Table. Detailed comments

Lp.	Provision	Comments
1.	General comment	Although the draft covers both renewable and low-emission hydrogen (including hydrogen produced at nuclear power plants), the support for renewable hydrogen infrastructure is much broader (separate chapter on investment and operating aid). By contrast, low-emission hydrogen is only mentioned in the context of network infrastructure and low-emission mobility, while, from the point of view of climate change mitigation, there is no justification for differentiating the support for renewable hydrogen from hydrogen produced in zero-emission nuclear power plants.
2.	General comment	Some of the proposed new regulations require clarification in terms of the intention to introduce them and determining whether they constitute a qualitative change or merely a different formulation of the regulations in their current meaning. This applies, inter alia, to changes proposed in Art. 2 points 27, 32, 45 and 49.
3.	Recital 11 of the Preamble	In recital 11 the following expression is used: “waste recycling and re-utilisation”. It should be noticed that a term „re-utilisation” is not used in UE legislation regarding waste. Moreover, this term is not used in other parts of this draft regulation. So it would be better to use terms defined in the Waste Framework Directive.
4.	Recital 13 of the Preamble	Recital 13 of the Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 indicates the following: "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 should consequently be excluded from the scope of Regulation (EU) No 651/2014 ". This condition no longer appears in the preamble to the amendment, which may indicate that it has been abandoned. If, on the other hand, this requirement is still to apply, then it should be included in the text of the regulation itself. It is not sufficient to include this requirement only in the preamble to Commission Regulation (EU) 2021/1237 of 23 July 2021, as with each subsequent revision the requirement is no longer presented, which contradicts the clarity of the provisions.
5.	Art. 1 (2) (c)	Non-applicability of GBER provisions to aid to export-related activities (Article 1(2)(c) of the Regulation) in the context of risk finance aid. We would like to point out that so-called “aid to export-related activities” mentioned in Article 1(2)(c) of the Regulation is already very incomprehensible within the framework of risk finance aid. Risk finance aid is the aid with regard to which no list of eligible costs has been defined. In principle, each expenditure on an investment in a SME that fulfils the criteria for risk finance aid can be an eligible cost. In such circumstances, there are serious doubts as to whether the exclusion provided for in Article 1(2)(c) of the Regulation is applicable in the context risk capital investments in SMEs. An important element in the development of every start-

		up is its expansion abroad, that is the search for new market outlets for products or services they are developing. With this end in view, companies would strive to build a distribution network for their product/service in new countries. It is hardly conceivable that aid intended for the company's development would not encompass such a crucial element as its international expansion. Given the many ambiguous points in this respect and the lack of EU case-law on the subject of export activities in the context of risk finance aid, the matter of admissibility of granting aid for start-ups' expansion abroad should be explicitly resolved in the GBER and allowed in the case of risk finance aid. Therefore, we propose that Article 1(2)(c) of the Regulation provides explicitly that "*the above shall not apply to expenditure on so-called "international expansion of SMEs" that qualifies for risk finance investments".*
6.	Art. 1 (6) (new proposal)	Proposed Amendment to the Article paragraph 6 (new): 6. If aid is awarded in accordance with competitive procedures resulting from European funds, such procedures are deemed to be in line with the requirements of the GBER, irrespective of the share of the non-price selection criteria <u>Justification:</u> We are postulating that in cases where the aid would be granted on the basis of a "competitive bidding process", the rule stating that "The submitted bid or the clearing price shall not account for less than 75 % of the weighting of the selection criteria" will be waived. The procedures for the distribution of the Cohesion Policy funds by definition assume a bidding procedure; however, this procedure will not necessarily in each and every case meet the conditions of a competitive bidding process. Particularly, in the case of the operational programmes implementing the Cohesion Policy funds, the selection criteria are not focused primarily on the price aspect but often also refer to numerous other aspects, such as complementarity with goals European Union environmental policies, implementing a program in partnership with an entity from another region or comprehensive revitalization of the area accompanying the investment. In order to exclude doubts or inconsistencies between regimes which govern granting of aid from different funds (e.g. the European Structural and Investment Funds – ESI Funds, the Modernisation Fund and the Recovery and Resilience Facility) and GBER, it would be desirable if the GBER explicitly stated that if aid is awarded in line with competitive procedures for which the requirements are set at the EU level (e.g. Article 73 of the Regulation (EU) 2021/1060 of The European Parliament and of the Council or Article 6 and 7 of Commission Implementing Regulation (EU) 2020/1001), such procedures are deemed to be in line with the requirements of the GBER, irrespective of whether the non-price selection criteria account for more than 25% of the weighting of all the selection criteria.
7.	Art. 2 (18)	The extension of so-called "period of protection" for SMEs from 7 to 10 years is a positive change, even though the draft retains the criterion under subpoint (c): "*where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors"*. We stress that all start-ups always fulfil at the initial stage the criteria for being declared bankrupt. We consider that no SME that has existed for less than three years or, for the purposes of eligibility for risk finance aid, no SME within the period of 7 years from its first commercial sale should be qualified as "*undertakings in difficulties*" if they fulfil the criteria for bankruptcy and a financial intermediary has selected

		them for financing following due diligence. Accordingly, we propose that the following exclusion be also added under subpoint (c): "*other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within seven years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary."*
8.	Art. 2 (18) (a)	Comment on the translation into Polish. In the sentence „Ma to miejsce w przypadku, gdy odliczenie poniesionych strat z kapitałów rezerwowych (i z wszystkich innych elementów ogólnie uznawanych za część funduszy własnych spółki) prowadzi do ujemnego wyniku przekraczającego połowę subskrybowanego kapitału podstawowego." the phrase „kapitał zakładowy" has been substituted with „kapitał podstawowy". The translation should be unified since both phrases mean the same.
9.	Art. 2 (18) (a)	Proposition of clarification: At the end of the last sentence of the definition it is essential to clarify the understanding of the term "share premium", due to the fact that Polish law does not recognize legal definition of a share premium. Considering the above, it is proposed that the text "and 'share capital' includes, where relevant, any share premium" is supplemented with additional clarification, as follows: "and "share capital" includes, where relevant, any share premium, **in particular any excess amounts or funds resulting from acquiring the shares above their nominal value**".
10.	Art. 2 (32)	The construction of the definition of "net increase in the number of employees", both in the content currently in force and in the proposed draft, is based both on the number of employees and the number of jobs created. It should be noted that the "number of employees" does not have to correspond to the "number of jobs". The difference may be due to, for example: - from the number of shifts (in the case of shift work) - one workplace employs several employees during several shifts; - from part-time employment; - the number of jobs does not correspond to the number of people working in this place / position, there are also vacancies (e.g. there may be 250 jobs / jobs, but there may be 50 vacancies); - "number of jobs created" may include jobs created and vacant, that have not been lost / reduced. In this case, the entrepreneur may create new – next - jobs and receive financial support on this account (public aid), because when creating new jobs (taking into account the definition of "net increase in the number of employees"), there is no connection with the place of work that was filled worker. It is questioned whether the above case has been recognized and how unfilled jobs are taken into account in the definition of "net increase in the number of employees".
11.	Art. 2 (38) and further	We propose to replace the term "competitive bidding process" used in the Polish language version (in the definition in Article 2 point 38 and in the following parts of the text, where this word is used) with: " a procedure compatible with competition rules", so

		that the concept of tender was not associated with the necessity to use public procurement procedures.
12.	Art. 2 (39a)	The Polish version of the project includes a mistake narrowing the “safe harbor” part of the definition to the “market price”, whereas “market conditions” should be indicated. [change in bold and underlined] As it is: “39a) »na warunkach rynkowych« oznacza, że warunki transakcji między umawiającymi się stronami nie różnią się od tych, jakie określiłyby niezależne przedsiębiorstwa, i nie zawierają jakiegokolwiek elementu zmowy. Każda transakcja, która wynika z otwartego, przejrzystego i niedyskryminującego postępowania, jest uznana za spełniającą zasadę **ceny rynkowej**;” It should be: „39a) »na warunkach rynkowych« oznacza, że warunki transakcji między umawiającymi się stronami nie różnią się od tych, jakie określiłyby niezależne przedsiębiorstwa, i nie zawierają jakiegokolwiek elementu zmowy. Każda transakcja, która wynika z otwartego, przejrzystego i niedyskryminującego postępowania, jest uznana za spełniającą zasadę **warunków rynkowych**;”
13.	Art. 2 (47a)	There is no definition of "investment", which makes it unclear whether the investment refers to a venture within a single project. It needs to be clarified what conditions need to be met and on what basis the authority considers the investment completed. It is necessary to explain if the administration relates to national administration or also to local administration. It seems reasonable to refer to the end of the project, not the end of the investment. The shortening of the implementation period is not justified. The shortening of the implementation period may have negative consequences, in particular for projects in the field of R&D, research and research and implementation, where this process is long and, in combination with the implementation for commercial sale, even longer. At the same time, for reasons beyond the control of the beneficiary, projects often require extending the deadlines for their implementation, while the regulations in question limit the implementation period to 3 years from the commencement of works.
14.	Art. 2 pkt 47a	In article 2 (47a), the definition of investment completion was introduced (‘completion of the investment’ means the moment when the investment is considered by the national authorities as completed or three years after the start of works, whichever is earlier). There are two doubts about this. Pursuant to Art. 14 sec. 5, the investment must be maintained in a given region for a specified period from its completion. The introduced definition indicates that if the investment process is extended beyond 3 years, then the maintenance of the investment after its actual completion may be shorter than 3/5 years. It is necessary to confirm the correctness of such understanding of the new definition. Secondly, it is not clear whether the phrase "start of works" in the statement: "three years from the start of works" is the same as the definition set out in Art. 2, point 23, where it is indicated not only the start of construction, but also the the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Such an obligation (for example, announcing a tender for a contractor for an investment) may be made long before the construction starts.

15.	Art. 2 (49)	The definition of a “replacement investment” should be added, in view of the exclusion adopted under the concept of the “initial investment”.
16.	Art. 2 (49)	The Polish version of the project includes a mistake narrowing the examples of “initial investment” by excluding from dash four the part “a fundamental change in (…) the overall provision of the service(s)”. [change in bold and underlined] As it is: “zasadniczą zmianą całościowego procesu produkcji produktu lub produktów, których dotyczy inwestycja w ten zakład;” It should be: „zasadniczą zmianą całościowego procesu produkcji produktu lub produktów **lub świadczenia usług**, których dotyczy inwestycja w ten zakład;”
17.	Art. 2 (49)	The term "overall production process" needs to be clarified. What should be considered an overall production process in a multi-stage production process? Do the changes have to concern every stage of this production, even if the change only at one stage would cause "fundamental" changes in production, translating e.g into product quality, acceleration of production, its robotization, but only at one stage of the entire production process. The use of a formulation analogous to that introduced in Art. 17 sec. 3 lit. (a) "a fundamental change in the overall production process of one or more products of the investment in the facility".
18.	Art. 2 (49) and (51)	As part of the new financial perspective for 2021-2027, we envisage an instrument supporting the digital transformation of enterprises. Enterprises (SMEs and large) will be able to obtain support for the purchase of devices and software related to the implementation of industry 4.0 solutions, including robots, software, as well as introduce digital solutions in the enterprise, which will be used, for example: • digitization of the company's internal processes (e.g. in the areas of controlling, human resources management, materials management • introduction of digital sales channels, the use of big data, artificial intelligence, etc. • cybersecurity: protection against malware, internal network security (segmentation, access control), protection against data leaks (so-called Data Leakage Prevention - DLP), Security of contact with the Internet, device security management. While solutions in line with the concept of industry 4.0 are directly related to the production process, the digitization of internal processes, e.g. in the area of procurement, finance, etc., is indirectly related to production. We would like to use regional investment aid, but in the case of types of projects related to digitization of internal processes, cybersecurity, which are indirectly related to production, we found the definition of the current version of the GBER and the proposal of its change introduced by the draft, as a blocking for this kind of investment, which will not thus qualify as an initial investment. According to the definition of the art 2 (49) introduced by the draft, the investment needs to be aimed at fundamental change in the overall production process. As described above, the digital strategy applies to most of the company's internal processes, and rarely results in complete change in

		the production process. However, as shown by the characteristics of the projects necessary for co-financing by Member State, in order for the digital transformation of enterprises, determined by the Commission to be possible, the definitions of article 2 (49) and (51) must be adapted accordingly, by introducing a wider catalogue of initial investments, in line with the requirements of digital strategies. At the same time, we would like to emphasize that the GBER regulations by now, do not offer other purposes of assistance enabling the effective financing of the digital transformation, especially by financing investment costs at an appropriate level.
19.	Art. 2 (72)	If the EIF is to be automatically treated as a public investor, then, judged from the perspective of PFR Ventures activities, the funds which already have the EIF on board may become problematic. There could simply be no longer any room for PFR Ventures since there will be proportionally too many public investors. Similarly huge doubts of interpretation would arise in connection with the following language: "*a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission."* It will be very difficult to determine whether a given entity purporting to be an investor from the public sector, or even a private sector investor, pursues an objective of public interest or not. We see this provision as potentially discriminatory against the said institutions as well as private entities with fully private funds at their disposal which agreed to carry out a public service mission as part of their activities. Consequently, we propose that this phrase be deleted. Should the proposed amendment be retained in the draft nevertheless, we ask that interim provisions be introduced in this respect in order to ensure stability of the processes already initiated with the participation of institutions which status will change as a result of the adoption of these amendments. Additionally, we would point out that the expression "is usually understood as" may give rise to questions regarding its interpretation; namely, whether the specified list of entities should be treated as non-exhaustive or should it be considered that the said provision establishes the exhaustive list of entities that are independent private investors. We must also indicate that the said definition refers to "private persons," instead of "private entities." In our view, the definition so constructed does not include, for example, partnerships such as limited partnerships, which do not have a legal personality (Polish: osobowość prawna), but are recognized as persons before the law (Polish: podmiotowość prawna). At the same time, point (79) of the same Article 2 refers to the concept of "private law bodies". We propose that in the said provision of Article 2 point (72) the term "private persons" be replaced with the concept of "private entities".
20.	Art. 2 (72)	The proposed clarification of the concept of a private and independent investor represents in principle a positive change; however, in our opinion, whether or not an investor is "private" should be assessed not so much in terms of internal characteristics of such entity, but objectively – that is in terms of funds available to it – or at least of a combination of such criteria. On the other hand, we take essentially a negative view of the explicit exclusion of the EIF and the EIB as private investors. The definition without no reasonable justification excludes investment fund with only private investors onboard or with minor presence of EIB/member state presence. With regard that in the younger EU countries such as Poland most of the investment funds include some EU or state funding, even if such public entities have no influence on the investment policy, such definition formally limits the possibility to use

		the aid schemes based on such definition. Therefore a change is needed [change in bold and underlined]: *"'independent private investor' means an investor who is private and independent, as set out in this point. "Private" investors will typically include banks investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance companies,* ***investment funds,*** *pension funds, private individuals, and academic institutions. The European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, as well as a public or private law body with a public service mission,* ***without prejudice to private bodies (including investment funds) with direct or indirect share owned by a public authority if less than 30% of the total shares,*** *will not be considered private investors for the purposes of this definition. "Independent" means that a private investor is not a shareholder of the eligible undertaking in which it invests. Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company;"*
21.	Art. 2 (78)	Replacement capital is defined as only the repurchase of existing shares from previous investors. Since an investment by previous investors may take the form of not only an equity investment but also of debt investment or quasi-debt investment, this definition should also include: "*repayment of loans granted earlier by investors to finance the operations of the company*."
22.	Art. 2 (80)	As a side note, we suggest that all rules, requirements and limitations regarding risk capital investments should, in our opinion, concern an "investment project", rather than the company as an enterprise. Very often companies that have been in existence for more than seven years (as per current provisions) do have a new idea for which they require financing and while such idea has not yet been commercialized, it does fulfil all the criteria for being considered a project "before the commercial sale" – yet obtaining financing is no longer possible due to the duration of the company's operations. We also suggest that the expert should be independent of the undertaking that he/she is asked to evaluate. The expert's opinion should indicate the final deadline for developing a product, service or process (designated as a specific date, event or in any other manner that can be identified in time). We propose that the general clauses specifying time limits in subpoints (a) and (c) of the same Article 2 point (80) be clarified (e.g. "recently" should be replaced with the designation of a point in time relative to the date of occurrence of specific and real events).
23.	Art. 2 (80)	The definition of "innovative enterprise" does not include enterprises that currently implement or have implemented an innovative product (based on expert assessment). It is proposed to include the above. It is also proposed to clarify the wording of "external expert" used in the draft. Point 80 (a) allows, on the basis of an expert's assessment, to define the enterprise as innovative, assuming the possibility of the emergence of innovations in the future, while point b) in relation to the current state of the enterprise requires showing operating costs in the R&D area at the level of 10%.

