty. Such aid is exempt from the notification requirement if the output of the installation generating renewable energy on-site, integrated with residential buildings or in buildings dedicated to the provision of activities related to social services does not exceed by more than 20% the overall aggregated consumption demand of the building. The installed capacity of such installations generating renewable energy shall not exceed 500 kW”</p> <p>Current recital 13 shall receive number 14.</p>	<p>by the energy efficiency aid measure, subject to the following conditions:</p> <p>(i) the integrated on-site renewable energy generating installation relates to production of electricity and/or heat; it may be combined with storage equipment;</p> <p>(ii) the output of the installation generating renewable energy on-site shall not exceed by more than 20% the overall aggregated consumption demand of the building residents;</p> <p>(iii) the installed capacity of the installation generating renewable energy shall not exceed 500 kW;</p> <p>(iv) the final beneficiary of the aid may be either the owner of the building or a tenant”</p> <p>it is proposed that the recitals be supplemented accordingly.</p> <p>The change aims to include recitals that allow, while applying the Regulation, to avoid interpretation-related doubts and to ensure intrasystem coherence as far as public aid-related regulations are concerned.</p> <p>The European Commission has been so far presenting a practical view that pursuant to point 207 of the Commission</p>

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			<p>Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter: NoA), a small renewable energy installation in residential buildings or public administration fall outside the State aid rules, as they are intended to primarily to supply power to non-economic facilities, under the condition that the potential energy surplus fed to the grid does not exceed 20%.</p> <p>In the draft regulation, conditions that are largely convergent are planned to be established as criteria for assessing compatibility of aid (deciding, as a matter of fact, that support constitutes public aid).</p> <p>Such an approach seems to be fully justified, as the role of prosumers as active market participants continues to grow. Hence, support offered to them should be subject to rules governing public aid. The recitals to the draft regulation, however, need to contain relevant explanations concerning current assessment of the energy market situation, which should exert a positive impact on the practice of applying public aid rules, and should avoid any interpretation-related doubts.</p>

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4	<p>Article 1(2)(e)</p> <p>(173) "social services" means clearly identified services, meeting social needs, in particular as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing (which means housing for disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions) and the care and social inclusion of vulnerable groups (as explained in recital 11 of Commission Decision 2012/21/EU* or subsequent legal acts replacing said decision);</p>	<p>Article 1(2)(e)</p> <p>(173) "social services" means clearly identified services, meeting social needs, in particular as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing (which means housing for disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions) and the care and social inclusion of vulnerable groups (as explained in recital 11 of Commission Decision 2012/21/EU* or subsequent legal acts replacing said decision);</p>	<p>It is suggested that the reference to recital 11 of the Commission Decision 2012/21/EU, presented in parentheses, be removed.</p> <p>In the aforementioned Commission Decision 2012/21/EU, social services are related with tasks of general <u>economic</u> interest, i.e. only with those social services that are, simultaneously, of economic character. It seems that the definition of social services introduced to GBER should relate both to services of general economic interest, and to social services of non-economic character (social services of general interest). Such a distinction is clearly made in point (1) and point (3) of the <i>Commission staff working document Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest [SWD(2013) 53 final/2]</i>.</p>
5	<p>Article 1(2)(e)</p> <p>(178) "small mid-cap" means an undertaking whose number of employees does not exceed</p>	<p>Article 1(2)(e)</p> <p>(178) "small mid-cap" means an undertaking whose number of employees does not exceed</p>	<p>Since the term "small mid-cap" is used solely in the proposed Article 56e that concerns the conditions for aid involved in financial products supported by the</p>

