Comments of the Czech Republic on the targeted revision of the General Block Exemption Regulation - Regulation (EU) No 651/2014 (HT.5934) – public consultation

General comments on the revised text of the GBER proposal:

- **Point (1) letter i)** (page 6 of the proposal in English version) - point 43 - **definition of the steel industry** - it would be much more practical for implementation reasons, clarity and unambiguity to define the industry by the NACE (4 digit) codes rather than a description. Some other types of industries/ sectors are defined in GBER in this way (meaning by NACE) and it would be helpful to use the same method here as well.

- **Point (1) letter z)** (p. 12) **-** in suggested 102(e) we propose to adjust and delete:
  „(102e) 'low-carbon hydrogen' means fossil-based hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves life-cycle greenhouse gas emissions savings of at least [73.4 %] [resulting in life-cycle greenhouse gas emissions below 3 tCO2eq/tH2] relative to a fossil fuel comparator of [94g CO2e/MJ (2.256 tCO2eq/tH2)]. ~~**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;**~~"

  Justification:

- The determination of the hydrogen´s carbon content through the marginal generation unit in the bidding zone is hardly feasible in the real conditions. The definition of "low-carbon hydrogen" shall be reformulated in way to allow the use of guarantees of origin or power purchase agreements (PPA) supplemented by the information about time and location of the electricity generation used for the low-carbon hydrogen production. We would also like to mention the alternative emission threshold for low-carbon hydrogen CertifHy, which states a limit of -60% emissions savings instead of -73.4%. The definition contains two different values and does not refer to any calculation methodology. We recommend to follow on the CertifHY methodology
  https://ec.europa.eu/jrc/sites/default/files/Vanhoudt%20Definition%20of%20Green%20Hydrogen%20SFEM.pdf or
  https://www.certifhy.eu/images/project/reports/Certifhy_Deliverable_D2_4_green_hydrogen_definition_final.pdf

  We find the wording of paragraph 102(e) also problematic in the second part concerning the electrolyser consuming electricity from the grid. The proposed wording is not entirely clear.

- Furthermore, we ask to adjust the provision also by low-carbon hydrogen, as low-carbon hydrogen, which contributes to the development of other low-emission technologies and decarbonisation, should also be compatible with the internal market and exempted from notification.

  Justification:
  Some countries have a limited options and alteratives to use renewable energy sources. At the same time, it is desirable for hydrogen to be used in other technologies, which makes a significant contribution to decarbonization. Without the possibility of this support, the

motivation to use other technologies is limited and this may also slow down the process and the possibilities of achieving climate goals.

- **Point (1) letter z)** (p. 12) - we propose these changes in suggested 102(f):
    - Letter a) and c): as Directive 2009/33/EC was amended by Directive (EU) 2019/1161 in 2019, a reference to the amended legal act should be made instead
    - Point **(102f)**, letter b) and c): as CO_2 emission targets for HDVs apply as of 2025, the definition of clean HDV should be based only on Directive 2019/1161, at least until December 2024. Also, the definition of "clean HDV" based on Regulation 2019/1242 might be difficult to implement in practice.
- **Point (1) letter z)** (p. 12) - in suggested 102 (h): in the "vehicle" definition should be "off-road vehicles and non-road mobile machinery" included as well, as incentives for the uptake of vehicles in these categories would be beneficial.
- **Point (1) letter as)** (p. 16) - we propose in suggested 124(a) and 124 (b) these changes:
    - Point (**124a**): Directive **2018/2001/EU** provides in article 2 (19) more up to date definition of district heating, reference to this directive should replace Directive 2010/31/EU.
    - Point (**124b**): instead of the undefined and somewhat misleading term "consumers", the definition should include the term "**final customers**", which means a natural or legal person who purchases energy for own end use – see article 2 point 23 of directive 2012/27/EU.

  Reference to district heating is to be interpreted as district heating and/or cooling systems (DH/CS), depending on whether the networks supply heat or cooling jointly or separately;

  ~~*** Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).";**~~

  ***Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82–209).";**

  Justification:

  Directive 2018/2001/EU provides more up to date definition of district heating including decentralized sources:

  (19) 'district heating' or 'district cooling' means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from central **or decentralised sources** of production through a network to multiple buildings or sites, for the use of space or process heating or cooling;

  We suggest using term **'final customer'** as defined in article 2 point 23 of directive 2012/27/EU:

  (23) **'final customer'** means a natural or legal person who purchases energy for own end use;

  instead of undefined and rather misleading term 'consumer'.