		The situation in which the entrepreneur currently implements innovations, but does not show costs at the level of 10% is not taken into account. An assessment of such a situation could also be pefrormed - similarly as indicated in point a) - by an external expert. It is also unclear who might be the "external expert" referred to in point a).
24.	Art. 2 (82a) and (98b)	A new definition [change in bold and underlined] **"*the following point (82a)/(98b) is inserted:*** ***"(82a) 'environmental protection' means environmental protection as defined in pt. 101"*** ***"(98b) 'environmental protection' means environmental protection as defined in pt. 101"***
25.	Art. 2 (85) and (86)	In the light of the planned change of the definition of industrial research (Art. 2 (85)) and experimental development (Art.2 (86)), it is worth noting that after the above-mentioned changes are introduced there will be discrepancies between the above-mentioned definitions and those adopted in the current Communication from the Commission — Framework for State aid for research and development and innovation.. Therefore, we want to underline also the need to change the definitions contained in the Framework to ensure the consistency of the legal system.
26.	Art. 2 (92)	The content of the provision should clearly indicate the possibility of qualifying as innovation clusters innovation centres not only focused on digitization (digital innovation centres - edihy), as well as innovation centres dealing with other sectors and operating for entrepreneurship in a more universal, not sectoral perspective.
27.	Art. 2 (92a)	An aid scheme similar to innovation clusters should be introduced for hydrogen valleys: [change in bold and underlined] "**the following point (92a) is inserted:** **"(92a) 'hydrogen valley' means an ecosystem of entities cooperating in the field of research, production, transport, distribution and final use of renewable hydrogen, irrespective of its legal form;"**
28.	Art. 2 (95)	In the draft guidelines for RDI, i.e. the Commission Communication - Framework for State Aid for Research and Development and Innovation, which Member States received for consultation in May 2021, the definition of innovation support services was extended in point 17(u). The draft specifies the eligibility under the provision of costs related to the digital strategy, while emphasizing in the justification that these costs were always possible to be financed under this provision, and the change is clarifying. Point 17(u) innovation support services' *means the provision of office space, data banks,* ***cloud and data storage services****, libraries, market research, laboratories, quality labelling, experimentation, testing and certification or other services, including those provided by research and knowledge dissemination organisations, research infrastructures, technology infrastructures or innovation clusters, for the purpose of developing more effective or technologicaly advanced*

		products, processes or services, including the implementation of innovative digital technologies and solutions. As a rule, the GBER complements the provisions of the above-mentioned Framework, and the definitions contained in both documents should be consistent in order to avoid discrepancies between the two sets of principles and to ensure the greatest possible legal certainty. However, a similar change in terms of definition of innovation support services has not been introduced into the definition of these services contained in Art. 2(95) GBER of the draft. Clear specification of the possibility of financing such costs is particularly important due to the necessity to implement digital strategies. In projects dedicated to digital transformation, entrepreneurs will be interested in financing the costs of using software in the form of SaaS (Software as a Service). Entrepreneurs more and more often, instead of buying software, use it in the form of monthly subscriptions. However, this form of using intangible assets does not meet the conditions set out in Art. 14 sec. 8 GBER. Considering this and the fact that, in line with the changes in the Framework, such services may be financed under the innovation support services, it is necessary to comply with these provisions and clarify the definitions under Art. 2 (95) by adding the possibility of qualifying cloud services and data storage services.
29.	Art. 2 (98a)	1.The definitions of research and testing and experimentation infrastructure are vague, which means that it may be difficult to qualify a particular infrastructure in one of the two categories. However, the correct classification will have specific legal consequences related to the level of funding (the maximum aid intensity level for testing and experimentation infrastructure is 25%, while for research infrastructure it is 50%). This may cause serious difficulties in the practical application of the above provisions. 2.Taking into account the specificity of the implementation of innovation and the entities of the science and education sector operating in Poland, it is crucial to ensure within the provisions of research infrastructure the possibility to implement the full research and development cycle, from basic research to the final demonstration of the developed technology. This position is also supported by a number of research organisations in Europe, which indicates the universality of this postulate independent of national legal and administrative systems. It should be pointed out that without ensuring the full realisation of the R&D cycle, the ability of European companies to offer innovative products and, particularly importantly, to contribute to the EU's strategic autonomy in sensitive sectors, will be significantly impaired. We therefore propose that in the draft regulation the concept of testing and experimentation infrastructure is replaced by the concept of pre-production demonstration infrastructure. Statements equating this type of infrastructure with technology infrastructure should therefore be deleted. The definition of pre-production demonstration infrastructure could be: *Pre-production demonstration infrastructures mean facilities, equipment, capabilities and related support services required to demonstrate, upscale and evaluate the implementation of technology in relevant environment, and the users of which are mainly industrial players, including SMEs, which seek support to integrate innovative technologies into new products, systems, processes and services, whilst ensuring feasibility and regulatory compliance.*

		In contrast, the technology infrastructure could form a separate category of research and technology infrastructure together with research infrastructure. The definition could be: *Research and technology infrastructures mean facilities, equipment, resources and related services that are used by the scientific community and Research Organisations, among others in collaboration with industrial players, including SMEs, to conduct research and develop and test technology in their respective fields, from fundamental research to technology validation in relevant environment. They cover scientific equipment or set of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication and other technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research and development. Such infrastructures may be independent or hosted by Research Organisations, and they can be 'single-sited' or 'distributed' (an organised network of resources). These infrastructures are essential to strengthen Europe's knowledge base and to enable industry to access the skills and facilities needed to foster their innovation capacity.* In this sense, technological infrastructure is an intermediate stage between research infrastructure and pre-production demonstration infrastructure, which is presented in the table below this table with comments. In case of disagreement on changing the definitions in a way to ensure support for R&D infrastructure for the full innovation cycle, we propose to refer to technology readiness levels (TRL) in the definitions beeing prepared. This approach is used e.g. within the European research programme Horizon Europe and allows for precise matching of levels and funding opportunities. In this case, research infrastructure from the current wording of the draft regulation could be used to conduct research at levels TRL 1-8, while testing and experimentation infrastructure at TRL 9. Also, the concept of "capabilities and related support services required to develop, test and upscale technology (…)" should be explained.
30.	Art. 2 (102e)	The wording of the regulation implies that low-carbon hydrogen is the hydrogen achieving greenhouse gas emissions of up to 3 tCO2eq/tH2], which are higher than those indicated for fossil fuels comparator of [94g CO2e/MJ (2.256 tCO2eq/tH2)]. Proper emissions limits should be introduced.
31.	Art. 2 (102e)	The definition of low-carbon hydrogen sets a GHG savings requirement on a 73,4%. PL suggests that this threshold should correspond to a DNSH level. Suggested drafting: "The activity complies with the life cycle GHG emissions savings requirement of 70 % relative to a fossil fuel comparator of 94g CO2e/MJ…". We propose to delete in point 102e (page 12) the following requirement: "The carbon content of electricity-based hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid" During the transformation period, the level of CO2 emission linked with the production of hydrogen in the electrolysis should not be determined by the marginal generation unit in the bidding zone where the electrolyser is located. Because, this will result in the inability to finance hydrogen from electrolysis as low-carbon hydrogen in most EU countries, particularly in countries where the process of transition and coal phase-out is undertaken. This

		can cause significant obstacles and delays in transformation, and hence lock in fossil fuels.
32.	Art 2 (108)	Some technologies require the use of kindling fuel which is not renewable energy. We propose to clarify whether the use of non-RES "starting / starting fuel" in such installations is allowed in the light of the proposed “green cogeneration” definition).
33.	Art 2 (109)	Proposed amendment to the Article 2 point 109: 109) ‘energy from renewable sources’ or ‘renewable energy’ means energy from renewable non-fossil energy sources as defined in Article 2, point (1), of Directive 2018/2001/EU, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources multi-fuel plants using renewable and non-renewable sources and includes renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;” Terms used in the definition of energy from renewable sources have been translated in a way that narrows their meaning in the Polish language version, which is repeated in the following parts of the legislative proposal. This applies in particular to the activity of “filling storage systems”, which has been translated as: “pumping in pumped storage plants”. It narrows storage systems to pumped storage power plants. We propose to comply with the terminology of the RED 2 Directive in the Article 2 point 109 of the draft GBER regulation. The installations referred to in the draft GBER regulation in the definition of “energy from renewable sources” are referred to in the RED directive not as “hybrid plants”, but as "multi-fuel plants using renewable and non-renewable sources". This will reduce the risk of interpretation doubts, taking into account the links between these legal acts.
34.	Art. 2 (109a)	Correction of the incorrect reference in the GBER to the said directive: CURRENT: "Art. 109a "renewable energy community" means the renewable energy community as defined in Art. 16 (2) of Directive (EU) 2018/2001" PROPOSAL: "Art. 109a "renewable energy community" means the renewable energy community as defined in Art. 2 (16) of Directive (EU) 2018/2001"
35.	Art. 2 (114)	The term "qualified technology" needs to be defined.
36.	Art. 2 (121a)	In the draft regulation the following definition of remediation is proposed: ‘remediation’ means actions, such as the removal or detoxification of contaminates or excess nutrients from soil and water, that aim at removing sources of degradation. We would like to point out that Directive 2010/75/EU of the European Parliament and of the Council of November 24, 2010 on industrial

		emissions (integrated pollution prevention and control) defines actions to clean up contaminated soils, referred to as remediation in Art. 22 sec. 3 and 4: ,, where the contamination of soil and groundwater at the site poses a significant risk to human health or the environment (…),the operator shall take necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk.". Therefore, we propose to adjust the definition of remediation proposed in draft regulation to the provisions of the above directive, i.e. "necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk".
37.	Art 2 (124b)	The heating/cooling storage has been translated as "sieci magazynowania" which means "storage network". It should be clear that the proposed wording covers storage infrastructure (including seasonal). There should be no doubts about the possibility of including this type of installation in the scope of the heating system, in accordance with the practice applied so far.
38.	Art. 2 (130) (a) (v)	Offshore electricity grids within one country should clearly be treated as a category of energy infrastructure under state aid rules. We propose the following changes: "off-shore electricity grids, that is to say any equipment or installation of the systems referred to in point (i), having ~~dual~~ the following functionality: interconnection, ~~and~~ transmission or distribution of offshore renewable electricity from the offshore generation sites to ~~two~~ one or more countries." There are also doubts about the - included at the end of the proposed art. 2 point 130 of Regulation 651/2014 - exclusion from the scope of the concept of "energy infrastructure" of "dedicated infrastructure" facilities, ie facilities built for one or a small group of previously identified users and tailored to their needs.
39.	Art. 2 (130) (b) (i)	We propose to include the infrastructure for the transport of biomethane in energy infrastructure concerning gas. Using a term "distribution" might undesirably narrow the application of this provision. Transport is a broader term including both distribution and transmission as well as other forms of transporting gas. In order not to eliminate infrastructural solutions other than distributing gas, it is recommended to use a term "transport" instead of "distribution". Proposal: (b) (i) transmission and distribution pipelines for the transport of natural gas, bio gas, biomethane and renewable gaseous fuels of nonbiological origin that form part of a network, excluding high-pressure pipelines used for upstream ~~distribution~~ transport of natural gas;
40.	Art. 2 pkt 130 lit.b ppkt iii Art. 2 (130) (b) (iii)	Indicated infrastructure which is currently related to LNG and CNG should also serve in the future to process biogas and other renewable gases. Bearing in mind the growing need to transform energy sector, renewable gases, also of non-biological origin, should be included to the furthest possible extent in EU legal framework. Proposal:

		(b) (iii) reception, storage and regasification or decompression facilities for liquefied natural gas ('LNG') or compressed natural gas ('CNG') including liquefied or compressed bio gas and renewable gaseous fuels of non-biological origin;
41.	Art. 2 (130) (b) (v)	Proposed smart gas grid definition should not be limited to digital solutions but broadened to cover also the necessary technical investments such as valves, compressor stations, metering infrastructure and connecting infrastructure to inject new gases into the existing infrastructure. Poland proposes an wording extension on: • synthetic methane - in addition to biomethane and hydrogen; • retrofitting – clear confirmation needed in accordance with the wording „related necessary upgrades to the existing network"; • increasing the capacity of existing networks - to enable transport of renewable and decarbonised gases in the case of further transport of existing volumes of natural gas filling the network; • reverse flow - from one type of network to other of different capacity, not only from the distribution to the transmission level; • storage systems – in addition to production, transmission, distribution and consumption. Whole gas value chain needs to be covered. • connections - enabling transport of renewable and decarbonised gases from production units to the network.
42.	Art. 2 (130) (c), (d)	In the definition of energy infrastructure contained in Art. 2, point 130, for hydrogen (c), at the end, the sentence "Facilities (i), (ii), (iii) and (iv) to which third parties have access qualify as energy infrastructure" has been added. If the provision of third party access is to be a precondition, it should be made more explicit. A similar comment applies to the final sentence in the next paragraph, i.e. carbon dioxide infrastructure (point (d)).
43.	Art. 2 (130) (e), (g)	In the amended Article 2 (130) (e) the concepts of zero-emission and low-emission heat and steam have been introduced. These terms have not been defined either directly in the amended regulation or by reference to other documents. It should be clarified how these concepts should be understood. A similar comment applies to the concepts of zero-emission and low-emission energy production (or energy carriers), introduced in the amended Art. 2 point 130 lit. g).
44.	Art. 2 (131a)	Does "underground geological formations" also include storage of CO2 under the seabed (offshore CCS projects)? PL supports such an interpretation.
45.	Art. 2a (new proposal)	Article 2a (new): ***If the project was eligible for aid at the time of submitting the application, the amendment to the provisions of other legal acts to which the conditions for granting aid refer, after the application for aid has already been submitted, does not affect whether the project is eligible for state aid.*** **Justification**:

