Comments of Bank Gospodarstwa Krajowego on the proposal of Commission Regulation (EU) 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

1. In BGK's opinion, it is necessary to reformulate the **definition of "*commercial financial intermediaries*" and "*market funds*"**, which will be set out in article 2 points 171 and 173 of the proposed GBER.

   commercial financial intermediary

   According to the current GBER proposal, a national promotional bank (or institution) is excluded from the scope of the definition of the commercial financial intermediary, regardless of the fact whether as a financial intermediary operates on a for profit basis and at full own risk.

   In this context, it should be emphasized that any such an exclusion should refer to the terms and conditions of the business activity of the given entity (regardless of whether it is a national development bank or not), and not to the status granted by national law, which, according to EU State aid law, should have a secondary importance. The BGK sees no justification that, due to the sole role of the national development bank, the entity in question should be excluded from the scope of abovementioned definition.

   It should be underlined, that proposed definition of commercial financial intermediary excludes national promotional banks from the possibility to grant State aid on the basis of article 56f of the proposed GBER, which will be reserved for commercial financial intermediaries.

   market funds

   Under the current GBER proposal, funds provided by national promotional banks (or institutions) cannot be considered as market funds. It should be pointed out that such regulation makes it difficult to grant State aid on the article 56f by both:

   - national promotional banks (or institutions) and
   - financial intermediaries implementing InvestEU products using funds provided by national promotional banks.

   In our opinion, there is no rational justification for the introduction of such rules, especially since this exclusion is not based on an analysis of the rules for offering such funds (risk sharing, cost, etc.), but only on a formal source of funds (national development bank).

2. **Competition between commercial FI and non-commercial FI**

   GBER proposal envisages two separately State aid measures set out in article 56e and 56f. Both measures may be granted within the InvestEU products for the same type of investments. However article 56e and 56f offer different aid conditions (related to the pricing, aid amount) and have different requirements, inter alia, aid on the basis of article 56f may be granted exclusively by the commercial financial intermediary.

In BGK opinion distinguishing the possibility of using the envisaged State aid measures mainly on the basis of the status of the financial intermediary (not conditions of support, fact whether a financial intermediary operates on a for profit basis and at full own risk), may negatively affect competition between financial intermediaries, if at the same time and within the same market, a given InvestEU product would be offered by two financial intermediaries, one of which could be classified as commercial financial intermediary, and the other not.

Commercial financial intermediaries will be able to offer financial products on different terms and conditions than financial intermediaries which will not fall within the scope of said definition. This means, according to the regulation proposed by the Commission, that in one market and at the same time, if the Implementing Partner decides to choose more than one financial intermediary to implement a financial product (understood as a product in terms of the InvestEU regulation), it will be possible that these products will be offered on different conditions, depending on legal basis (56e and 56f).

In this context, it should be clearly emphasized that in such a case, for the same InvestEU product, an intermediary qualified as "commercial" (as defined in Article 1, point 171), solely on the basis of such classification, will be entitled to provide aid at better price and conditions and without the need to meet additional project conditions set out in art. 56e.

3. **Pricing of loans article 56e**

BGK strongly suggest reformulating the proposed rules regarding the minimum cost of the loan (at the level of the aid beneficiary) as defined in article 56e par. 1 GBER proposal.

Proposed rules do not take into account the economic conditions of countries where Euro is not a national currency. These rules will definitely hinder the use of InvestEU in such Member States, in particular in the areas of SMEs and Social Investments and Skills Window.

- For loans with a **fixed interest rate**, according to the proposed rules, the minimum interest rate should be at least at the level of the bonds issued by the country in question for the relevant period[1]. For example, in the case of Poland, the interest rate for a 4-year loan would now have to be at least 2.4% (for 3-year - 2.2%; for 10-year 2.7%).
- On the other hand, in the case of a **floating interest rate**, the minimum interest rate that would now have to be proposed to an enterprise could not be lower than WIBOR, i.e. about 1.8% in Poland.

Such conditions strongly differ from the market demand and financial capabilities of SMEs and entities implementing social projects and are definitely less attractive than the conditions of support provided in the form of de minimis aid (which might be offered on lower costs, might be granted in a similar amount and the investor is not obliged to meet additional project conditions arising from the article 56e par. 3 -11).

[1] If a generic mid-swap rate for the corresponding maturity and currency in which the loan is denominated is not available

In this context it should be pointed out that in order to grant an aid on the basis of article 56e, additional InvestEU product conditions will have to be fulfilled (what is not required in case of de minimis aid). As it is set out in Recital 9 to the GBER proposal *The design of the InvestEU Fund by the Commission incorporates a number of important competition safeguards, such as supporting investments which deliver Union policy objectives and EU added value and the requirement for the InvestEU Fund to be additional and address market failures and sub-optimal investment situations. Moreover, the governance system and decision-making process will ensure before issuing the EU guarantee that the InvestEU supported operations meet the above requirements. Finally, the support provided by the InvestEU Fund will be transparent and its effects will be evaluated. Therefore State aid involved in the financial products supported by the InvestEU Fund should be considered compatible with the internal market and exempted from the notification requirement based on a limited set of conditions.*

In our understanding and according to the above, InvestEU should be granted on more preferential conditions than currently available State aid measures. Otherwise the added value of the proposed Section 16 of GBER will be questionable.