- **Point (1) letter av)** (p. 17) - we propose these changes in suggested 130:
    - "(130) 'energy infrastructure' means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:

…

(e) infrastructure used for transmission or distribution of heat/steam from multiple producers or users, based on use of ~~**zero or low carbon heat, steam or residual heat from industrial applications or from production processes (waste heat)**~~ **energy from renewable sources including green cogeneration or waste heat and cold**;"

- Following definition should be included: "**'waste heat and cold' means waste heat and cold as defined in article 2 point (9) of the directive 2018/2001/EU.**"

Justification:

Term 'zero or low carbon heat' is not defined and very ambiguous and should be replaced with clearly defined and tangible terms – namely energy from renewable sources and waste heat or cold. Regarding waste heat or cold definition from directive 2018/2001/EU should be used. It is broader than just residual heat from industrial installations and covers data centers and tertiary sector as well.0

- **Point (2) letter e)** (p. 21)- point (v) is replaced by the following:
"(v) for operating aid for the promotion of electricity from renewable sources, as referred to in Article 42**, operating aid for high efficiency cogeneration, as referred to in Article 42a** and operating aid for the promotion of energy from renewable sources**, high efficiency cogeneration** and renewable hydrogen in small scale installations and for the promotion of renewable energy communities, as referred to in Article 43: EUR ~~20~~ **30** million per undertaking per project;";

Justification:

Current limit of EUR 15 million should be doubled in order to support achievement of climate and energy targets. It should also apply to operating aid for high-efficiency cogeneration as we suggest to be introduced in new article 42a and article 43.

- **Point (2) letter (f)** (p. 21)– the following point (va) is inserted:
"(va) for operating aid for the promotion of energy from renewable sources**, high efficiency cogeneration** and renewable hydrogen in small scale installations and for the promotion of renewable energy communities, as referred to in Article 43, and for operating aid for the promotion of electricity from renewable sources, as referred to in Article 42 **and for operating aid for the promotion of high efficiency cogeneration in Article 42a**: EUR ~~250~~ **300** million per year taking into account the combined budget of all schemes falling under the respective Article;";

Justification:

Current limit of EUR 150 million should be doubled in order to support achievement of climate and energy targets. It should also apply to operating aid for high-efficiency cogeneration as we suggest to be introduced in new article 42a and article 43 (see page 21).

- **Point (2) letter g)** (p. 21) – suggested change:

(g) points (w) and (x) are replaced by the following:

"(w) for aid for district heating or cooling systems, as referred to in Article 46: EUR ~~50~~ **70** million per undertaking per project;

(x) for aid for energy infrastructure, as referred to in Article 48: EUR 70 million per undertaking per project;"

Justification:

Notification threshold for district heating or cooling systems should be increased to 70 million per undertaking per project – the same as for energy infrastructure. There are quite large district heating schemes across EU that will need to be substantially refurbished until 2030, especially in Central and Eastern Europe. It is hard to see why notification threshold for district heating or cooling systems should be lower than the one for energy infrastructure.

There are quite large district heating schemes across EU that will need to be substantially refurbished until 2030, especially in Central and Eastern Europe. It is hard to see why notification threshold for district heating or cooling systems should be lower than the one for energy infrastructure.

Point (5) (p. 22) - Art. 7 par. 1 - The meaning of concept "relevant exemption provision" is not clear from the last sentence ("*and that the category of costs is eligible according to the relevant exemption provision*").

Does this wording means that simplified cost options can be used only in case when simplified cost option is explicitly mentioned in a specific section (Article) in Chapter III, as it is in Article 25 par. 3 letter e) of GBER? However, such interpretation would lead to undesirable restriction of simplified cost option using under other sections of the GBER (e.g. the simplified cost option could not be used for training aid under Article 31 as it is not explicitly mentioned in Article 31).

At the same time, the question arises as to why simplified cost options are explicitly addressed only in Article 25 and not also in other Articles of GBER (for example in Article 31 on training aid).

We recommend clarifying this wording in order to avoid possible negative consequences for beneficiaries and aid providers.

- **Point (7)** (p. 22) We urge that the current single threshold of **EUR 500 000** (and relevant agricultural production, fishery and aquaculture sector thresholds) **for publication on TAM** are maintained. We consider the lowering the thresholds to be a disproportionate administrative burden. The proposed threshold of EUR 100 000 is also well below the general de minimis limit. GBER should be an instrument for enabling granting of state aid. Lowering the limit is contrary to this notion.

- **Point (9) letter a)** (p. 23) **-** we ask for definition of "area concerned", meaning is it an area on the level of NUTS 2 or NUTS 3 or some other? And is it the same as "assisted area" or "recipient area", which is changed also to "area concerned" in this proposal but translated to Czech as "dotyčná oblast"(the area concerned) instead of "daná oblast" (given area)? If yes, we ask for unification of these terms into one suitable with its one single and clear definition.