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	499, calculated in accordance with Articles 3 to 5 of Annex I, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million; several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I is fulfilled;	499, calculated in accordance with Articles 3 to 5 of Annex I, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million; several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I is fulfilled; an entity that is not an SME and that employs up to 499 employees;	<u>InvestEU Fund</u> , it is suggested that the definition introduced to GBER be identical as the one presented in Article 2(26) of the Proposal for a <u>Regulation establishing the InvestEU Programme</u> [2020/0108 (COD)], reading as follows: “(26) ‘small mid-cap company’ means an entity that is not an SME and that employs up to 499 employees”;
6	Article 1(7)(a) Article 8 is amended as follows: (a) in paragraph 3, point (b) is replaced by the following: “(b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation. Financing provided to the final beneficiaries under the support of the InvestEU Fund under Section 16 of Chapter III and the cost covered by it shall not be considered for determining compliance with the cumulation provisions of paragraph 3. Instead, the amount relevant for such compliance shall be calculated by first deducting the nominal amount of the financing supported by the InvestEU Fund from the total	Article 1(7)(a) Article 8 is amended as follows: (a) in paragraph 3, point (b) is replaced by the following: “(b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation. Financing provided to the final beneficiaries under the support of the InvestEU Fund under Section 16 of Chapter III and the cost covered by it shall not be considered for determining compliance with the cumulation provisions of paragraph 3. Instead, the amount relevant for such compliance shall be calculated by first deducting the nominal amount of the financing supported by the InvestEU Fund from the total eligible	We suggest, in the case of senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, that aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated on the basis of the reference rate prevailing at the time of the granting of the aid and can be used for ensuring that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the highest aid intensity or aid amount applicable to the aid under this Regulation or the relevant notification threshold under this Regulation.

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	eligible project costs and subsequently calculating the highest aid intensity or aid amount applicable to the aid under this Regulation only on the basis of the total remaining eligible costs. The nominal amount of financing provided to the final beneficiaries under the support of the InvestEU Fund shall, in cases of Articles for which the notification threshold is expressed as a maximum aid amount, also not be considered for determining whether the notification thresholds in Article 4 are respected. Alternatively, for senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, the aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated on the basis of the reference rate prevailing at the time of the granting of the aid and can be used for ensuring that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the highest aid intensity or aid amount applicable to the aid under this Regulation or the relevant notification threshold under this Regulation.”;	project costs and subsequently calculating the highest aid intensity or aid amount applicable to the aid under this Regulation only on the basis of the total remaining eligible costs. The nominal amount of financing provided to the final beneficiaries under the support of the InvestEU Fund shall, in cases of Articles for which the notification threshold is expressed as a maximum aid amount, also not be considered for determining whether the notification thresholds in Article 4 are respected. Alternatively, f For senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, the aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated on the basis of the reference rate prevailing at the time of the granting of the aid and can be used for ensuring that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the highest aid intensity or aid amount applicable to the aid under this Regulation or the relevant notification threshold under this Regulation.”;	
7	Article 1(18) The following section 16 is inserted after Article 56c: [...]	Article 1(18) The following section 16 is inserted after Article 56c: [...]	The remark is of an editorial nature. As the structure of the provision in question corresponds to that of the first sentence of Article 14(14) GBER, it is suggested that the same wording be adopted in the first

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	<p>Article 56e(2)(a)(iii)</p> <p>(iii) The beneficiary provides a financial contribution of at least 25% of the eligible costs through its own resources or by external financing in a form that is exempted of any public financial support. Alternatively when such external financing is provided via an investment platform combining different sources of financing, this condition is replaced by the presence in such a platform of 30% of private investment;</p>	<p>Article 56e(2)(a)(iii)</p> <p>(iii) The beneficiary provides a financial contribution of at least 25% of the eligible costs through its own resources or by external financing in a form that is exempted of any public financial support of aid must provide a financial contribution of at least 25% of the eligible costs through its own resources or by external financing in a form that is exempted of any public financial support. Alternatively when such external financing is provided via an investment platform combining different sources of financing, this condition is replaced by the presence in such a platform of 30% of private investment;</p>	<p>sentence of the draft Article 56e(2)(a)(iii), namely:</p> <p><i>The beneficiary of aid must provide a financial contribution of at least 25% of the eligible costs through its own resources or by external financing in a form that is exempted of any public financial support.</i></p>
8	<p>Article 1(18) The following section 16 is inserted after Article 56c:</p> <p>[...]</p> <p>Article 56e(3)(a)</p> <p>Aid for energy generation and energy infrastructure shall comply with the following requirements:</p> <p>(a) aid shall only be granted for investments in energy infrastructure in gas and electricity that is subject to third party access, tariff regulation and unbundling in line with the internal energy</p>	<p>Modification of the definition of “assisted areas” in Article 2(27) GBER, so that the provision of the fourth indent of Article 56e(3)(a)(ii) may be applied in practice.</p> <p>It is therefore proposed that Article 2(27) be amended to read as follows: “(27) “assisted areas” means areas designated in an approved regional aid map approved in application of Articles 107(3)(a) and (c) of the Treaty for the period from 1 July 2014 to 31 December 2021 for regional aid granted until 31 December 2021 and areas designated in an approved regional aid map approved in</p>	<p>We suggest to amend, when drafting the provision concerning assisted areas, the definition of this particular term, as presented in Article 2(27) GBER (in the wording contained in the Commission Regulation of 2.7.2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments), currently reading as follows: “(27) “assisted areas” means areas designated in an approved regional aid</p>