4. **Aid amount for SMEs**

In addition to the pricing conditions, BGK strongly suggest reformulating of the proposed rules regarding the maximum amount of aid in case of SMEs.

We would like to point out that in case of SMEs not complying with the additional requirements of article 56e par. 11 (a), the nominal aid amount of aid (in case of for example SME operating more than seven years following first commercial sale) might not be higher (and in case of guarantees even lower) than the possible aid in form of de minimis aid.

5. **Scope of support**

Scope of support and additional conditions for different areas (art. 56e par. 3 -11)

InvestEU products will comply with all applicable conditions laid down in the InvestEU Fund Regulation and the InvestEU Investment Guidelines. In addition all potential products will be consulted with and approved by the Commission. Therefore, additional requirements in this regard are not only not necessary, but may complicate the implementation of the financial products. In addition all these additional requirements do not apply for commercially-driven financial products (article 56f of GBER). It must be pointed out that there is no reason for such a differentiation between these two types of financial instruments.

In our view we should not limit the sectoral coverage of GBER only to sectors set out in par. 3 to 11. It should be correlated with the Investment Guidelines and allow to use GBER in all sectors listed there.

In addition, according to the **Annex 2 of the InvestEU Regulation**, within **the social investments and skills window**, InvestEU product will be implemented in several sectors (the complete list below[2]), which

[2] Social investments, including those supporting the implementation of the European Pillar of Social Rights, in particular through:

a. microfinance, social enterprise finance and social economy;
b. demand for and supply of skills;

seems to be wider than the scope envisaged in the GBER proposal. In other words the proposed GBER does not cover all sectors envisaged by InvestEU Regulation within the social investments and skills window.

6. Thresholds article 56e

Taking into account the value of future investments in this sector and BGK average engagement expected by our clients, we would recommend to increase this thresholds up in line with the following:

No	Par.	Sector	Current proposal	BGK proposal
1.	56e par. 3 (a)	broadband infrastructure	EUR **70** million	EUR **100** million
2.	56e par. 4 (a)	ports	EUR **100** million	EUR **250** million
3.	56e par. 5 (a)	energy generation and energy infrastructure	EUR **100** million	EUR **250** million
4.	56e par. 5 (b)	generation of energy from renewable energy sources	EUR **30** million	EUR **250** million
5.	56e par. 7 (b)	transport and transport infrastructures	EUR **100** million	EUR **250** million
6.	56e par. 9 (b)	climate and environmental protection	EUR **50** million	EUR **250** million
7.	56e par. 10 (b)	Aid for research, development, innovation and digitalisation	EUR **50 / 30** million	EUR **100 / 60** million

In addition, the EUR100 million threshold stipulated in article 56 par. 8 (b) Aid for other infrastructures, for i.e. research infrastructure should correspond with limits proposed in article 56 par. 10 (b), so the proposed double amounts seem to be fair and represent same policy towards R&D and innovation growth.

7. Simplified notification procedure and Investment Committee

BGK proposes also, in the case of projects supported under InvestEU, which will require conditions beyond these foreseen in the GBER proposal, to adopt a simplified notification procedure.

As indicated above, which is also confirmed by the content of Recital 9 of the GBER proposal, in the case of InvestEU, the legitimacy of individual InvestEU products is verified by the European Commission at the stage of accepting the assumptions of individual products. In other words, every product offered by

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c. education, training and related services;
d. social infrastructure, in particular
    - education and training, including early childhood education and care, educational facilities, student housing and digital equipment;
    - social housing;
    - health and long-term care, including clinics, hospitals, primary care, home services and community-based care;
e. social innovation, including innovative social solutions and schemes aiming at promoting social impacts and outcomes in the areas referred to in this point;
f. cultural activities with a social goal;
g. integration of vulnerable people, including third country nationals;
h. innovative health solutions, including health services and new care models;
i. inclusion of and accessibility for persons with disabilities.

a financial intermediary will be first accepted by the European Commission. Therefore, we propose to adopt a simplified notification procedure for InvestEU projects.

At the same time, from an operational point of view, the optimal solution would be to grant authorization for the acceptance of State aid conditions beyond the conditions set out in GBER proposal, to the Investment Committee, which, according to InvestEU Regulation, plays an important role in the implementation of individual products and ensures their compliance with legal acts regulating the implementation of InvestEU.