- **Point (9) letter b)** (p. 23) - we ask for the wording of letter c) in Article 14 par. 4 to to be changed as follows **"a combination of points (a) and (b)"**. We never understood the practical use of the condition of not exceeding the amount of (a) or (b), whichever is

higher, and new proposal doesn´t clarify this at all. From the mathematical point of view this extra condition has no sense and the beneficiaries are forced to make false calculations in order to comply with this. In our opinion only a simple combination of these costs with no other conditions added, as it is in other articles of GBER, makes no harm. Or the letter c) can be removed totally and the possibility to allow both types of costs together in the project shall be preserved anyway (same as in the other articles of GBER).

- **Point (9) letter b)** (p. 23) **-** we suggest to integrate current (or new proposed) par. 5 with par. 16 of Article 14, because of their similarity and better orientation in this otherwise complicated article.

- **Point (9) letter c)** (p. 24) **-** we ask for definition or more clarification, what does mean "unrelated to the buyer". The new proposal has different translation to the Czech language (nespřízněný x nemající vazbu – having no relation x having no connection), but the unclarity of this wording remains the same. We totally disagree with the explanation of this term in FAQ GBER (point 73), where Commission declares that even small equity participation (e.g., 1%) means that the subjects are related. In the context of SME definition (where the connection starts from 25%) is this interpretation absolutely disproportionate.

- The insertion of a new paragraph 6a in Article 14 of the GBER, which concerns eligibility of the lease, however, the last paragraph of that provision refers to the transfer of assets in the event of the takeover of an establishment. We therefore consider that this last paragraph is incorrectly included under the new point 6a, as it is not materially related to it.

- **Point (9) letter d)** (p. 24) – the words „diversification of an existing establishment" are translated wrongly into Czech language – „diverzifikace produkce" (diversification of production) instead of „rozšíření výrobního sortimentu" (expansion of the product range), which is contained in definition in Article 2 point 49. But if this translation is better, then the current one, it needs to be changed also in Article 2.

- **Point (9) letter d)** (p. 24) – Article 14 (7) GBER is highly problematic, even though should now be applicable for large enterprises only (even the wording of the 2017 GBER change in this article is unclearly made and causes interpretational questions).This article causes high administrative burden for the applicants for aid and is actually very difficult to almost impossible to meet in practice. In our opinion both of the criteria for minimal amount of eligible costs should be deleted. If the deleting is not accepted, we require at least to add the wording „to large enterprises" in second sentence of par. 7 of Article 14 in the same way as it is contained in the first sentence, just to gain legal certainty, that both conditions are connected to only large enterprises.

- Article 14 (7) GBER: in the event of a condition for a major change in the production process, it should be clarified from which event the previous 3 accounting periods are calculated, ie adjust the text to the following: change in the production process, the eligible costs must exceed the depreciation of the assets related to the activity to be modernized for the previous three accounting periods, preceding the period in which the work began."

- **Point (9) letter i)** (p. 25)**-** we suggest to integrate current (or new proposed) par. 14 with par. 12 of Article 14, because of their similarity and better orientation in this otherwise complicated article. In practice, the users usually do not understand this financial contribution condition, which seems like the specific combination of aid intensity and cummulation rules for Article 14. If this condition is connected with aid intensity, it may help to understand and apply both conditions.

- **Point (12)** (p. 26) – in new suggested Article 21 we propose these changes:
    - In par. 10 letter b) – It is not clear how to assess expected losses in the venture capital portfolio (which operates with 100% risk), it is also not clear how to determine the usual market premium if there will be no similar market products.
    - In par. 14 - We ask to add an exception from the public tender for public financial development entities (national development banks/funds) which are standard VC providers in many EU countries and a similar principle of direct award as in Regulation 1303/2013 article 38 (4)(b)(iii) can be applied.

- **Point (17)** (p. 33) **-** in Article 25 letter (a) due to different needs of various types of state aid schemes we suggest not to mention a concrete limit for flat-rate and consider allowing all types of simplified cost approach. This could simplify the rules for eligibility of indirect costs and could help to target state aid. Limit 15 % is not compatible for example with Horizon 2020 which is a pattern to other state aid schemes.
  We would also like to ask for clarification how a flat-rate of up to 15 % of total eligible direct R&D project costs was established. Is this figure determined on the basis of any analysis?