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	<p>market legislation for the following categories of projects:</p> <p>(i) as regards energy storage, projects included in the Union list of Projects of Common Interest in Annex VII of Regulation (EU) No 347/2013 of the European Parliament and of the Council*;</p> <p>(ii) as regards energy infrastructure projects other than storage:</p> <ul style="list-style-type: none"> - smart grids; - projects, which fulfil any of the criteria laid down in Article 4(1)(c) of Regulation (EU) No 347/2013; - projects included in the Union list of Projects of Common Interest in Annex VII to Regulation (EU) No 347/2013; - projects in assisted areas; 	<p>application of Articles 107(3)(a) and (c) of the Treaty for the period from 1 January 2022 to 31 December 2027 for regional aid granted after 31 December 2021. Definition of assisted areas should be applied accordingly in case of Aid involved in financial products supported by the InvestEU Fund.</p>	<p>map approved in application of Articles 107(3)(a) and (c) of the Treaty for the period from 1 July 2014 to 31 December 2021 for regional aid granted until 31 December 2021 and areas designated in an approved regional aid map approved in application of Articles 107(3)(a) and (c) of the Treaty for the period from 1 January 2022 to 31 December 2027 for regional aid granted after 31 December 2021.</p> <p><i>It needs to be pointed out that Article 56e(3), in which reference to “assisted areas” is made, is concerned with aid involving financial products supported by the InvestEU Fund. As stated in the application concerned with the Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme [COM(2020) 403 final], its effective date was set to be 1 January 2021.</i></p> <p><i>Hence, in order to make it possible to take advantage of aid referred to in the proposed fourth indent of Article 56e(3)(a)(ii), the definition of assisted areas needs to be expanded to cover other types of aid which also refer to the defined notion.</i></p>

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9	<p>Article 1(18) The following section 16 is inserted after Article 56c:</p> <p>[...]</p> <p>Article 56e(7)(a)</p> <p>Aid for environmental protection, including climate protection, shall comply with the following requirements:</p> <p>(a) aid shall be provided only to the following projects:</p> <p>(i) investments enabling undertakings to remedy or prevent damage to physical surroundings (including climate change) or natural resources by a beneficiary's own activities, insofar as the investment goes beyond Union standards for environmental protection or increases the level of environmental protection in the absence of Union standards or constitutes an early adaptation to future Union standards for environmental protection;</p> <p>(ii) measures improving the energy efficiency of an undertaking, insofar as the energy efficiency improvements are not undertaken to ensure that the undertaking complies with Union</p>	<p>As the introduction of Article 56e relying on the notion of "Union standards" is concerned, it is proposed that the definition of "Union standards" be changed, within Article 2 GBER, from the part "Definitions applicable to aid for environmental protection" to the general part titled "Definitions".</p>	<p>The drafted provision of Article 56e(7) uses the term of "Union standards". Although this term is defined in Article 2(102) GBER, it needs to be stressed that the definition in question is presented in the part titled "Definitions applicable to aid for environmental protection". According to the Table of Contents of GBER, Aid for environmental protection is described in Section 7 of Chapter III. The proposed provision of Article 56(7), also using the notion of "Union standards" is included, in turn, in Section 16 of Chapter III. For the avoidance of interpretation-related doubts during the application stage, it is proposed that the definition of "Union standards" be moved from the part titled "Definitions applicable to aid for environmental protection" to the general part titled "Definitions" in Article 2. This will eliminate any doubts as to how the notion of "Union standards" should be understood.</p>

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	<p>standards already adopted, even if they are not yet in force;</p> <p>(iii) remediation of contaminated sites, insofar as no legal or physical person liable for the environmental damage under the applicable law is identified in line with the “polluter pays” principle as referred to in Article 45(3);</p> <p>(iv) environmental studies;</p> <p>(v) enhancement and restoration of biodiversity and ecosystems where that activity contributes to protecting, conserving or restoring biodiversity and to achieving the good condition of ecosystems, or to protecting ecosystems that are already in good condition.</p>		