		The Commission proposes to link the definitions set out in the GBER with other legal acts. We are sceptical about this solution. Direct reference to other legal act will automatically translate any amendments to this act into the rules for granting State aid. The Commission is inconsistent in the way it refers to other pieces of legislation as it does not always refer to provisions that may in the future replace the referenced provisions. A different wording raises doubts as to how such references should be understood and whether it is a deliberate legislative measure or an oversight. Taking into account the course of the process of granting investment aid, in particular its length, the proposed mechanism may have negative effects. Changing provisions of the directive between the development of a given support scheme, then the moment of applying for aid, and the final date of granting aid, may cause the extension of the assessment, as well as a high level of uncertainty of potential applicants in terms of eligibility of their investments. A good example of such a situation is the newly proposed definition of high-efficiency cogeneration presented altogether with the recast of Energy Efficiency Directive (hereinafter: "EED proposal"). This amendment, aiming at introduction of the limit for direct CO2 emissions (for units using fossil fuels) lower than 270 g of CO2 per 1 kWh of energy produced in cogeneration (heat, electricity and mechanical energy combined) from as early as 1 January 2026, is not feasible, as it is not possible to complete all investments by the end of 2025. Therefore, some existing units may be deprived of the high-efficient cogeneration status, which might have several consequences, also on the ground of the State aid. The changes introduced are so significant that in many cases they will affect the project's eligibility for exemptions provided for in the Article 41 of the draft GBER regulation. Therefore, we propose to introduce a rule according to which, if a project was eligible for aid at the time of submitting the application, then changing the provisions of other legal acts, after submitting the application, no longer affects the project's eligibility for conditions of granting State aid under the GBER regulation.
46.	Art. 4 (1) (f)	We would like to highlight the need for a change in Article 4(1) (f) of GBER concerning the notification threshold for aid for undertakings participating in European Territorial Cooperation projects. The current threshold for aid under Article 20 is EUR 2 million per undertaking, per project. Our present knowledge for the upcoming financial perspective is that we might have in some projects state aid over this threshold. In order not to use any other GBER article for state aid in ETC, this would be fully justified to raise the threshold above EUR 2 million. Moreover, we would like to suggest that wide survey should be launched by Interact to examine this topic in the all of ETC programs (2014-2020) on what level above the current threshold and how many cases there are.
47.	Art. 4 (1) (cc)	The notification threshold for investment aid for local infrastructures has not been increased in spite of a price increase recorded on the market. Both the aid and the total costs thresholds should be raised.
48.	Art. 4 (1) (s)	There is no notification threshold for the projects connected with buildings falling within the scope of Article 38(3a) GBER in the proposed provisions for Article 4. Current content of the Article 4 letter s GBER contains the threshlold of 30 million EUR per projects for aid for energy efficiency investments in certain buildings falling within the scope of Article 38(3a)), but the amending regulation in Article 1 point 2 letter c („point (s) and (sa) are replaced by the following") exlude the Article 38(3a) from the 30 million

		EUR notification threshold per project. Does that mean that the draft regulation proposes the general threshold 20 mln EUR per project for the Article 38(3a) or there is an unintentional omission of this Article among the particular thresholds? We propose maintaining the threshold of 30 mln EUR per project for the Article 38 paragraph 3a of the GBER.
49.	Art. 4	Proposed amendment to the Article 4: "(s) for investment aid for environmental protection, unless otherwise specified: EUR **30** million per undertaking per investment project; **Justification:** In addition, we propose that the overall threshold should be increased to EUR 30 million. The adopted direction of changes in the EU climate policy, including the recent significant increase in costs for electricity producers from fossil fuels, due to CO2 allowances prices, result in a significant increase in demand for the development of renewable energy sources, additionally intensified by the provisions of the legislative proposals included in the Fit for 55 package. With the highest HICP inflation in the Euro zone since 2008, this results in significant increases in the prices of investment projects.
50.	Art. 5 (2)	The methodology for calculating the reduction in the price for access to innovation support services, e.g. provided by EDIH or the possibility of using them free of charge, should be specifically regulated directly in the provision. At the same time, we request that, in order to obtain adequate legal certainty, the provision should not use very vague and subjective in the assessment terms such as "measurable" and "identifiable" benefits, and replace them with specific guidelines on the conditions of charging for individual types of users and the methodology of their calculation with the option of a price reduction. The proposed shape of the regulations introduces such a large margin of interpretation, which as a consequence may lead to distortion of competition on the EU market - Individual Member States, freely interpreting the "measurable" nature of the benefits, will have an offer of the same type of services priced in a completely different way. The provision should clearly regulate the conditions on the basis of which services can be provided to the entrepreneur free of charge and when the cost must be incurred in some extent and an indication on the basis of which indicators / criteria the scale of this reduction is to be calculated. At the same time, in order to standardize the support scheme offered by the entities mentioned in the provision, it should be indicated that regardless of whether the services will be offered free of charge (as non-financial aid for the entrepreneur) or at reduced prices, their provision constitutes state aid, granted in accordance with Art. 28. This construction is not clear and may raise doubts in the interpretation of the provisions by entrepreneurs.
51.	Art. 6	According to the draft Guidelines on State aid for climate, environmental protection and energy (CEEAG) aid can have an incentive effect even for projects which started before the aid application. The same provision should be included in GBER.

52.	Art. 6 (6) (new proposal)	We propose new paragraph to the Article 6: **6. In exceptional cases aid is considered to have an incentive effect if the aid is awarded automatically in accordance with objective and non-discriminatory criteria and the Member State has no discretion in the granting process.** **Justification:** The draft regulation amending the GBER, in contrast to the CEEAG draft consulted in summer 2021, does not propose solutions allowing for relaxation of the purely formalistic approach to the evaluation of the incentive effect. We are postulating that in amending the GBER, similar solutions be implemented in Article 6 paragraph 6 as the ones proposed in point 30 of draft CEEAG
53.	Art. 6 (3) (a), (5) (m), (n)	The numbers should be adjusted with regard to the inflation rate https://ec.europa.eu/eurostat/databrowser/view/tec00118/default/table?lang=en
54.	Art. 8 (2)	In Article 8, paragraph 2 it seems justified to extend the catalogue of exceptions with funding from Member States to the European Digital Innovation Hubs, which are to be established under the Digital Europe Program. These centres are to be financed as follows - 50% from the Program funds, 50% from the resources of the Member State (including the ERDF or the Recovery and Resilience Facility). Submitting their financing to state aid rules causes significant difficulties in financing their activities, which, as a rule, is to support the development of the most advanced digital technologies, including cybersecurity and the development of advanced digital skills as well as the exchange of knowledge and good practices in these areas. Forcing the Member States to apply the general rules of state aid may (apart from the complexity of the settlement and financing system) thus disadvantage entities from countries with a lower level of prosperity and technological development.
55.	Art. 13 (e)	It has been added in Art. 13 that regional aid does not cover: " aid covering investment costs for buildings, land, and equipment to the extent and as long as they are part of a project supported under Article 25". At the same time, Art. 25 covers, inter alia, “costs of instruments and equipment to the extent and for the period used for the project”. In the English version of the draft GBER amendment, "urządzenia" to which the exemptions in Art. 13 apply are referred to as "equipment". The same word was used in Art. 25 as equivalent to the Polish word "sprzęt", but additionally in Article 25 there is also “aparatura”(in the English version - "instruments"). At the same time, in the case of regional aid in the GBER, the eligibility of, inter alia, investment costs in tangible assets. Therefore, it is justified to clarify in the regulation, whether the exemption should apply to the costs of investment in tangible assets (i.e. costs of instruments and equipment as well as buildings and land), to the extent to which they are part of a project supported under Art. 25.

56.	Art. 14	According to the justification to the background note to the draft, the changes to the GBER are intended to enable the implementation of EU policies by the Member States, including the Digital and Green Strategy. In connection with the above, the provisions of Art. 14 should, as part of an investment project related to green or digital transformation (e.g. consisting in the construction of an energy-saving production line), also enable financing the purchase of software / digital technology needed to supporting the digitization of processes in the company. The possibility of financing within one projected, granted in one contract, on based of art 14, will result in support for both digital and green transformation in company and will enable a more efficient implementation of the aid measure. In addition, the provision of GBER should regulate which types of investments in the implementation of the Green Deal, besides the projects which aimed to are not storage, production or distribution of energy, but aimed on the transformation of the enterprise in accordance with the assumptions of the circular economy, could be financed from Regional Investment Aid, and which exclusive are qualified only to the section 7, e.g. installation or modernization of renewable energy sources but used only for personal use. The provision of the GBER should reflected this demarcation of this section of the regulation.
57.	Art. 14 (4)	The background note to the draft does not contain information of the reasons and scope of the change introduced in point b, i.e. instead of the wording *arising from job creation as a result of initial investment ,* introduced wording *employment created as a result of an initial investment*. Therefore, it is not clear what the reason of this change was and if it extends the scope of jobs eligible under this provisions or is purely editorial change. Such information should be included in the justification.
58.	Art. 14 (4)	Article 14(4) – in connection with the introduction of the definition of 'completion of the investment' (Article 2(47a)) – we would like to call for clarity/legal certainty by referring (primarily in Article 14(4)) explicitly to the possibility of incurring eligible costs after the investment has reached the 'completion of the investment' (as defined in the Article 2(47a)).
59.	Art. 14 (6a)	Technical note - Paragraph 6a indicates paragraph a two times where with the second condition "for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease" should be a letter "b".
60.	Art. 14 (7)	It needs to be clarified that the sentence "For aid awarded for a diversification of an existing establishment, the eligible costs shall exceed by at least 200 % the book value of the reused assets, as registered in the fiscal year preceding the start of works" also refers only to large companies. Such an interpretation results from the Commission's reply to WIKI, but not from the wording of the provision itself. It is necessary for the transparency of all compliance rules and conditions.
61.	Art. 14 (7)	Polish language version is not clear: 'the eligible costs **exceed** the depreciation costs (…) of the undertaking; the eligible costs **are** at least more than (…)', whereas the English version states '**shall exceed**', which indicates an obligation (not a description of the existing state). The same is true in the current Polish version of the GBER that uses the phrase "must exceed'.

62.	Art. 14 (8) (d) second subparagraph	In the provision of Art. 14 (8) (d) second subparagraph, the draft introduced the following change: “For large enterprises, costs of intangible assets shall be eligible only up to 50 % of the total eligible investment costs for the initial investment. For SMEs, 100 % of the costs of intangible assets shall be eligible.”; However, at the same time, there is no information in the background note to the draft about the aim of this change, which may cause problems with the implementation of this provision. Such information should be included in the background note.
63.	Art. 14 (11)	Investment aid for research infrastructures **should not be made conditional on the granting of access to several users**. This is an impossible condition for many enterprises, which would thus disclose information covered by a company secret, including information on the directions of conducted research. This holds back technological development, as enterprises have a large part of human resources with research and development competences. This issue should be included in the revision of the regulation. **We propose deleting Article 14 paragraph11**
64.	Art. 14 (13)	Pursuant to Art. 14(13) „any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. " However the Regional Guidelines in point 19 (27) indicate that: „single investment project’ means any initial investment related to the same or a similar activity started by the aid beneficiary at group level within three years of the date of start of works on another aided investment in the same NUTS 3 region". Therefore, it seems reasonable to clarify the definition in art. 14(13) GBER.
65.	Art. 14 (15) last sentence	Art. 14(15) last sentence – incorrect translation into Polish. As a result the expression 'jeżeli inwestycja początkowa powoduje powstanie nowej działalności gospodarczej' does not refer (although it should) to the amended definition of Article 2(51) (as the English version does), because instead of using the introduced legal definition, it uses different wording (powoduje powstanie =/= zapoczątkowuje).
66.	Art. 16 (2) and (4)	paragraph 2 (b) they are co-financed by the European Structural and Investment Funds **or funded under the Recovery and Resilience Facility**; paragraph 4 The eligible costs shall be the overall costs of the urban development project to the extent that they (a) comply with articles 37 and 65 of Regulation (EU) No 1303/2013, or Articles 67 and 68 of Regulation (EU) 2021/1060, whichever is applicable;

		(b) serve implementation of recovery and resilience plans adopted in line with Regulation (EU) 2021/241*. *** Regulation (EU) 2021/241 of The European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L57, 18.2.2021, p. 17)** We would like to propose an extension of the scope of Regional urban development aid. Currently, Regional urban development aid can only be granted for projects co-financed by the European Structural and Investment Funds. In our opinion, at the time of launching programmes funded under the Recovery and Resilience Facility - in their case it should also be possible. Taking into account our experience in the field of implementation of urban development programmes, we see the potential of using this State aid measure in the context of implementation of recovery and resilience plans in the form of loan instruments. Regional urban development aid is the only regional State aid measure restricted to projects co-financed by the European Structural and Investment Funds (in case of regional investment there is no such condition) - in our opinion, the extension of the scope of support of art. 16 is therefore justified.
67.	Art. 19a and Art. 19b	We are requesting an extension of the validity period of Art. 19a and 19b until the end of the transitional period of the Common Agricultural Policy (CAP), i.e. until 2025 (transitional period: 2021-2022 + 3 (N + 3)). Ensuring the application of uniform rules throughout the transition period for beneficiaries benefiting from aid granted to SMEs under the Regulation 651/2014 amended in July 2021 will enable the implementation of aid without the need to change the program implementation system in the last 2 years of the programming period (e.g. extended RDP 2014- 2020). In addition, when programming the Strategic Plan for the CAP, Member States may provide for solutions set out in Art. 19a and 19b in terms of aid provided in the years 2023-2027.
68.	Art. 21	We would be obliged for verification of the translation into Polish and making it more consistent. It refers particularly to paragraph 9 (a), where the English phrase "quasi-equity" is translated once as "quasi-equity" and once as "quasi-equity investment". Regardless of the above, it should be noted that Art. 21 does not provide for a block exemption for mixed instruments widely promoted by the European Commission in the model of a financial instrument and a grant within one operation. Para. 5 should therefore also contain a non-returnable element - the catalogue should be supplemented with grants. The Polish version after the change: „5. Inwestycje w zakresie finansowania ryzyka w kwalifikujących się przedsiębiorstwach mogą przybierać formę inwestycji kapitałowych, quasi-kapitałowych, pożyczek, gwarancji, dotacji lub kombinacji tych rozwiązań.”. The English version after the change: “5. Risk finance investments into eligible undertakings may take the form of equity, quasi-equity investments, loans, guarantees, grants or a mix thereof.”. In order to simplify the rules for granting aid under Art. 21 and encourage the Member States to use the proposed solutions more widely, it is proposed to simplify the provisions of para. 12: deleting the condition in sentence 3 of this paragraph, i.e. reduction of private participation rates only in assisted areas in the approved regional aid map in favour of lower overall minimum levels of the

		total private participation rate: • a change from 10% to 5% (para. 12 (a)), • a change from 40% to 20% (para. 12 (b)), • a change from 60% to 30% (para. 12 (c)). In connection with the above, we propose the following wording of the above-mentioned recipe: Polish version: „12. W przypadku środków finansowania ryzyka mających na celu zapewnienie inwestycji w zakresie finansowania ryzyka w formie inwestycji kapitałowych, quasi-kapitałowych lub pożyczek kwalifikującym się przedsiębiorstwom wkład publiczny wniesiony na rzecz pośrednika finansowego musi służyć pozyskaniu dodatkowego finansowania od niezależnych inwestorów prywatnych na poziomie pośredników finansowych lub kwalifikujących się przedsiębiorstw, tak aby osiągnąć łączną stopę udziału prywatnego na następujących minimalnych poziomach: a) 5% inwestycji w zakresie finansowania ryzyka przyznanej kwalifikującym się przedsiębiorstwom, o których mowa w ust. 3 lit. a); b) 20% inwestycji w zakresie finansowania ryzyka przyznanej kwalifikującym się przedsiębiorstwom, o których mowa w ust. 3 lit. b); c) 30% inwestycji w zakresie finansowania ryzyka na inwestycje przyznanej kwalifikującym się przedsiębiorstwom, o których mowa w ust. 3 lit. c), i na inwestycje kontynuacyjne w zakresie finansowania ryzyka w kwalifikujących się przedsiębiorstwach po upływie okresu wymaganego do kwalifikowania się, o którym mowa w ust. 3 lit. b). Finansowanie zapewnione przez niezależnych inwestorów prywatnych korzystających z pomocy na finansowanie ryzyka w formie bodźców finansowych zgodnie z art. 21a nie jest uwzględniane dla celów osiągnięcia łącznych stóp udziału prywatnego określonych w akapicie pierwszym. Stopy udziału prywatnego, o których mowa w akapicie pierwszym lit. b) i c), zostają zmniejszone do 20 % zgodnie z lit. b) i do 30 % zgodnie z lit c.) w przypadku inwestycji dokonanych na obszarach objętych pomocą określonych w zatwierdzonej mapie pomocy regionalnej obowiązującej w chwili zapewnienia inwestycji w zakresie finansowania ryzyka w zastosowaniu art. 107 ust. 3 lit. a) Traktatu.”. The English version: “12. For risk finance measures aimed at providing risk finance investments in the form of equity, quasi-equity or loans to eligible undertakings, the public contribution provided to the financial intermediary shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds: (a) 5% of the risk finance investment provided to the eligible undertakings referred to in paragraph 3, point (a);