- **Point (21) letter g)** (p. 35) - we propose to change the proposed wording of Amendment with respect to Art. 36 (5) as follows:
    - In 5. first sentence of the first paragraph, remove the word **“extra”**
    - In 5 third paragraph, remove the word **“add-on”** and replace the words **“already existing”** with **“environmentally-friendly”**

  We propose amending Art. 36/5 in a manner which does not only enable aid to add-ons to existing infrastructure but also to new operations (for example focusing usage of secondary materials which **replaces** the existing waste deposition facility).

- **Point (22)** (p. 37)
  The Czech Republic is convinced that if only 25% of selection criteria was given to other aspects (like environmental, technological etc.), then the motivation of the applicants to submit projects fulfilling those specific aspect (like for example use of renewable energy as a source in recharging or refueling stations) would be very limited. Actually our experience from the implementation of the previous granting scheme (based on Decision of the Commission on State Aid SA.45182) is that even if the financial criteria (based on costs of project and requested state aid) is just 55% it still has major influence on a whole evaluation of the projects. Bearing this in mind we propose to decrease financial selection criteria from 75% to 60%.

  Although Czech Republic understand that proposed revised GBER concentrates on zero-emission technologies we are of the view that LNG technology could still play important role in the process of transport decarbonisation, particularly in road freight transport where zero-emission technologies can currently play only limited role (due to level of

development of the respective market). This might be the case especially in situation of gradual replacement of fossil LNG by renewable bio-methane. Therefore we miss (in proposed Article 36a and 36b) specific provision dealing with this issue. Similar or even more stringent approach as in the Guidelines on State aid for climate, environmental protection and energy 2022 could be therefore very appreciated.

- We further propose these changes in suggested **Article 36 (a):**
    - **GBER Article 36a (2.)**: Given there is a need for uptake of hydrogen mobility, aid for refuelling infrastructure using hydrogen created as a by-product (for ex. „waste hydrogen" from petrochemical processes) should be allowed for a transitional period. We also propose to add comma in first sentence between "electricity" and "or with", so it is clear that this provision enables two possibilities.
    - **GBER Article 36a (3.)**: We welcome that eligible costs may also cover storage units for storing renewable electricity or renewable or low-carbon hydrogen so that comprehensive projects covering construction, installation, upgrade or extension of infrastructure, renewable electricity generation and storage are enabled.
    - **GBER Article 36a (8.)**: We welcome the inclusion of charging and refuelling stations/infrastructure that is not publicly accessible. As for the Czech Republic, for instance, where the share of low/zero-emission vehicles in first registrations is still quite low, measures supporting the development of both public and non-public infrastructure are crucial.
    - **Missing LNG/CNG support**: The draft is missing the support for CNG/bioCNG and LNG/bioLNG infrastructure. Its return for HDVs/long-distance transport is desirable. See e.g. the CEEAG draft (point 185): Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%).

  Furthermore, we would like to add to the "reduced intensity awarding" option (similar to the Article 36) in order to be able to support cases where there is no procurement procedure.

- **Point (23)** (p. 38) - we welcome in new suggested Article 36b the inclusion of a new article focusing on aid for the purchase and leasing of clean vehicles. Aid in this area is still very much needed considering the development of clean mobility in the Czech Republic, but also in other parts of the EU. On the other hand, the draft is m**issing the support for CNG/bioCNG and LNG/bioLNG HDVs/long-distance transport vehicles**, which is needed. See e.g. the CEEAG draft (point 162): Aid for the acquisition or leasing of CNG and LNG vehicles may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is

implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term. The aid may also be regarded as not having lock-in effects or displacing investments into cleaner technologies where the Member State commits to ensure that those vehicles would be operated using blending of biogas or renewable gaseous transport fuels of non-biological origin (minimum 20%).

- **Point (23)** (p. 38) - we propose to remove the necessity to apply the additional conditions of 36b (4) and (5) as they don't allow effective implementation of financial instruments – which are implemented on the market principles (first-come-first-served).

- **Point (25) letter c)** (p. 40) - we propose to add new letter (g):

  "g) In the case of investments aimed at improving energy efficiency where the total value of such investment does not exceed 500000 EUR per project and calendar year, the counterfactual value may be set as 10% of such investment."

  We propose amending these provisions by allowing a simplified way of ascertaining the value of the counterfactual. The reasoning behind this proposal is that in practical life there is a certain threshold for enterprises to still be interested in funding for their projects. The enterprises usually weigh on one hand the total value and intensity of funding and on the other the risks of returning funding and the costs of implementing funding projects. The proposed amendment of article 38, while fully logical, burdens the enterprises (or funding providers) with further costs and risks. Usually, the counterfactual would have to be established by an external expert appraisal. The costs of such appraisal may be within thousands to tens of thousands of EUR (depending on a project). Additionally, because it is a hypothetical scenario, there is relatively high risks of mistakes being made which can lead to return of funding. For smaller projects, these costs and risks may no longer be appropriate for the enterprise to apply for funding. For example, in a 400.000 EUR investment where the hypothetic scenario (counterfactual) would indicate that a similar less energy efficient investment would be at approximately 50% of such investment, i.e. 200.000 EUR. In such case the total maximum funding for a big enterprise would be 60.000 EUR. In order to get this funding, the enterprise has to pay additional 10.000 EUR to prepare the project for funding, i.e. to have the counterfactuals appraised and project prepared and administered. The bonus of the funding would be thus reduced to app. 50.000 EUR without taking into consideration the risks of returning the funding. The proposed value of project/enterprise gap of 500.000 EUR, where the hypothetical comparison scenario (counterfactual) may be replaced by a percentage of total investment costs is inspired by the SGEI de minimis limit used in Commission Regulation Nr. 360/2012 and also in GBER. In our view the parallel approach of simplified project management fully appropriate to the proposed amendment of Art. 38 (3) of GBER.

- **Point (25) letter d)** (p. 40) – we propose in suggested Article 38 add new letter f) to par. 3b after letter (e) (+ change of the last par. of 3b):

  "(f) the connection to a district heating or cooling.
  In case of any such combined works, as set out in points (a) to ~~**(e)**~~ **(f)**, the entire investment cost of the various installations and equipment shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible."

Justification:

Connection of a building to district heating can contribute to primary energy savings and significantly improve level of environmental protection. It typically requires investment also on the side of a building and the equipment is not part of district heating network. This investment should be supported in the same manners as on-site generation of energy from renewable sources.

- **Point (25) letter d)** (p. 40) – it seems that there is not inserted new par. 7 but changing the current one.
- **Point (25) letter d) and e)** (p. 40, 41) - anyway we propose to change Art. 38 (3a, 3b and 6a) as follows:
    - **In 3a**. replace the words
      "If the investment relates to the improvement of the energy efficiency of one of the following:
      (i) residential buildings;
      (ii) buildings dedicated to the provision of education or social services;
      (iii) buildings dedicated to activities related to public administration or to justice, law enforcement or fire-fighting and civil protection services;
      (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 internal floor area."
      with:
      "without the need to deduct the value of counterfactual investment"
    - **In 3b**, first sentence, delete **"For the buildings referred to in paragraph 3, point a"**
    - **In 6a**, first sentence, delete **"For the buildings referred to in paragraph 3, point a"**

  We propose amending Art. 38/3a an 3b in a manner where it is applicable to all buildings. This is necessary for the fulfilment of the current climate and energy policies. The proposed wording of the Amendment is discriminatory and dramatically reduces the absorption capacity of such aids and effectively hinders the implementation of EU climate and energy policies.

- **Point (25) letter e)** (p. 41) - we propose a change of suggested Art. 38 par. 7 letter c to allow support also for large enterprises. A large portion of ESCO market would be omitted without it, which would distort a market competition. At the same time the support of financial instruments can benefit all ESCO projects.

- **Point (26) letter a)** (p. 42) - we propose to change the proposed wording of Amendment with respect to **Art. 39 (2a)** as follows:
    - Replace the words "(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," with: "**buildings**"

  We propose amending this Article in a manner where it is applicable to all buildings. This is necessary for the fulfilment of the current climate and energy policies. The proposed wording of the Amendment is discriminatory and dramatically reduces the absorption capacity of such aids and effectively hinders the implementation of EU climate and energy policies.

- **Point (26) letter a)** (p. 42) - we propose to add new letter (f) to paragraph 2a:

  (f) the connection to a district heating or cooling.

  Justification:

  Connection of a building to district heating can contribute to primary energy savings and significantly improve level of environmental protection. It typically requires investment also on the side of a building and the equipment is not part of district heating network. This investment should be supported in the same manners as on-site generation of energy from renewable sources.

- **Point (26) letter a)** (p. 42) - the connection to a district heating or cooling should be included as paragraph 3a(f) as well.
- **Point (28) letter b)** (p. 43) - we propose to change the proposed wording of Amendment with respect to **Art. 41 (1a)** as follows:
  - **In 1a. first sentence** insert **"electricity"** between words **"for"** and **"storage"**
  - **In 1a.** replace **second sentence** "The storage investment shall have as a maximum the same capacity as the connected renewable investment" with:
    "Maximum electricity storage capacity is 300% of the designed hourly energy production at peak hours"

  We propose amending Art. 41/1a in a manner which will (i) enable clear uniform interpretation among member states and (2) enables sufficient use of the total potential of renewable sources of energy. According to latest studies, the storage capacity should be approximately 3 times the peak hourly production of the concerned renewable source.