		(b) 20% of the risk finance investment provided to the eligible undertakings referred to in paragraph 3 point (b); (c) 30% of the risk finance investment provided to eligible undertakings mentioned referred to in paragraph 3, point (c) and for follow-on risk finance investment in eligible undertakings after the eligibility period referred to in paragraph 3, point (b). Finance provided by independent private investors benefitting from risk finance aid in the form of tax incentives under Article 21a shall not be taken into account for the purposes of reaching the aggregate private participation rates set out in the first subparagraph. The private participation rates mentioned in the first subparagraph, points (b) and (c) shall be reduced to 20 % under (b) and 30 % under (c) for investments made in assisted areas designated in an approved regional aid map valid at the time of provision.”. In section 14 it is proposed to abandon or correct the provision of point (d) ("it shall aim at establishing adequate risk-reward sharing arrangements as described in paragraph 10"). This paragraph refers to the selection of financial intermediaries and fund managers in an open, transparent and non-discriminatory procedure in line with applicable EU and national regulations. This procedure is also to be based on the objective criteria described in para. 14, and meet the additional conditions listed in points (a)-(c). As for the condition indicated in point (d), it should be noted that the purpose of the market game is primarily to establish market-based rules for remuneration (as referred to in paragraph 16 (b)). The procedure in which the profit and risk division would be determined at the same time would result in incomparability of the submitted tenders. It is proposed to delete the condition indicated in point (d), whereas the establishment of appropriate profit and risk sharing mechanisms should be established in an appropriate investment strategy - referred to in para. 15 (a). The proposed wording of the provision after the amendment – the Polish version: „14. Pośredników finansowych i zarządców funduszy wybiera się w drodze otwartej przejrzystej i niedyskryminującej procedury zgodnej z obowiązującymi przepisami unijnymi i krajowymi. Procedura opiera się na obiektywnych kryteriach związanych z doświadczeniem, wiedzą fachową oraz potencjałem operacyjnym i finansowym oraz spełnia następujące warunki: a) zapewnia powołanie kwalifikowalnych pośredników finansowych i zarządców funduszy zgodnie z obowiązującymi przepisami; b) nie wprowadza rozróżnienia na pośredników finansowych i zarządców funduszy ze względu na miejsce prowadzenia ich działalności lub założenia w jakimkolwiek państwie członkowskim; c) może wymagać, aby kwalifikowalni pośrednicy finansowi i zarządcy funduszy spełnili z góry określone kryteria obiektywnie uzasadnione charakterem inwestycji; ~~d) ma na celu ustanowienie odpowiednich mechanizmów podziału zysków i ryzyka zgodnie z ust. 10.~~”. The English version: “14. Financial intermediaries and fund managers shall be selected through an open, transparent and non-discriminatory procedure

		in accordance with applicable Union and national laws. The procedure shall be based on objective criteria linked to experience, expertise and operational and financial capacity, and shall comply with the following conditions: (a) it shall ensure that eligible financial intermediaries and fund managers are established in accordance with the applicable laws; (b) it shall not discriminate between financial intermediaries and fund managers on the basis of their place of establishment or incorporation in any Member State; (c) it may require that eligible financial intermediaries and fund managers fulfil predefined criteria objectively justified by the nature of the investments; ~~(d) it shall aim at establishing adequate risk-reward sharing arrangements as described in paragraph 10~~.". Para.16 lit. (a) limits the catalogue of financial intermediaries or fund managers only to entities subject to regulatory supervision. It is proposed to delete the words "regulatory supervision shall apply" from point (a). Financial intermediaries in Poland are not only banks or cooperative banks; a significant part of the support is implemented by loan funds and guarantee funds, which, according to the Polish law, are not subject to regulatory supervision. Similarly, in other European countries, the forms and methods of supervision over potential financial intermediaries may differ. This provision should not exclude such entities from open, non-discriminatory proceedings. Additional fact is that para. 14 (b) proposes not to distinguish financial intermediaries and fund managers according to their place of business or establishment in any Member State. The method of application of the condition of par. 16 (d) raises doubts as it requires intermediaries to define an investment strategy, criteria and investment timeframe. It is unclear how to understand this condition in relation to the requirement contained in par. 15 (a), according to which the Member State or the entity entrusted with the implementation of the measure is to ensure the investment strategy. The proposed wording of the provision after the amendment – the Polish version: „16. Pośrednikami finansowymi zarządza się na zasadach komercyjnych. Wymóg jest spełniony, jeżeli pośrednik finansowy oraz – w zależności od rodzaju środka finansowania ryzyka – zarządca funduszu spełniają następujące warunki: a) są zobowiązani na mocy prawa lub umowy do działania zgodnie z najlepszymi praktykami i z należytą starannością charakteryzującą profesjonalnego zarządcę, w dobrej wierze oraz unikając konfliktu interesów; ~~zastosowanie ma nadzór regulacyjny;~~ b) ich wynagrodzenie jest zgodne z praktykami rynkowymi. Wymóg ten uznaje się za spełniony, jeżeli są oni wybierani w drodze otwartej, przejrzystej i niedyskryminującej procedury wyboru zgodnie z ust. 14; c) otrzymują oni wynagrodzenie powiązane z uzyskanymi wynikami lub przejmują część ryzyka związanego z inwestycją poprzez współinwestowanie środków własnych, tak aby zapewnić, że ich interesy są trwale powiązane z interesami państwa członkowskiego lub powołanego dla niego podmiotu, któremu powierzono zadanie;

		~~d) określają oni strategię inwestycyjną, kryteria i proponowane ramy czasowe inwestycji;~~ e) inwestorzy mają prawo do bycia reprezentowanym w organach zarządzających funduszem inwestycyjnym, takich jak rada nadzorcza lub komitet doradczy.”. The English version: “16. Financial intermediaries shall be managed on a commercial basis. This requirement is met where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions: (a) they shall be obliged by law or contract to act in accordance with best practices and with the diligence of a professional manager acting in good faith and avoiding conflicts of interest; ~~regulatory supervision shall apply;~~ (b) their remuneration shall conform to market practices. This requirement is presumed to be met as long as they are selected through an open, transparent and non-discriminatory selection procedure in accordance with in paragraph 14; (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing their own resources so as to ensure that their interests are permanently aligned with the interests of the Member State or its entrusted entity; ~~(d) they shall set out an investment strategy, criteria and the proposed timing of investments;~~ (e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.”.
69.	Art. 21	The risk aid scheme unreasonably favourizes fund-of-funds structures, excluding co-investment schemes. Without prejudice to the influence on the EU market, the latter may be of reason due to policy issues or in cases, where private investors are not willing to enable a public investor to participate directly in their fund. Therefore some changes are required: [changes in bold and underlined “*Article 21* *Risk finance aid* *(…)* *2. Member States, either directly or through an entrusted entity, shall implement the risk finance measure via* ***or in a co-investment with*** *one or more financial intermediaries.(…)* *9. The public contribution provided to financial intermediaries may take one of the following forms:* *(a) equity or quasi-equity, or financial endowment to provide risk finance investment directly or indirectly to eligible undertakings;* *(b) loans to provide risk finance investment directly or indirectly to eligible undertakings;* *(c) guarantees to cover losses from risk finance investment directly or indirectly to eligible undertakings****;***

		***(d) if applicable: a co-investment fee**.”*
70.	Art. 21	Modern capital markets have an international specifics which results in search of start-ups for capital in different states and different intermediaries. Although freedom of establishment and capital are crucial and some mobility if welcome, this may harm some policy objectives. Therefore as indicated in the “*Guidelines on State aid to promote risk finance investments”* (pt. 28 lett. b) Member States should be explicitly entitled to limit the aid to undertakings actually conducting activity on their territory [change in bold and underlined]: *“3. Eligible undertakings shall be undertakings that at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:* *(a) they have not been operating in any market;* *(b) they have been operating in any market for less than 10 years following their registration and/or, in the case of innovative enterprises, seven years after their first commercial sale. For eligible undertakings that have taken over the activities of another enterprise or were formed through a merger, in which case the eligibility period also encompasses the operations of that enterprise or the merged companies. For eligible undertakings that are not subject to registration, the eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity, whichever is earlier;* *(c) they require an initial risk finance investment which, based on a business plan prepared in view of a new economic activity, is higher than 50 % of their average annual turnover in the preceding 5 years. Investments aimed at significantly improving the environmental performance of the activity in line with Article 36 (2) and other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852 of the European Parliament and of the Council shall be considered new economic activities if their initial funding requirements are above [30 %] of the average annual turnover in the preceding 5 years**;*** ***(d) without prejudice to article 49 of the Treaty on the freedom of establishment the Member State concerned may require the final beneficiaries to have an establishment and carry out economic activities in its territory.”***
71.	Art. 21	The threshold should take into account the changes on the European capital market, the capital needs of the start-ups and the inflation rate, which took place after 2014: [change in bold and underlined] *“8. The total outstanding amount of risk finance investment referred to in paragraph 5 shall not exceed EUR **20** ~~**15**~~ million per eligible undertaking under any risk finance measure. In order to calculate this maximum risk finance investment amount, the following shall be taken into account: (…)”*
72.	Art. 21	The current description may cause some doubts if both European- (per portfolio) and American (per deal) style waterfalls are eligible. To avoid such doubts: [change in bold and underlined]

		"10. Risk-reward sharing arrangements between the Member State or its entrusted entity and the financial intermediary, ***irrespective if deal- or portfolio based,*** *shall be adequate and shall comply with the following: (…)"*
73.	Art. 21	The risk financing schemes will be introduced by public or private entities with limited access to data on the use by private investors of the aid scheme in art. 21a which may jeopardize the certainty of the legality of the aid to final recipients. Therefore the indicated paragraph should be deleted from the project: [change in bold and underlined] ***"12. For risk finance measures aimed (…)*** ~~***Finance provided by independent private investors benefitting from risk finance aid in the form of tax incentives under Article 21a shall not be taken into account for the purposes of reaching the aggregate private participation rates set out in the first subparagraph."***~~
74.	Art. 21 (3) (b)	Experience has shown the need to include in the scope of application of this provision also undertakings created as a result of spin-off of an organized part of an enterprise of another undertaking, and undertakings created as a result of conversion, or undertakings that have acquired an organized part of an enterprise from another undertaking.
75.	Art. 21a	We consider this amendment and the principle that private investors should be granted tax incentives as a step in the right direction. We would point out the vague wording in the Polish language version of the amended Regulation, such as: "*udziały zwykłe pełnego ryzyka*" (full risk ordinary shares), "*udziały kwalifikowalne*" (eligible shares), "*usługi świadczone przez pośrednika finansowego"* (services provided by a financial intermediary), which, in our view, must be redrafted or better defined in the text of this article. We also propose that the conditions for granting reductions in taxes to independent private investors making indirect investments be defined precisely in point 3 of Article 21a. As a consequence, it seems advisable that the entire wording of Article 21a is redrafted, also from the editing/language point of view.
76.	Art. 22 (2)	(i) Modern capital markets have an international specific which results in search of start-ups for capital in different states and different intermediaries. Although freedom of establishment and capital are crucial and some mobility is welcome, this may harm some policy objectives. Therefore as indicated in the "*Guidelines on State aid to promote risk finance investments"* (pt. 28 lett. b) Member States should be explicitly entitled to limit the aid to undertakings actually conducting activity on their territory. (ii) the eligibility criterion with regard to the post-registration period should be changed in line with the change made in article 21, that is from five to seven years. ***We would proposed the amendment to Article 22 paragraph 2 as follows***