- **Point (28) letter c)** (p. 44) – we suggest the following change:
  (c) paragraphs 2, 3 and 4 are replaced by the following:

  "2. Investment aid for the production of biofuels, bioliquids, biogas and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts ~~**and are made from the feedstock listed in Part A of Annex IX to that Directive.**~~

  …"

  Justification:

  Annex IX to the Directive 2018/2001 applies to feedstocks for the production of biogas for transport and advanced biofuels, the contribution of which towards the minimum shares referred to in the first and fourth subparagraphs of Article 25(1) may be considered to be twice their energy content and hence is completely irrelevant for heat and electricity production from biomass fuels and article 41 of GBER which does not apply to fuels used in transport.

- **Point (28) letter c)** (p. 44) - in new suggested par. 2 of Art. 42 the condition regarding the feedstock origin (listed in Part A of Annex IX) in case of the production of biofuels, bioliquids, biogas and biomass fuels should be deleted. Annex IX to the Directive 2018/2001 applies to feedstocks for the production of biogas for transport and advanced biofuels, the contribution of which towards the minimum shares referred to in the first and fourth subparagraphs of Article 25(1) may be considered to be twice their energy content

and hence is completely irrelevant for heat and electricity production from biomass fuels and article 41 of GBER which does not apply to fuels used in transport.

- **Point (28) letter d)** (p. 44) – we suggest the change:
  (d) the following paragraph 4a is inserted:

  "4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with ~~**the 2030 and 2050 climate targets**~~ **national climate and energy plan** is ensured.";

  Justification:
  Compliance with 2030 and 2050 climate targets cannot be verified on project level (beneficiary of aid). Compliance of the investment with national climate and energy plan which provides for concrete measures to reach climate and energy targets on national level can be ensured.

- **Point (28) letter d)** (p. 44) - in new suggested par. 4a of Art. 42 the exemption from the notification requirement of Article 108(3) of the Treaty in case of natural gas should not be linked to the compliance with the 2030 and 2050 climate targets, but to the "national climate and energy plan". Compliance with 2030 and 2050 climate targets cannot be verified on project level (beneficiary of aid). Compliance of the investment with national climate and energy plan which provides for concrete measures to reach climate and energy targets on national level can be ensured.

- **Point (28) letter e) and f)** (p. 44) - we suggest to change the proposed wording of Amendment with respect to **Art. 41 (7 and 9)** as follows:
  7. The aid intensity shall not exceed:
  (a) 30 % of the eligible costs for the production of energy ~~**from renewable energy sources**~~, ~~**renewable hydrogen**~~ and high-efficiency cogeneration;
  (b) ~~**15**~~ **45** % of the eligible costs **for the production of energy from renewable energy sources, renewable hydrogen and environmentally-friendly cogeneration** for projects involving electricity storage.";
  (f) paragraphs 9 and 10 are replaced by the following:
  "~~9. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration.~~
  … "
  We propose amending Art. 41/7 and 9 in a manner which will (i) enable clear uniform interpretation among member states and (2) enables sufficient use of the total potential of renewable sources of energy. Even though in recent years electricity storage costs have been decreasing, these investments still represent major obstacles to renewable electricity use.

- **Point (29) letter (a)** (p. 45) – we suggest the change:

  (29a) the following Article 42(a) is inserted:

  "Article 42(a)

  Operating aid for the promotion of electricity from high-efficiency cogeneration

  1. Operating aid for the promotion of electricity from 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.

2. High-efficiency cogeneration shall not use fossil fuels with the exception of natural gas where compliance with national climate and energy plan is ensured.
3. Aid shall be granted in a competitive bidding process on the basis of clear, transparent, non-discriminatory and objective criteria, defined ex ante in accordance with the objective of the measure and minimising the risk of strategic bidding. Those criteria shall be published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition. The competitive bidding process shall fulfil all of the following criteria:

(i) the budget or volume related to the bidding process shall be a binding constraint in that it can be expected that not all bidders would receive aid;

(ii) the expected number of bidders shall be sufficient to ensure effective competition;

(iii) the design of undersubscribed bidding processes during the implementation of a scheme shall be corrected to restore effective competition in the subsequent bidding processes or as soon as possible;

(iv) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be avoided as they may undermine the efficiency of the process's outcome.

4. The bidding process can be limited to specific technologies where a process open to all generators would lead to a suboptimal result.
5. Aid shall be granted as a premium in addition to the market price whereby the generators sell their electricity directly in the market.
6. Aid beneficiaries shall be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators.
7. Aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.
8. Aid shall only be granted until the plant generating the electricity from high-efficiency cogeneration has been fully depreciated in accordance with generally accepted accounting principles. Any investment aid received shall be deducted from the operating aid.";

Justification:

Operating aid for promotion of high-efficiency CHP is important for number of Member states in order to achieve climate and energy targets. Provision of this aid by competitive bidding process has limited impact on internal market and should be facilitated by GBER.

- **Point (30) letter (a)** (p. 45) – suggested changes:

"Article 43

Operating aid for the promotion of energy from renewable sources, high efficiency cogeneration and renewable hydrogen in small scale installations and for the promotion of renewable energy communities

1. Operating aid for the promotion of energy from renewable sources**, high-efficiency cogeneration** and renewable hydrogen in small scale installations and for the promotion of

renewable energy communities 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. Operating aid for small-scale installations shall be exempted from the notification requirement of Article 108(3) of the Treaty only up to the following size thresholds:

for electricity generation or storage projects: projects below **1 MW** installed capacity;

For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.";

Justification:

Article 43 should apply also to small scale high-efficiency cogeneration installations which are important element for achieving climate and energy targets of the EU.

Suggested threshold of 400 kW is very low and would hamper necessary transformation. There is no need to apply the same threshold as for electricity also for heat generation. 1 MW threshold was already suggested for renewable energy communities. We believe that the same threshold should apply to all installations regardless of their owner.

- **Point (30) letter b)** (p. 46) - we propose to delete new suggested par. 2a. We do not see reason for different maximum capacity for renewable energy communities. The same rules should apply to all projects serving the same purpose regardless of who is the owner. Renewable energy communities cannot be preferred against other owners of projects because that would create serious distortion of competition on internal market.
- **Point (30) letter b)** (p. 46) - suggested change:

(b) the following paragraphs 2a and 2b are inserted:

"~~2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity of less than 1 MW undertaken by entities falling with the definition of renewable energy community.~~

"2a. Operating aid to high efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with national climate and energy plan is ensured.

2b. Operating 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 hydrogen.";

Justification:

We do not see the reason for different maximum capacity for renewable energy communities. The same rules should apply to all projects serving the same purpose regardless of who is the owner. Renewable energy communities cannot be preferred against other owners of projects because that would create serious distortion of competition on internal market.

Article 43 should apply also to small scale high-efficiency cogeneration installations which are important element for achieving climate and energy targets of the EU. high-efficiency

cogeneration installations should not use fossil fuels other than natural gas where compliance with national climate and energy plan is ensured.

- **Point (33) and others** (p. 47) – why in proposal are paragraphs like „2a“ or „1a, 1b“ in Article 46 if they are totally replaced and so the continual numerical order is rather not used?
- **Point (33)** (p. 47, 48) - We propose these changes in new suggested Article 46:

  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 ~~**start**~~ **completion** of the supported works.

  1b. Aid shall not be granted for the construction or upgrade of fossil fuel-based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas-based generation may be granted only where compliance with ~~the **2030 and 2050 climate targets**~~ **national climate and energy plan** is ensured.

  1c. 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: (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**~~ **fossil fuels compliance with national climate and energy plan** is ensured.

  3. The aid intensity shall not exceed 30% of the eligible costs **for production plants and 60% for the network**. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

  4. The aid intensity may be increased by 15 percentage points for investments using ~~**only**~~ **at least [60 %]** renewable energy sources, including green cogeneration **or waste heat or cold or combination thereof**.

  - Following definition should be included: **“waste heat and cold’ means waste heat and cold as defined in article 2 point (9) of the directive 2018/2001/EU.”**

  Justification:

  According to CEEAG where a Member State invests in the upgrade of a district heating and cooling system without meeting the standard of energy efficiency, it needs to commit to start the works to reach that standard within three years following the upgrade works. The same requirement exists under RRF. GBER should stick to the same requirement. It should be noted that works to upgrade DH network typically take 2 to 3 years as the work has to be done out of heating season. Investment into reaching efficient heating status would therefore need to start simultaneously with district heating network upgrade which is not realistic and it would prevent large share of planned district heating refurbishments.

  Compliance with 2030 and 2050 climate targets cannot be verified on project level (beneficiary of aid). Compliance of the investment with national climate and energy plan which provides for concrete measures to reach climate and energy targets on national level can be ensured.