		(14) Article 22 is amended as follows: (a) paragraph 2 is replaced by the following: *"2. Eligible undertakings shall be any unlisted small enterprise* ***seven years after*** *its registration, that fulfils the following conditions:* *(a) it has not taken over the activity of another enterprise;* *(b) it has not yet distributed profits;* *(c) it has not been formed through a merger;* ***(d) without prejudice to article 49 of the Treaty on the freedom of establishment the Member State concerned may require the final beneficiaries to have an establishment and carry out economic activities in its territory****.* *For eligible undertakings that are not subject to registration, the 7-year eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier.* *By way of derogation from the first subparagraph, point (c), enterprises formed through a merger between undertakings eligible for aid under this Article shall also be considered eligible undertakings up to seven years from the date of registration of the oldest enterprise participating in the merger.";* ***Explanatory note*** *Change of the undertaking eligibility criterion, which allows enterprises to receive start-up aid from 5 years to 7 years after their registration.* *The proposed change for 7 years from registration is aimed at increasing the possibility of applying for support by entrepreneurs who have been registered for more than 5 years on the market, but have not started appropriate innovative activity. Beneficiaries pointed out that investment cycles of such enterprises in the biotechnology, healthcare and microelectronics sectors (Smart Specializations) may last longer than 7 years.* *Changing the period of the company's operation from 5 to 7 years will allow for establishing cooperation with entities whose credibility has already been verified on Polish capital market e.i. in two editions of the Bridge Alfa program. The added value for NCBR is the possibility of cooperation with entities already listed in the ZASI register, which means that their investment strategy is in line with the Act on FI and AIF management and has been positively assessed by the Polish Financial Supervision Authority.* *In order to ensure the proper allocation of public funds, the experience of the staff of the already existing funds should be used, thanks to which many risky ventures were given their chance. It is also necessary to take into account the incubation period of projects originating from the medical and biotechnological community, the implementation of which is much more extended over time.* *By allowing proven companies to participate in the next venture, it will allow for the efficient continuation of the Institution's*

		activities, relying on trusted partners, thanks to whom they will gain the best ideas. *We also propose, in order to remove doubts of interpretation, to change the Polish language version of GBER in Article 22 paragraph 2 first sentence:* *"**2. Eligible undertakings shall be any unlisted small enterprise seven years after its registration, that fulfils the following conditions: (…)"*** ***Explanatory note*** *The GBER clearly indicates that in order to be considered eligible undertakings should be registered no earlier than the indicated period preceding the date of granting the aid, and the condition that the undertakings should not be listed is not limited in time.*
77.	Art. 22(3) (c)	The threshold should take into account the changes on the European capital market, the capital needs of the start-ups and the inflation rate, which had place after 2014. The values should be doubled for example: [change in bold and underlined] *"paragraph 3 is replaced by the following:* *"3. Start-up aid shall take the form of: (…)* *(c) grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR **0,8** million gross grant equivalent or EUR **1,2** million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR **1,6** million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.*
78.	Art. 22(5)	Europe needs fast new green innovations. The aid scheme for start-ups should promote green innovators [change in bold and underlined] "*5. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled. **Irrespective from sentence one, in case of small enterprises creating innovation with regard to environmental protection, the maximum amounts may be multiplicated by 1,5.**"*
79.	Art. 22(6)	The changes present a great concept, which should take into account that thanks to innovative procurement some public-owned IP may also have great impact: [change in bold and underlined] "6. In addition to the amounts in paragraphs 3 to 5 of this Article, start-up aid can take the form of a transfer of intellectual property rights (IPR) and related access rights, from a research organization, **a public authority or a public agency** where the underlying IPR has been developed, if the transfer is: (…)"
80.	Art. 25 (3) (e)	The change should be in line with the 2021/1060/EU regulation (article 53-54). The following wording is therefore proposed: *"additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly*

		as a result of the project; without prejudice to Article 7(1) third sentence, indirect R&D project costs may also be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to [15 %] ***and in case it is based on a fair, equitable and verifiable calculation method: up to 25%****, applied to total eligible direct R&D project costs. In this case, both categories of direct and indirect costs shall be established on the basis of normal accounting practices, shall comprise only eligible R&D project costs listed above in points (a) to (d), and shall be duly justified."*
81.	Art. 25 (6) (b) (ii) – Dissemination of the research results	By the change of the above mentioned point, another possibility to obtain an additional bonus, in the form of an increased intensity of aid has been added. However, at the same time, there is no information in the background note to the draft about the aim of this change, which may cause problems with the implementation of this provision. Such information should be included in the background note.
82.	Art. 25 (6) (b) (ii)	The proposed wording does not contain a change in relation to the current provision - due to the addition of item iii), the full stop should be replaced with a semicolon.
83.	Art. 26 (7)	We propose to make the claw back mechanism more flexible as it is not effective in long term perspective (after durability period) and in case of changing the institutional systems, especially with regard to international cooperation. The Article 26(7) of GBER obliges MS to put in place a monitoring and claw-back mechanism in order to ensure that the applicable State aid intensity is not exceeded. The mechanism consists of the monitoring during the entire depreciation period of the infrastructure (i.e. in case of buildings under Polish law it means even up to 40 years), whether the annual level of the using the resources of infrastructure for economic activity does not exceed 20% of the entire use of the infrastructure. If this level is exceeded, the beneficiary must refund (claw back) an appropriate amount of unlawful aid or legalise it. In our opinion, the most important problem related to the implementation of the monitoring and claw-back mechanism is providing the institutional support in order to ensure the functioning of this mechanism during the entire depreciation period of the infrastructure in the situation of changing map of operational programmes in further perspectives. The Managing Authority operates during the period related to the existence of the operational programme, under which projects is co-financed. Legal bases of the programme provide the institutional service during the durability period. However, there is lack of empowerment for the MA to perform the above-mentioned obligation of monitoring and clawing back when the durability period passes and the operational programme does not exist anymore. Taking above into consideration we propose to shorten the period of the claw-back mechanism application period to the durability period or the period during which the beneficiary is required to keep documentation of projects covered by state aid (currently 10 years).
84.	Art. 26 (8)	The European Union requires green innovations and it requires them fast. One of the greatest methods to develop them is to use

		pre-commercial procurement, thanks to the initiative of the public sector. While the *Framework for State aid for research and development and innovation* includes a guideline when a pre-commercial procurement does not involve state aid due to market conditions, a wider use of a state-aid involving mechanism would be valuable: [change in bold and underlined] **"*(c) the following section 8 is inserted:*** ***8. The aid intensity may be increased up to 100% if all of the following conditions are fulfilled:*** ***a) the funding is granted through a pre-commercial procurement for research and development services on a basis of an open, transparent and non-discriminatory selection, using objective selection and award criteria specified in advance of the bidding procedure;*** ***b) the funding agreement includes at least one intermediate evaluation having in regard the maturity of the innovation involved, verifying if the procurement should be continued and – if applicable – if the innovation is better than other solutions competing in the same pre-commercial procurement process;*** ***c) the value of the services procured does not exceed EUR 10 million per project and per market operator, subject that the procurement may include the development of a demonstrator validating the procured innovation;*** ***d) the market operator is obliged to widely disseminate all results which do not give rise to intellectual property rights in a way that allows other undertakings to reproduce them."***
85.	Art. 26a and Art. 4 (1) (ja)	According to the definition included in the draft in the added article 2 point 98a, the technological infrastructure is to provide facilities for the implementation of industrial research and experimental development works as well as testing and improvement of technologies in order to move from the stage of validation in the laboratory to validation representative for the operating environment. As rightly pointed out by the EC in point 2 of the preamble: (…) *constructing or upgrading a state of the art testing and experimentation infrastructure involves high up-front investment costs, which together with an uncertain client base, can render access to private financing difficult*. Therefore, we would like to point out that the proposed aid intensity of 25% of eligible costs may constitute a significant burden to the implementation of the Commission's strategy in this respect, due to: • difficulties in obtaining by the applicants, especially research organizations, own contribution, in a financial or in-kind form, which is totally free from any public support, in such high extent. • low limit of the maximum aid exempted from notification, which was introduced in Art. 4 (1) (ja), i.e. EUR 15 million for infrastructure, may constitute a significant implementation barrier - more ambitious projects requiring higher costs will have to go through a multi-month notification procedure before the Commission, which will significantly extend the implementation of the project and significantly delay the achievement of aid objectives, i.e. providing adequate facilities for R&D projects carried out by entrepreneurs and science at an advanced stage of work. This may delay the commercialization of the results of R&D projects co-financed by e.g. from funds.

86.	Art. 26 vs Art. 26a	In order to ensure the most effective use of state funds to subsidize the infrastructure and technological facilities for R&D activity in Poland, it is necessary to define an appropriate and logical demarcation between the research infrastructure under Art. 26 and the technological infrastructure of Art. 26a, by indicating in particular the scope of the research stage under the BR project, which is dedicated to be allowed for each of them, and the scope of users and the method of their settlement under both projects. The current shape of the regulations allows *de facto* scheme in which both types of infrastructures can provide facilities to the same level of BR project, thus being competitive for each other. There is no regulation of infrastructure that can simultaneously fulfil the definition of research infrastructure and test and experimental infrastructure. It should be clarified to which category of infrastructure such fixed assets, equipment, etc. should be qualified due to the necessity to define one support intensity level for the same cost.
87.	Art. 26a	The European digital agenda and the developments in the innovation industry require more computing powers. On the other hand, the European Green Deal requires more infrastructure accelerating the development of the green innovations: [change in bold and underlined]: "*Article 26a* *Investment aid for testing and experimentation infrastructures* ***and computing powers*** *1. Aid for the construction or upgrade of testing and experimentation infrastructures* ***and computing powers*** *shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.* *2. The price charged for the operation or use of the infrastructure* ***or computing powers*** *shall correspond to a market price or reflect their costs plus a reasonable margin in the absence of a market price.* *3. Access to the infrastructure* ***or computing powers*** *shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.* *4. The eligible costs shall be the investment costs in intangible and tangible assets* ***and in case of computing powers – the market price for the access to such powers****.* *5. The aid intensity shall not exceed 25 % of the eligible costs.* ***In case of infrastructure used for the development of innovations for the climate protection, and the production, transport and use of renewable hydrogen in particular, the aid intensity may be increased up to 40%.***"
88.	Art. 27	According to the proposal of the wording of the article 27 paragraph 2, investment aid for the innovation cluster should be

		granted exclusively to the entity owning the cluster facilities. Considering the non-uniform legal forms of cluster managers, including consortia, the definition of cluster owners, mentioned in the provision is required.
89.	Art. 27(8)	Europe needs new green energy, and hydrogen is of utmost importance to decarbonize the energy intensive industry. With regard to an early stage of the maturity of the whole ecosystem, an aid measure stimulating the creation of the hydrogen valleys is required. ***"(c) the following paragraph 8 is added:*** ***8. Paragraphs 1-7 shall apply mutatis mutandis to the creation and operations of hydrogen valleys, subject that the aid is granted to the legal person operating the hydrogen valley or to the leader of the consortium which had established the hydrogen valley."***
90.	Art. 29	Taking into account the challenges faced by entrepreneurs in connection with the objectives of the Digital Strategy, it is necessary to include in the catalogue of eligible costs set in Art. 29(c) cost of purchase of software / digital technology purchase.
91.	Art. 36, 36a and 36b	We propose that in cases where the aid would be granted on the basis of a "competitive bidding process", the rule stating that "The submitted bid or the clearing price shall not account for less than 75 % of the weighting of the selection criteria" will be waived. We propose to introduce more flexibility as regards application of non-price criteria and increase admissible weighting of such criteria from 25% to 35%.
92.	Art. 36 (1a)	We propose to extent this provision to include investments using CCS and CCUS because in some areas of the economy a complete phase-out of fossil fuels will be difficult, but with the use of CCS and CCUS the transformation in line with the ambitions of decarbonisation will be possible, also in the industries that are difficult to decarbonise. Therefore, we propose the following wording to this provision: " This Article shall also not apply to investments in equipment, machinery and industrial production using fossil fuels, except those using **CCS or CCUS technology or** natural gas. "
93.	Art. 36 (1a) and others	A number of public aid allocations relate to hydrogen projects. In such a case, the hydrogen used is required to be low-emission or renewable hydrogen over the entire economic life cycle of the investment. It will be very difficult to verify that this condition is met unless a harmonized hydrogen certification system is established. The application of that requirement should therefore be suspended until such a certification scheme is established at EU level. Otherwise, there may be difficulties and abuse in verifying the requirement to use low-emission or renewable hydrogen.
94.	Art. 36 (3)	It is unjustified to change the required deadline for completing the investment aimed at early adaptation to EU standards from 12

		months to 18 months before the standard comes into force (Article 36 (3)). Such investments are usually long-term and experience of implementing projects implemented in accordance with the current conditions of Art. 37 indicate that achieving the EU standards 12 months before their entry into force is extremely difficult. With the extension of this period, in many cases it may turn out to be impossible. As a consequence, it may result in the disappearance of incentives for early adaptation to EU standards. The extension of the required period for early adaptation to EU standards is also unjustified due to the fact that the detailed rules for determining eligible costs take into account the effect of the investment deadline in the event that the counterfactual is the same investment carried out at a later date (Art. 36 (5) (b).
95.	Art. 36 (3) and Art. 36 (5) (b)	Proposed amendment to the Article 36 paragraph 3: Aid shall not be granted where investments are undertaken to ensure that undertakings merely comply with the Union standards in force. Aid encouraging undertakings to comply with new Union standards not yet in force, which increase the level of environmental protection, may be granted under this Article provided that the Union standard has been adopted and the investment for which the aid is granted is implemented and finalised at least **12** months before the date of entry into force of the standard concerned. We also propose deleting provisions contained in Article 36 paragraph 5 (b) **Justification:** It seems such a solution will correspond with one of the purposes of the GBER revision, defined in the Explanatory Note, namely to modify the GBER in a targeted way that ensures that it complements well the relevant State aid Guidelines being revised in parallel. As regards Article 36 (3) GBER, we also propose that aid should be considered to have an incentive effect if the investment is carried out and completed at least 12 months before the EU standards come into force, not 18 months as currently proposed. Our experience shows that early adaptation to the standards is associated with a significant increase in operating costs, which may discourage the use of this type of support. Taking into account the requirement from paragraph 3 indicating the deadline for the implementation and completion of the aided investment, the mechanism of limiting eligible costs may lead to the inability to grant aid, which will result in the lack of incentive for the earlier application of the Union standards.
96.	Art. 36 (5)	In para. 5, four methods of determining the eligible investment costs are listed: comparison with the counterfactual investment (a), comparison with the NPV of the counterfactual investment (b), comparison with the NPV of the maintenance, repair and modernization costs of the counterfactual investment (c), comparison with discounted leasing costs (d). In each case, the calculation is based on complex and unverifiable financial forecasts developed for a fairly long period of time (not specified in the quoted provision). The experience, confirmed e.g. by evaluation studies, shows that the preliminary financial forecasts significantly differ from the assumptions not only in terms of expenditure (cost estimates and tender results), but also operating flows. Even despite the best care, the future is uncertain and the facts may significantly differ from the assumptions, which creates a risk of overstating / understating the eligible amounts.

		The method of determining eligible costs should be simplified (e.g. by indicating that these may be investment costs), and in case of fear of too high aid intensity - the levels given in par. 6 may get lower, similar to that adopted in Art. 41 par. 6
97.	Art. 36 (5) (b), (c), (d) and Art. 36b (3) (b) and Art. 38 (3) (b), (c) and (d)	In the amended Article 36 (5) (b), (c) and (d) the Polish authorities propose use the term "Present Value" (PV). instead of "Net Present Value" (NPV). The NPV value is used in the analysis of investment projects assuming expenditure (in the investment phase) and receipts (in the operational period). In the case of only negative flows (i.e. costs), which occur in the provisions in question, the use of the term "net present value" may raise interpretation doubts. A similar remark concerns the introduced Article 36b (3) (b) and the amended Article 38 (3) (b), (c) and (d).
98.	Art. 36 (6a)	The aid intensity for CCUS-related investments appears to be too low. CCUS is still a nascent technology and the existing facilities are mostly test and demonstration installations. Despite its early stage of development, CCUS technology will be an indispensable tool to meet the EU's climate goals, especially in high-carbon energy countries. CCUS technology will also be indispensable in the decarbonisation of hard-to-abate sectors. Therefore, CCUS technology should be given a preferential treatment, and the proposed maximum aid intensity of 20% for CCUS-related investments should be significantly increased. We propose to increase aid intensity up to **35%.** Investments in CCUS may have a significant impact on the decarbonisation of the area where it is difficult to meet these goals. In addition, the use of CO2 is coherent with the idea of the circular economy.
99.	Art. 36a (2) and (3)	The possibility to support infrastructure related to renewable gaseous fuels along with hydrogen should be granted in GBER. The reduction or even elimination of gases emitted by the vehicles can also be achieved through other innovative fuels like renewable gaseous fuels. It should be allowed to enhance the development of technologies as long as they prove to be beneficial for the environment inter alia related to renewable gases used in the transport sector. Proposal: 2. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles with electricity or with renewable or low-carbon hydrogen or other renewable gaseous fuel for transport purposes. The Member State shall ensure that the requirement to supply renewable or low-carbon hydrogen is complied with throughout the economic lifetime of the infrastructure. This Article is without prejudice to the possibility to grant aid for investments relating to alternative fuel infrastructure as part of port infrastructure under Articles 56b and 56c. 3. The eligible costs shall be the costs of the construction, installation, upgrade or extension of the recharging or refuelling The possibility to support infrastructure related to renewable gaseous fuels along with hydrogen should be granted in GBER. The reduction or even elimination of gases emitted by the vehicles can also be achieved through other innovative fuels like renewable gaseous fuels. It should be allowed to enhance the development of technologies as long as they prove to be beneficial for the environment inter alia related to renewable gases used in the transport sector. 10 infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself, installation of or upgrades to electrical and gas or other components,

		including electrical cables and power transformers or gas networks and gas stations, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit or renewable gaseous fuel, as well as related technical equipment, civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits
100.	Art. 36a	Under the proposed Article 36a, aid for vehicle charging or refueling infrastructure may only be granted through a competitive bidding process, irrespective of whether the infrastructure is open to access by users other than the beneficiary or is used exclusively for the beneficiary's own needs. In the case of infrastructure open to access by users other than the beneficiary, the competitive procedure of project selection is justified and ensures the selection of the best projects and effective use of public funds. However, in the case of infrastructure used exclusively for the own needs of the beneficiary, granting aid through a competitive bidding process is not appropriate as the beneficiaries may be companies from a wide variety of sectors operating under different, incomparable conditions. As a result, for example, entrepreneurs conducting activities in which the transport component is an important element ensuring a competitive advantage (e.g. courier, postal companies, passenger transport), may dominate aid programs for charging or refueling infrastructure and limit access to assistance to enterprises operating in which transport is subordinated to other types of activity, such as commercial, agricultural, etc. The requirement to apply a competitive procedure for selecting projects with regard to refueling and recharging infrastructure used only for the beneficiary's own needs will limit the development of low-emission transport and unjustified discrimination against entrepreneurs for whom transport-related activities are subordinated to activities in another sector. At the same time, in the case of charging infrastructure used only for the beneficiary's own needs, we are dealing mainly with low value and high fragmentation of projects for which the application of a competitive procedure is an unjustified administrative burden.
101.	Art. 36b	The scope of the aid should be extended to the equipping of bicycles and other vehicles that use muscle power with electric motors. The definition of a vehicle given in Art. 2 (102h) of the draft amendment does not include bicycles, rickshaws or other muscle powered vehicles. Their equipping with electric motors and battery systems will significantly increase their usability for users, especially in urban transport. In addition, there are kits available on the market to convert bicycles into power-assisted units, which cannot be said for larger combustion vehicles.
102.	Art. 36b	Pursuant to Article 36b, aid for the purchase of vehicles is granted, as a rule, in a competitive procedure. Due to the mass nature of the programs in this area and the ease of identifying additional investment costs (the difference between the cost of an environmentally friendly or emission-free vehicle and the cost of a conventional vehicle), it should be possible to grant aid in a different mode.
103.	Art. 36b	Art. 36b (3)

		The definition of the comparison of the investment costs of purchasing an environmentally friendly or emission-free vehicle to the costs of a vehicle of the same category that meets EU standards is too general. It is proposed to specify that these are to be EU emission standards. “3. The eligible costs shall be: (a) for investments involving the purchase of clean or zero emission vehicles, the additional investment costs related to the purchase of a clean or zero emission vehicle. These costs are calculated as the difference between the investment costs related to the purchase of a clean vehicle or zero emission vehicle and the investment costs related to the purchase of a vehicle of the same category, meeting **EU emission standards**, which would have been purchased without the aid;” Art. 36b (4) and (5) Regulation (EC) No 1370/2007 of the European Parliament and of the Council identifies possible procurement procedures as either a tendering procedure or a direct entrustment of a service to an internal entity. Should this provision be interpreted as meaning that if we have entrustment in accordance with Regulation (EC) No 1370/2007, then the requirement that aid pursuant to Article 36b be awarded by way of a tender does not apply? If so, then in the case of direct entrustment to an internal entity, reference should be made to the judgment of the Court in joined cases C - 266/17 and C - 267/17, where it was stated that “Article 5 par. 2 of Regulation (EC) No 1370/2007 […] shall not apply to the direct award of public service contracts for passenger transport by bus, which are not awarded in the form of a service concession… ”. Similarly, in the judgment of the Court in Case C - 253/18. This means that direct entrustment can only take the form of a service concession. Therefore, if the intention of the provision would be to derogate from granting aid by means of a tender procedure also in the case where entities obliged to provide public transport services are selected directly as "in house", it is suggested to extend paragraph 5 to award a contract in accordance with procurement directives, i.e. 2014/24 / UE, 2014/25 / UE Proposed wording: “"Article 36b. Investment aid for the purchase of clean or zero-emission vehicles and for the retrofitting of vehicles 4. Aid under this Article shall be granted in a competitive bidding process as defined in Art. 2, subpara. 38, meeting all the following additional conditions: 5. By way of derogation from par. 4, aid granted under this Article to an undertaking which has been awarded a public contract under the terms of Regulation (EC) No 1370/2007 of the European Parliament and of the Council or in accordance with the procurement directives 2014/24 / EU, 2014/25 / EU may be awarded outside of a competitive bidding process.”.

104.	Art. 36 (5)	Article 36b (5) contains a derogation from the necessity to apply a competitive competition procedure where the aid for the purchase of vehicles relates to undertakings which have been awarded public service contract under the terms of Regulation 1370 / 2007. In order to avoid doubts related to the public service rules, it is appropriate to clarify this provision by stating that the derogation provided for in Article 36b applies irrespective of the mode of entrustment pursuant to Regulation 1370/2007 and the duration of the obligation to provide that service.
105.	Art. 38 (3)	In para. 3 (a-d) four new methods have been introduced for determining the eligible investment costs for energy efficiency improvement, which relate to non-verifiable and likely non-reliable alternative options. Moreover, the methods are based on forecasts for an undefined timeframe, future costs that are difficult to estimate and discounted with indices of undefined value. The above considerably complicates the current model and makes it impossible to use in practice. The only area where you can try to provide aid on the basis of the above is the improvement of the energy efficiency of buildings, where point (f) and para. 3a may be applied. The above proves that the objectives of simplifying the state aid provisions are not being implemented, and on the contrary, each amendment brings more and more complex and impractical solutions.
106.	Art. 38 (3)	The paragraph "Costs that are not directly related to achieving a higher level of energy efficiency shall not be considered eligible" was deleted from section 3, while in paragraph 3b, which does not apply to enterprises, the provision was included. It seems reasonable to leave also in Article 38 paragraph 3 the above-mentioned provision in order to clearly define what is considered ineligible. In the financial perspective of 2014-2020, the above regulation was of key importance in the case of questioning expenditure that was not directly related to the improvement of energy efficiency.
107.	Art. 38 (3a) (iv)	The Polish translation of the text is unclear and does not fully correspond to the English version. Considering the English version of the draft, this point should read as follows: „budynki, o których mowa w ppkt (i), (ii) lub (iii) i w których działania inne niż działania wymienione w tych ppkt zajmują mniej niż 50 % całkowitej powierzchni wewnętrznej”.
108.	Art. 38 (3b)	The last sentence of para. 3b should be deleted or redrafted in line with Art. 39 (3). The current provision indicates that all activities listed in paragraph 3b must be related to the achievement of a higher level of energy efficiency. In this situation, it will be difficult to prove the eligibility of e.g. green roofs, rainwater recovery installations or structured cabling for the needs of data networks or charging infrastructure.
109.	Art. 38 (3c)	The current wording of the provision limits the group of eligible entities only to the owner or the tenant. In view of the above, the entity that owns the real estate is not currently eligible for support, e.g. by way of a lending or lease agreement. There is no justification for the exclusion of other legal titles to the ownership of real estate (e.g. a lending or lease agreement) and

		the admission only of ownership or rental; It is not uncommon for real estate to be lent, for example, by a commune to, for example, non-governmental organizations (e.g. the Volunteer Fire Department association). Proposed wording: “art. 38 para. 3c. Aid may be granted to the owner (s) of the building or to its real users with other legal title to the building depending on who carries out the energy efficiency works.”.
110.	Art. 38 (3d)	Poland opposes treating gas-fired energy equipment equally to oil and coal-fired installations. Poland promotes phasing-out of solid fossil fuels, in a manner that protects poor and affected communities, at the same time ensuring a healthy standard of living. In this context, Poland together with several countries have repeatedly emphasized the role of natural gas as a transition fuel. Natural gas is a low emission, competitive fuel that can significantly curtail greenhouse gas emissions in comparison to coal, lignite peat and oil. Natural gas provides also the fastest and the most affordable portfolio of instruments for improving air quality and reducing premature deaths due to air pollution, which is a great problem in CEE region. In such case natural gas, especially in Member States of Central and South-Eastern Europe needs to be finally recognized as a prerequisite for successful energy transformation, not an obstacle. Therefore natural gas-fired installations equipment shall be exempted from the notification requirement of Article 108(3) of the Treaty. In case of the proposed obligation to ensure that gas-fired equipment in replaced by equipment using renewable fuels by 2050 at the latest, it seems too soon to consider whether such a replacement would be possible by 2050 (question of availability of renewable fuels). Therefore Poland proposes the following change: “and that it is ensured that the gas-fired energy equipment is upgraded or replaced by equipment adjusted to using renewable fuels by 2050 at the latest.”
111.	Art. 39	With regard to the European Bauhaus and also with regard to the needs of the carbon intensive European economies, ventilation systems as one of the means to obtain clean air and energy efficiency is required: [change in bold and underlined] *“2. Eligible for aid under this Article are investments improving the energy efficiency of buildings.* *2a. Where the investment relates to the improvement of the energy efficiency of (i) residential buildings, (ii) buildings dedicated to the provision of education or social services, (iii) buildings dedicated to public administration or to justice, police or fire-fighting services, or (iv) buildings referred to in (i), (ii) or (iii) and in which activities other than those mentioned in (i), (ii) or (iii) occupy no more than 50 % of the floor area, the aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:(…)* *(e) investments in green roofs and equipment for the recovery of rain water**;*** ***(f) ventilation systems.”***
112.	Art. 39	Poland opposes treating gas-fired energy equipment equally to oil and coal-fired installations. Poland promotes phasing-out of solid fossil fuels, in a manner that protects poor and affected communities, at the same time ensuring a healthy standard of living. In this context, Poland together with several countries have repeatedly emphasized the role of natural gas as a transition fuel.

		Natural gas is a low-emission, competitive fuel that can significantly curtail greenhouse gas emissions in comparison to coal, lignite peat and oil. Natural gas provides also the fastest and the most affordable portfolio of instruments for improving air quality and reducing premature deaths due to air pollution, which is a great problem in CEE region. In such case natural gas, especially in Member States of Central and South-Eastern Europe needs to be finally recognized as a prerequisite for successful energy transformation, not an obstacle. Therefore natural gas-fired installations equipment shall be exempted from the notification requirement of Article 108(3) of the Treaty. In case of the proposed obligation to ensure that gas-fired equipment is replaced by equipment using renewable fuels by 2050 at the latest, it seems too soon to consider whether such a replacement would be possible by 2050 (question of availability of renewable fuels). **Therefore Poland proposes the following change:** “and that it is ensured that the gas-fired energy equipment is upgraded or replaced by equipment adjusted to using renewable fuels by 2050 at the latest.”
113.	Art. 41	The Polish translation of the title of the measure is not proper and needs being corrected – it limits the scope of application of Art. 41 to “Investment aid for the promotion of **electric energy** renewable hydrogen and high-efficiency cogeneration”, while the English title provides for “Investment aid for the promotion of **energ**y from renewable sources, renewable hydrogen and high-efficiency cogeneration”. Therefore, the title should be corrected in the Polish version by deleting the word "electric".
114.	Art. 41	Investment aid should be possible for both renewable and low-carbon hydrogen installations. During the transition period, low-carbon hydrogen may contribute to the implementation of the EU's climate ambitions and be a tool that will accelerate the transformation process. Low-carbon hydrogen through the use of CO2 emission reduction devices can be an alternative to fossil fuels and can be used in those countries where the renewable energy potential may be insufficient to develop significant volumes of renewable hydrogen. Therefore we propose to change the title of the article to the following: "Investment aid for the promotion of energy from renewable sources, renewable **and low-carbon** hydrogen and high-efficiency cogeneration"
115.	Art. 41	The proposed amendment of the Article 41 GBER introduces unfavorable changes in the intensity provisions for the CHP and RES projects. In particular, high-efficiency cogeneration is an extremely important element of the energy transition and the achievement of the EU climate policy goals. Therefore, such a reduction in the maximum intensity may slow down the development of high-efficiency cogeneration technology. We propose maintaining the intensity of 45% of the eligible costs for the projects mentioned in the amended Article 41, the possible increase by 20 percentage points for aid granted to small undertakings, by 10 percentage points for aid granted to medium-sized undertakings, by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

116.	Art. 41	Recital 8 and consequently Article 41, include aid for energy storage, but only connected to generating installations from renewable energy sources. In the opinion of the Polish authorities, Article 41 should also cover support for heat storage linked to high-efficiency cogeneration installations. In the case of cogeneration installations used in industry (mainly for the beneficiaries' own needs), the problem is the mismatch between the current heat production in cogeneration and the plant's current heat demand. This limits the interest of beneficiaries in investing in high-efficiency cogeneration. Including heat produced in high-efficiency cogeneration in Article 41 would help to solve the problem of mismatch between heat supply from cogeneration and variable heat demand, which would contribute to greater dissemination of high-efficiency cogeneration installations.
117.	Art. 41(1)	One of the sources of renewable energy might also be renewable gases – other gases than hydrogen. They should be included in order to stimulate the full development of renewable energy in Member States. Proposal: 1. Investment aid for the promotion of energy from renewable energy sources, renewable gases, renewable hydrogen and high efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.”;
118.	Art. 41	Para. 1a The provisions of the new paragraph 1a are unclear in the case when an energy storage is added to the existing RES installation. Due to the difference in the time of investment in the source and later in the storage, it should be clearly explained whether such a chronology of events does not breach the "incentive effect".
119.	Art. 41 (1a)	The proposed terms of commissioning time and maximum capacity are creating obstacles for the development of storage projects combined with RES unit. Building a storage and RES unit at the same time is a complex organizational and investment challenge. Under proposed provision only limitted investments will be eligible to obtain aid without notification. We propose to delete this requirement and extend this provision. (b) the following paragraph 1a is inserted: “1a. Investment aid for storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted on the basis of a scheme open to combined renewable and storage projects (behind-the-meter), ~~where both elements are installed and put into operation at the same time. The storage investment shall have as a maximum the same capacity as the connected renewable investment~~. Aid to storage connected to an existing renewable installation (behind-the-

		meter) may also be covered by the same scheme, where the storage investment fulfils the same conditions and all investment projects (renewables and storage) are considered an integrated project for verification of compliance with the thresholds set out in Article 4.”;
120.	Art. 41 (1a)	Proposed amendment to the Article 41 paragraph 1a: 1a. Investment aid for storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted on the basis of a scheme open to combined renewable and storage projects (behind-the-meter), where both elements are installed and put into operation at the same time. The storage investment shall have as a maximum the same capacity as the connected renewable investment, **except for heat storage**. Aid to storage connected to an existing renewable installation (behind-the-meter) may also be covered by the same scheme, where the storage investment fulfils the same conditions and all investment projects (renewables and storage) are considered an integrated project for verification of compliance with the thresholds set out in Article 4. **Justification:** In case of a condition " The storage investment shall have as a maximum the same capacity as the connected renewable investment ", a restriction should be introduced that it will not apply to projects **that include heat storage**. The abovementioned condition suggests that granting aid under this category is dedicated to installations that use electricity, therefore it should not be applied to projects that are based on heat storage. The parameters and characteristics of heat storage facilities, including large-scale and seasonal ones, may lead to the exclusion of this group of projects from the possibility of granting aid under Article 41.
121.	Art. 41 (3)	Investment aid should be possible for both renewable and lowcarbon hydrogen installations. During the transition period, lowcarbon hydrogen may contribute to the implementation of the EU's climate ambitions and be a tool that will accelerate the transformation process. Lowcarbon hydrogen through the use of CO2 emission reduction devices can be an alternative to fossil fuels and can be used in those countries where the renewable energy potential may be insufficient to develop significant volumes of renewable hydrogen. Therefore, we propose the following wording to this provision: "3. Investment aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable and low-carbon hydrogen.(...) The investment aid may cover dedicated infrastructure for the transmission or distribution of renewable and low-carbon hydrogen, as well as storage facilities for renewable and low-carbon hydrogen. "
122.	Art. 41 (5)	The term "refurbished capacities" needs to be defined, especially with regard to the subsequent sentence of this paragraph stating that the aid amount shall be independent from the output.
123.	Art. 41 (7) (a)	The amendment abolishes the regulations differentiating aid for small and large-scale RES. This is not clear in the case these investments are technically and economically scalable. The costs of investing in small installations are higher, but their use may

		be justified, for example, by the condition of the grid, the needs of local customers, or environmentally-related restrictions. The most often they are implemented by SMEs. Therefore, small installations (e.g. up to 200-500 kW in the case of electricity) should be covered by higher aid intensity (e.g. by 5-10 percentage points).
124.	Art. 41.7 (b)	The aid intensity for electricity storage projects is too low. So far, Poland has no legal solutions enabling a dynamic trade in electricity, which is the most profitable activity of energy storage in markets with a much more developed network infrastructure. A distinction should be made here: - energy storage which is part of the energy infrastructure covered by Art. 48 - in this case, the aid concerns large enterprises and is based on the calculation of the funding gap. In the 2014-2020 perspective, co-financing of investments in distribution networks amounted to approx. 50-55%; - energy storage facilities used by undertakings from outside the energy sector, mainly to increase the level of self-consumption or to regulate the parameters of energy output from own RES. It should be noted that the technology of battery storage requires constant development, and the costs of devices available on the market are still high. Investments in storage facilities on the Polish market are not profitable for investors. Due to the above, the aid intensity for storage facilities should be increased to a minimum level of 45% (ie. the same as for "stand-alone" RES with the bonus provided for in paragraph 9). The regulation does not provide aid intensities either for thermal or mechanical energy storage projects. Does this mean that the only form of support for this type of storage projects are tendering procedures referred to in para 10? It is more complicated and difficult (or even impossible) to implement under the Cohesion Policy. Therefore, the provision should also provide for the scheme for storage installations other than battery based – like for thermal or mechanical energy, irrespective of the final type of energy produced. The aid intensity should be simple (percentage of the investment eligible costs), and - due to the need to develop the market for such storage facilities - attractive to potential investors. In addition, it needs to clarify what level of aid intensity should be applied f.e. in case of construction documentation, which may be cover both the design of the RES electric installation and the storage facility. It is not clear from the wording (“projects involving electricity storage”) whether the aid intensity shall be 15% for the entire project (i.e. the renewable energy source and the electricity storage installation) or 15% would apply just for the storage component, while the RES component would have an aid of intensity of 30% (art. 41.7(a)). Electricity storage will play a crucial role in stabilising the electric power system with a high penetration of renewables. In general, we propose a higher aid intensity for measures on CHP, RES and storage.
125.	Art. 41 ust. 9	The bonus for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) and 107(3)(c) of the Treaty (with GDP below the EU average). It is not justified from the point of view of the Cohesion Policy and market imbalance, because in a poor region it is more difficult to accumulate the capital necessary for investment than in developed regions. Elimination of the bonus violates Art. 174 and 176 of the Treaty on the Functioning of the EU. Art. 41 should be redrafted in a similar way as, for

		example, in Art. 45 (7). Moreover, for unknown reasons, the "tender procedure" is regulated differently than in, for example, Art. 36a (4), 36b (4) (without reference to the definition in Art. 2 p. 38). Either similar solutions should be applied, or differences explained.
126.	Art. 42 and 43	Principal remark addresses a structural shift embedded in the proposed amendments to Article 42 and Article 43. As per their joint reading, GBER-exempted operational aid to a RES installation with its installed capacity surpassing de facto a threshold of 400 kW could only be allocated via a competitive bidding process. Further to that, it remains unclear – due to the joint reading of Art. 42 and 43 alongside proposed deletion of current Art. 42 par. 8, 9 and 10 – whether possibly any GBER-exempted allocation of aid should take form of a competitive bidding process, therefore encompassing also installations of their installed capacity below 400 kW threshold. We do voice our objection to such a solution, as the polish model of RES operational aid is not yet fit to be subject to market-based form of aid allocation for every RES installation. It relates to both installations of capacity from 400 kW to 1 MW, not to mention the smaller ones. In fact, should the proposed changes enter into force, it would inevitably result in aggravation of already difficult situation of polish biogas, hydroenergy and biomass sector. It is to be underlined that these technologies can as of now benefit from the Feed-in Premium (FiP) scheme for installations of capacity below 1 MW, based on the registered case SA.63449 (2021/X) Taryfy i premie dla mikro i małych instalacji odnawialnych źródeł energii (OZE), prolongation of which has been only recently registered by the Commission – in line with the GBER assumption from back then – until 30 June 2024. This is due to the fact that participation of the above-mentioned technologies in a competitive bidding process, even taking into account installations of capacity above 1 MW, has historically not led to a desired outcome with vast majority of auctions having been undersubscribed, resulting either in allocation of only part of the reserved electricity volume or in lack of aid allocation altogether. Subsequently, we do forecast that proposed amendments, given the business specifics of the aforementioned technologies, would lead to lack of a feasible option to have aid awarded to smaller installations, undermining the green transformation and fulfilment of relevant climate goals by Poland. Therefore, we do propose that the amended Art. 43(2) is having the thresholds kept in line with its current status, i.e. to enable GBER aid allocation to installation with their installed capacity up to 1 MW and Art. 42(8)-(10) are not deleted.
127.	Art. 42 (2)	In Article 42 Operating aid for the promotion of electricity from renewable sources, the proposed paragraph 2 is amended by the necessity to publish the criteria for the competition procedure at least 6 weeks before the deadline for submitting applications. It is proposed to shorten this period to 21 or a maximum of 30 days due to the fact that the support specified in Article 42 concerns block exemptions, and the tender procedure will be more extensive due to the new criteria. Therefore, its excessive extension seems inadvisable.

128.	Art. 42 (8), (9), (10)	In the opinion of the Polish authorities, the derogation in Articles 42 (8), (9) and (10) concerning the "non-tender" procedure does not seem justified. It should be emphasized that due to the limitations of the maximum values of support programs, Regulation 651/2014 is dedicated to limited generation capacities, as well as to smaller entities that are not able to compete with large, professional entrepreneurs. It should be noted that in Poland the ownership structure of renewable energy sources, other than wind and photovoltaics, is fragmented. For this reason, smaller entrepreneurs should be dedicated to more friendly, easier to obtain support systems. The experience to date in supporting the production of renewable energy sources in Poland shows that types of renewable energy sources such as water or biogas are more likely to use "no-tender" systems and are not very competitive due to the costs of RES generating energy from sun and wind.
129.	Art. 42 (11) and art. 43 (7)	We would like to highlight that only recently we have welcomed the solution proposed within the context of the draft CEEAG, which foresaw a departure from the concept enabling operational aid allocation to a RES installation only until its full depreciation. In fact, we observed in Poland that some technologies (e.g. biogas, biomass and hydroenergy) are incurring such elevated operational costs that without continuous aid allocation they would most probably be forced to cease their operation, subsequently undermining an achievement of relevant climate goals. In this respect, it is to be noted that proposed Art. 42(11) is stipulating that aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated (…). Therefore, taking stock of possible COM experience regarding post-depreciation operational aid gather throughout the period of EEAG being in effect, we assume that given category of aid could also be incorporated into GBER. Consequently, we propose deletion of Art. 42(11) together with respective first sentence from Art. 43(7).
130.	Art. 43 (2)	In the opinion of the Polish authorities, the power of installations exempted from the notification obligation referred to in Article 108 (3) TFEU should be increased to 500 kW, both for projects related to the generation or storage of electricity and the production of heat and gas from renewable sources. Increasingly ambitious targets for reducing emissions and the use of energy from renewable sources require investment and operational support at least at the current level. Introducing additional restrictions interferes with the possibility of implementing the EU's energy and climate policy. The support should also allow for the non-use of the tendering procedure in accordance with the competition rules, in the case of installations with lower capacity.
131.	Art. 43 (2a)	In the opinion of the Polish authorities, the installed capacity of projects implemented by energy communities operating in the field of renewable energy, for which aid is exempted from the notification obligation referred to in Article 108 (3) TFEU, should be increased to 10 MW. Energy communities are organizational forms, the promotion of which was introduced in the Directive of the European Parliament and of the Council (EU) 2018/2001 of 10 December 2018 on the promotion of the use of energy from renewable sources. These are new forms of association that require significant commitment and cooperation at the local level. The development of energy communities is not possible without legal, organizational and financial support instruments from the Member States.

132.	Art. 45	It is not clear why protection, restoration of biodiversity and adaptation to climate change is indicated as state aid. It seems that these activities are not economic activities.
133.	Art. 45 (2b)	Restricting activities only to the area of natural habitats and ecosystems may result in the impossibility of implementing projects regarding the liquidation of wild landfills (depositing waste in non-habitat areas - affected by harmful human activity) and the removal of hazardous waste (e.g. asbestos) from the anthropogenic environment. The argumentation for taking into account a wider initial set (not only natural habitats and ecosystems) is also supported by the provision included in paragraph 4, stating that (...) the eligible costs are the costs of remediation or rehabilitation works less the increase in the value of the land or real estate. Indication of the "real estate" in the quoted point allows the presumption that the legislator also admits the eligibility of reclamation works in relation to cubature objects. Proposed wording: “art. 45, section 2b. rehabilitation of degraded natural and human habitats and ecosystems;”.
134.	Art. 45 (2b)	Under the proposed Article 45 (2b), remediation aid cannot be granted if the rehabilitation is a consequence of decommissioning of a power plant or mining operations. Such an exclusion is unjustified due to the challenges of the energy transformation. Rather, it is expected that the rigors related to the application of the "polluter pays" principle will be loosened in this respect, the more so as the possibility of including aid in remediation activities related to energy or mining activities is not excluded.
135.	Art. 45 (4) and (5)	The regulation should indicate when the increase in the value of the land / real estate should be assessed - ex ante or ex post? It is not clear at what point the eligible costs of works should be reduced by the increase in this value.
136.	Art. 46	Changing the regulation and allowing support for district heating systems based on coal combustion is very beneficial. Due to the objectives of the Green Deal and the European Climate Law mentioned in recital (1) of the draft regulation, it is necessary to supplement the provisions with a clear preference for heating systems that do not meet the definition of energy-efficient systems. It should be clearly indicated that the aid is to be directed in the first place to projects that help transform inefficient systems into energy-efficient ones. Only when there are no such projects, support can be directed to already efficient systems. About 80% of district heating systems in Poland require transformation towards energy efficient and ecological solutions. State aid and EU aid funding should be directed to the areas where there are significant development barriers. Due to its technical nature, systemic heat is the main source of heat supply in urban areas. The provisions proposed in the amendment, in particular para. 4, reward the systems that already are energy efficient. However, the Union's Cohesion Policy requires significant improvement, especially where emissions are the biggest problem. In order to achieve the EU's climate goals, it is essential to change the most emitting sources and networks in the first place. It should be emphasized that they have not been modernized so far, not because of the sympathy for coal, but because of the barrier, i.e. the

		costs of new sources and the change of fuel to more ecological ones. In view of the challenges set out in the EU's climate goals for 2030 and 2050, it is necessary to provide an appropriate legal framework for state aid, especially for inefficient networks and systems, which are to become greener in the future as a result of investments. **Therefore, we suggest to add in art. 46 the following paragraph:** "The aid intensity may be increased by 15 percentage points for investments in the schemes referred to in paragraph1a, as well as in the heating networks referred to in paragraph 1c. " (i.e. systems that will become energy efficient or for which such investments will commence within 3 years, and networks that are adapted to the transmission of "low carbon" energy). The bonus for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) and 107(3)(c) of the Treaty (with GDP below the EU average). It is not justified from the point of view of the Cohesion Policy and market imbalance, because in a poor region it is more difficult to accumulate the capital necessary for investment than in developed regions. Elimination of the bonus violates Art. 174 and 176 of the Treaty on the Functioning of the EU. Art. 46 should be redrafted in a similar way as, for example, in Art. 45 (7). Para.5 An alternative method of calculating the aid intensity is against numerous notions to simplify staid aid rules, which have been put forward by all categories of stakeholders. The proposed method is even more complicated than the one used in the original GBER. Disregarding the multilevel formulas for calculating the WACC discount rate, it should be underlined - the methods based on projected cash flows for the periods of 15, 20, 30 years are of value only as a mathematical exercise. In practice, both the assumptions and the results are analyst dependent and unverifiable. This may lead to unreliable analyzes which institutions granting state aid, even with the help of experts, are not able to verify. This may lead to the risk of undue aid. In place of the above-mentioned model an attractive and simple calculation method should be provided, which would take into account the objectives of climate and Cohesion policy, i.e. preferring the necessary investments in systems with the worst emission parameters in order to make them energy-efficient. Alternatively, we propose to maintain Art. 46 sec. 5 the aid limit expressed as "the difference between the eligible costs and the operating profit". The existing provision is understandable, and the definition of operating profit, contained in Art. 2 point 39 of the current regulation is even more precise than the definition of the funding gap. Moreover, it should be noted that the expression of the aid limit as "the difference between eligible costs and operating profit" remains in other articles of the Regulation. Therefore, the same value will be expressed inconsistently in the regulation - in Art. 46 and 48 as "100% of the funding gap" and in other articles as "the difference between eligible costs and operating profit".
137.	Art. 46 (1a)	We propose: Article 46 Investment aid for energy efficient district heating and cooling 1. Investment aid for the construction or upgrade of energy efficient district heating and cooling systems shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of

		Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. 1a. Aid shall only be granted for the construction or upgrade of district heating and cooling systems which are or are to become energy efficient. Where the system does not yet become energy efficient as a result of the supported works, the further upgrades required to reach the standard of energy efficiency shall commence on the basis of a plan approved by the competent authority. ~~within three years from the start of the supported works.~~ Justification for the changes- Paragraph 1a. was changed to be in line with current RED 2 directive which in article 24, paragraph 2 introduces idea of plan approved by the competent authority, allowing for some privileges of efficient district heating system to be upheld, without actually fulfilling the definition. Modification is going to allow for investments in large, albeit inefficient, district heating systems, in which it is impossible to carry out single investment required to reach the standard of energy efficiency. The sheer scale of some of the polish system require more elastic approach to funding, as their transformation is going to take decades.
138.	Art. 46 (1a)	Proposed amendment to the Article 46 paragraph 1a: 1a. Aid shall only be granted for the construction or upgrade of district heating and cooling systems which are or are to become energy efficient. Where the system does not yet become energy efficient as a result of the supported works, the further upgrades required to reach the standard of energy efficiency shall commence within three years from the **following** the supported works. **Justification:** We propose to align it with provisions of CEEAG[1] proposal, so that further upgrades required to reach the standard of energy efficiency **shall commence within three years following the upgrade works.** Leaving the wording "from the start" would expose potential applicants to the need to conduct many investments simultaneously, which, due to organizational, financial and market constraints, may become a significant barrier in applying for aid. Obtaining the required system efficiency status requires a complex reconstruction, which must be preceded by appropriate preparatory works.
139.	Art. 46 (1b)	The Polish authorities propose to amend Article 46 (1b) in such a way that state aid may be granted for modernization investments consisting in the replacement of fossil fuel with renewable fuel or waste energy. At the same time, the Polish authorities would like to explain that the financial situation of enterprises in the heating sector has deteriorated sharply due to the increase in the prices of CO2 emission allowances. Considering that, according to the data for 2019, the share of coal in the structure of fuels used in district heating in Poland was over 70%, the main group of beneficiaries of public aid for energy-related purposes (aid for heating and cooling systems and energy infrastructure) could be enterprises using this fuel to generate heat, however, the draft Article 46 (1b) excludes modernization investments in these enterprises from the

[1] Draft Communication From The Commission Guidelines on State aid for climate, environmental protection and energy 2022

		possibility of obtaining aid. Therefore, we apply for such a change in the above-mentioned the provision to allow for the possibility of granting public aid for modernization investments consisting in replacing fossil fuel with renewable fuel or waste energy.
140.	Art. 46 (1c)	Proposed amendment to the Article 46 paragraph 1c: 1c. **Without prejudice to the paragraph 1d aid** for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met: (a) the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources; (b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas; (c) in case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, compliance with the 2030 and 2050 climate targets is ensured. **1d. (new) Aid may be awarded for upgrade of storage and distribution networks that transmit heating and cooling generated based on solid fossil fuels if retrofits leading to their elimination start within five years of the aided work.** **Justification:** While we understand necessity of transition away from inefficient fossil-based heating solutions towards full decarbonisation by 2050 where district grid exists, it is important to highlight that in some regions the construction and modernisation of the district heating network (even powered by heat from a coal-fired CHP) is one of the main elements of the strategy to combat emission of combustion products of solid, liquid and gaseous fuels to the atmosphere from emission sources (emitters) located at a height of not more than 40 meters. In some regions, it could indeed bring measurable ecological effects, as it allows to move away from inefficient coal furnaces and therefore contributing to tackling the issue of air pollution in urban areas. Connecting an increasing number of consumers to district heating systems is one of the basic types of projects in the field of reducing greenhouse gas emissions related to the heating of residential or industrial facilities. Therefore, we propose at least relaxing the applicable provisions so that it would be possible to unconditionally grant support for the modernization of the network also for systems with a coal-based generation structure. Alternatively, following the provisions on efficient district heating networks, it is possible to introduce provisions, under which investments in the modernization and development of the network would be allowed, provided that works aimed at replacing the generating source with low-emission or zero-emission ones would start within a given time. Additionally, it should be noted that the GBER in the proposed wording introduces limitations in terms of upgrade, while the corresponding provisions of CEEAG covered upgrade and construction. The Commission's intention seems unclear.

141.	Art. 46 (3)	We propose the aid intensity of 45% instead of the 30% mentioned in the draft for the Article 46 par. 3 concerning the district heating and cooling (with maintaining the proposed and current increase by 20 percentage points for aid granted to small undertakings, by 10 percentage points for aid granted to medium-sized undertakings) and maintaining the current increase by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty (which now is connected with the production plant, but we recommend to extend the scope also for the distribution network).
142.	Art. 46 (4)	The aid measure should promote more renewable energy: [changes in bold and underlined] *" Article 46* *Investment aid for energy efficient district heating and cooling (…)* *4. The aid intensity may be increased by **25** ~~15~~ percentage points for investments using only renewable energy sources, including green cogeneration."*
143.	Art. 47	In para. 7 the method of comparing with another investment was adopted as the basis for determining the value of eligible costs. Three methods have been identified: comparison with a comparable investment (a), comparison with the option of treating the waste in a less ecological way (b), comparison with the "conventional production process" (c) and only in the absence of the comparable investment - costs of the new investment. In each case, the calculation is based on complex and unverifiable financial forecasts developed for a fairly long period of time (not specified in the cited provision), which partly relate the investment to operating activities. The experience of the years 2014-2020, mainly with providing aid under Art. 41 on RES, indicate numerous difficulties with calculating aid based on alternative variants. Initial financial forecasts differ significantly from the assumptions not only in terms of outlays (cost estimates and tender results), but also in terms of operating flows. Even despite the care of the estimates, the future is uncertain and the facts may significantly differ from the assumptions, which creates a risk of overstating / understating the eligible amounts. The method of determining eligible costs should be simplified (e.g. by indicating that for each scope of activities consistent with the policy of supporting circular economy described in paragraph 2, these may be investment costs). In case of fear of too high aid intensity – the percentage levels given in para. 8) can be differentiated (separately for the ranges specified in points a-d in para. 2), depending on the need to introduce incentives for individual types of investments.
144.	Art. 47 (3)	The current wording of Article 47 (3) in the Polish language version of the draft regulation (Aid for the disposal of waste and waste recovery processes is not exempted from the notification obligation referred to in Article 108 (3) TFEU under this Article) does not correspond to the English version (Aid for waste disposal and waste recovery operations to generate energy shall not be exempted under this Article from the notification requirement of Article 108 (3) of the Treaty). It is necessary to harmonize the Polish language version of Article 47 (3).

145.	Art. 47 (6)	The provision of Article 47 is unclear in the proposed point 6: „6. The investment shall go beyond economically profitable or established commercial practices that are generally applied throughout the Union and across technologies. From a technological perspective, the investment should lead to a higher degree of recyclability or to a higher quality of the recycled material as compared to normal practice.” It is not defined and not clear how to understand the requirement for an investment to go beyond the practice applied in the EU, in particular with regard to all technologies, especially when in some countries the technological level of waste and resource management installations is lower than common practice in the EU, and measures are taken to achieve EU standards and practices. In many cases it would be not possible to go beyond the practice applied in the EU. The proposed privision may stop many necessary pro-environmental investments, which would support the goals of the circular economy. Considering the above, this provision should not be adopted in proposed form.
146.	Art. 47 (8)	Increasing the aid intensity will provide an effective incentive for the implementation of projects in the field of circular economy in the context of the ambitious environmental objectives of the European Commission. Proposed wording: “art. 47, section 8 (first sentence) The aid intensity shall not exceed 60% of the eligible costs”.
147.	Art. 47 (10)	The provision of proposed content of Article 47 paragraph 10 should not be adopted. Proposed provision („10. Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards”) causes a significant obstacle for Member States in achieving the goals set by EU directives. It should be emphasized that in many cases, public or local government entities - acting independently, through municipal enterprises or external companies providing services of general economic interest - are responsible for the implementation of the goals set out in the EU directives. The proposed provision will make it impossible to support this type of entities on which a legal obligation has been imposed to ensure the achievement of the goals set out in the EU requirements.
148.	Art. 48	The funding gap approach refers to a method based on uncertain and unverifiable financial projections. In this case, in relation to the previous regulations, the method was extended to calculate the WACC discount rate. These are very complex models. The comments and risks related to the calculations related to this type of analysis have been presented earlier. Simplification of the rules for calculating the aid intensity - e.g. by introducing the percentage level of eligible cost is needed. Alternatively, we propose to maintain in Art. 48 sec. 5 the aid limit expressed as "the difference between the eligible costs and the operating profit". The existing provision is understandable, and the definition of operating profit, contained in Art. 2 point 39 of the current regulation is even more precise than the definition of the funding gap. Moreover, it should be noted that the expression of the aid limit as "the difference between eligible costs and operating profit" remains in other articles of the Regulation. Therefore, the same value will be expressed inconsistently in the regulation - in Art. 46 and 48 as "100% of the funding gap" and in other articles as "the difference between eligible costs and operating profit".

149.	Art. 48 (3)	Poland opposes the proposed limitation of the scope of exemption from the notification requirement. This proposal in practice rules out the possibility for natural gas infrastructure projects to be exempted from this requirement. At the same time such projects are extremely important for successful energy transition towards carbon neutrality in coal or oil based economies. Art. 7 (1) (h) (ii) of Regulation 2021/1058 on the European Regional Development Fund and on the Cohesion Fund 1 , adopted in relation to the European Green Deal, refers to an investment in the expansion and repurposing, conversion or retrofitting of gas transmission and distribution networks provided that such investment makes the networks ready for adding renewable and low carbon gases, such as hydrogen, biomethane and synthesis gas, into the system and allows to substitute solid fossil fuels installations. This provision is incompatible with the proposed wording of art. 48 (3) of draft GBER. There is a need to ensure the consistency of the legal framework. Therefore Poland proposes to amend this sentence: "Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question allows to substitute solid fossil fuels installations or makes the networks ready for adding renewable and low carbon gases ~~is dedicated to the use for hydrogen and/or for renewable gases, or mainly used for the transport of hydrogen and renewable gases~~."
150.	Art 48 (6) (new proposal)	Proposed amendment to the Article 48 paragraph 6 (new) **6. The Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a 'natural monopoly', which is deemed to exist where the following cumulative conditions are met:** **(a) an infrastructure faces no direct competition, which is the case where the energy infrastructure cannot be economically replicated and hence where no operators other than the TSO or DSO are involved;** **(b) alternative financing in the network infrastructure, in addition to the network financing, is insignificant in the sector and Member State concerned;** **(c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for gas and electricity infrastructure.** Justification: We point the attention to the need to indicate in the GBER regulation the approach of the Commission presented in points 330-334 of the draft CEEAG, where circumstances were pointed out which allow excluding the occurrence of state aid with respect to certain types of energy infrastructure, i.e. in the case of legal monopoly or natural monopoly. Including the relevant clarifications in the regulation would favour legal certainty concerning the matter described above.
151.	Annex 1 – Article 1	Proposition of clarification: In the second sentence, due to the doubts that arose over the implementation of government programs addressed to SMEs, in

		respect of applicability of foundations, we recommend to indicate the following: "An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships, associations or foundations regularly engaged in an economic activity".
152.	Proposal of a new aid category: Digitalization and robotization	The current regulation does not contain solutions that would directly support the industrial transformation towards industry 4.0, robotization and digitization. In our opinion, it is important to support the development of digitization, automation and robotization, not only in SMEs, but also in large enterprises, because the effects of these changes will be most and fastest noticeable for the economy. Building awareness that it is necessary to move to autonomous systems (production and service) operating on the border of digital and physical worlds will not take place without adequate financial incentives for investments in digital equipment. Unfortunately, the efficiency of investments in the area of digitization of production processes and pro-climate investments is often negative in the short term. For this reason, it is necessary to support solutions that promote appropriate changes in technology, machinery and the structure of the commercial offer, as well as suppliers, allowing to increase the level of digitization and robotization and to achieve climate goals. The lack of aid for the introduction of digital technologies will significantly weaken the digital transformation identified as one of Europe's greatest challenges. At the same time, there is a need to increase the competitiveness of European enterprises by increasing the scale of automation and robotization. As a result, it will increase the productivity and efficiency of enterprises and will allow employees to shift to more complex processes. The quality and degree of adaptation of products / services to market needs will also increase (personalization of low-volume goods), which will allow European production to be adapted to market niches and customer requirements. The introduction of greater automation and robotization is also an opportunity to transform business processes towards the assumptions of the Green Deal and greater care for the condition of the natural environment. Therefore, we propose to create a new allocation in GBER for aid for digitization - aid for the introduction of digital technologies into the enterprise. As part of this purpose, we suggest the following eligible costs: a. consulting on the assessment of digital maturity of value chains, b. advising on the development of a roadmap for digitization of the value chain, c. advising on new business models and business process integration, d. purchase of intangible assets in the form of rights and licenses (platforms supporting business processes of the value chain), e. consulting on increasing efficiency and productivity with the use of automation and robotization, f. acquisition / leasing of fixed assets in the form of machines and devices for automating the production process,

		g. acquisition / leasing of industrial robot (s), h. purchase of intangible assets in the form of rights and licenses, i. training in the field of operation and safety of use.
153.	Proposal of a new aid category: Active Pharmaceutical Ingredient (API)	Ensuring access to raw materials and critical products is a fundamental and necessary condition for a successful transformation that will help the EU secure its key interests. The need to rebuild strategic value chains in Europe to ensure access to critical products, including medicines, implies coordination at European level so as to properly balance supply and demand while maintaining production competitiveness. The experience of the last year - the SARS-CoV-2 coronavirus pandemic, has shown that basing Europe's drug safety on global supply chains is dangerous and may lead to shortages of various drugs used in many population diseases. One of the reasons for the emergence of drug shortages is the lack of access to active pharmaceutical substances and intermediates necessary for the manufacture of drugs. Despite the fairly extensive production scale of generic drugs in the EU, the industry is not able to produce drugs along the entire value chain. Over 60% of the raw materials used by the industry come from factories in Asia. For economic reasons, purchasing APIs from third countries is more profitable than producing them in the EU. In crisis situations, the demand for drugs increases rapidly around the world and national borders are closed. The health security of EU Member States is guaranteed by the production of drugs along the entire value chain on their own territory. It is therefore extremely important to rebuild the vital role of the pharmaceutical industry as a pillar of the European economy. For this purpose, it is necessary to develop solutions that will improve the security of supply chains and will lead to further development of the sector's potential. The proposed mechanisms of financial support should, in a systemic way, level the chances of European producers. In this context, it is necessary to rethink the system of incentives needed to restore and maintain the production of key goods in Europe. In particular there should be the possibility of granting the aid for the production of important ingredients related to drug safety (API).

Table to note number 29:

	Research & Technology Infrastructures		**Pre-production demonstration Infrastructures**
	Research Infrastructures (RIs)	Technology Infrastructures (TIs)	
TRL	TRL1-3	TRL 4-8	TRL 9

Functionality	Fundamental research: from scientific discovery and education to formulation of technology concept	Technology development: from formulation of technology concept to technology validation in the relevant environment	Product or system demonstration: from demonstration in industrial environment to first industrial deployment prior to mass production
Host/ Manager	Often independent special purpose organisations but sometimes also hosted and managed by RKDOs	Mostly hosted and managed by not-for-profit applied research organisations (i.e RTOs and Technical Universities)	Mostly hosted by industry or independent organisations (co-)financed by industry
Access/ Users	Mostly public users (RKDOs), either for individual projects or in collaboration with other public Research Organisations	- Internal/individual technology development projects by RKDOs (RD&I competence/knowledge building) - Collaborative/co-creation projects between RKDOs, and industrial players (incl. SMEs)	Mostly industrial users (including SMEs), supported by RKDOs
Type of activities	Majority of collaborative RD&I (non-economic activities, economic activities are ancillary)		Predominantly RD&I on behalf of undertakings (economic activities are not ancillary)

The table is based on the EARTO study.