Paragraph 1c. refers to storage and distribution networks that transmit heating and cooling generated based on fossil fuels. Letter (c) in paragraph 1c. should therefore also refer to fossil fuels in general and not specifically to natural gas. It is not realistic to expect that the only fossil fuel used in district heating networks will be natural gas. However, transition to cleaner fuels in compliance with national climate and energy plan should be ensured.

Aid intensity of 30% in paragraph 3 is grossly insufficient in case of refurbishment of district heating networks or construction of new networks. District heating networks are highly capital-intensive and much higher aid is typically needed to trigger necessary investment. Calculation using paragraph 5 can be difficult and clear aid intensity limit in paragraph 3 would provide more certainty and would significantly improve applicability of the whole article.

Utilisation of waste heat can provide even bigger environmental benefits than renewable energy sources and it should be included in paragraph 4. It is also not realistic to expect that district heating system will use only energy from renewable energy sources or waste heat. District heating systems with very high share of renewable energy or waste heat should get the green bonus.

- **Point (34)** (p. 50) - Article 47, par. 2 (d) defines the following as eligible investments:

"investments for the separate collection and sorting of waste or other products, materials or substances with a view to the preparing for re-use or recycling."

Point 7 of the same article defines alternative investments corresponding to the listed eligible investments. We believe that none of these alternatives apply to separate collection and sorting of waste. In particular, separate collection is an activity without an existing alternative and at the same time it is not ancillary equipment.

Therefore, we suggest to redraft the last paragraph of the Article 7 as follows:

„Where the investment consists in an add-on investment to an already existing facility, separate collection, waste sorting or reuse centres for which there is no less environmentally-friendly equivalent, the eligible costs shall be the total investment costs.";

- **Point (35)** (p. 51) - we propose change of par. 3 in new suggested Article 48: "Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, ~~**or mainly**~~ **partially** used for the transport of hydrogen and renewable gases **and smart gas grids**."

  In case of mainly used infrastructure for the transport of hydrogen and renewable gases will be not exempted from notification requirement, support of blending 0-50% H2 in natural gas will be much more difficult. This will slow down opening of H2 market.

  Smart gas grids – EEAG point 206 - „The Commission considers that for Projects of Common Interest as defined in Regulation (EC) No 347/2013 (91), for smart grids, and for infrastructure investments in assisted areas, the market failures in terms of positive externalities and coordination problems are such that financing by means of tariffs may not be sufficient and State aid may be granted."

- **Point (37) letter d)** (p. 52) - We propose to add point (vi) to par. 8 point (b) in new Article 56e:

  d) in paragraph 8, point (b) is replaced by the following:

  "(b) Without prejudice to point (a) above, where the aid measure relates to the improvement of the energy efficiency of (i) residential buildings, (ii) buildings dedicated to the provision of education or social services or to justice, law-enforcement or fire-fighting and civil protection services, (iii) buildings dedicated to activities related to public administration, 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 internal floor area, aid may also be granted for measures that simultaneously improve the energy efficiency of those buildings and integrate any or all of the following investments:

  (i) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;

  (ii) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations;

  (iii) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where car parking facilities are located either inside the building or are physically adjacent to the building;

  (iv) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the passive network on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property is excluded;

  (v) investments in green roofs and equipment for the recovery of rain water~~.~~**;**

  (vi) the connection to a district heating or cooling.

  The final beneficiary of the aid may be either building owner(s) or tenant(s), depending on who obtains the financing for the project;"

  Justification:

  Connection of a building to district heating can contribute to primary energy savings and significantly improve level of environmental protection. It typically requires investment also on the side of a building and the equipment is not part of district heating network. This investment should be supported in the same manners as on-site generation of energy from renewable sources.

- We propose to implement a *new paragraph into the temporary provisions of the GBER **(Article 2)** of the Amendment*:

  "Individual aids awarded in accordance with any aid schemes reported pursuant to Art. 11 in accordance with the Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty before the date of entry into force of this Regulation stated in the previous paragraph, shall remain exempt without the need to modify such aid schemes, nor individual aids with respect to the amendments introduced by this Regulation even after its entry into force"

We propose implementing a temporary provision that would enable sufficient time to update existing aid schemes to the changes introduced by the Amendment. The reason is that the Amendment introduces substantial changes to GBER, namely, but not exclusively those introduced in Section 7.

Ideally, as proposed above, the principle should be that any aid schemes (calls, subprogrammes) which have been (i) prepared and published under the previous version of GBER before the date of entry into force of the Amendment and (ii) reported pursuant to Article 11 of GBER should remain exempt, including individual aids awarded within such schemes without the need to update such aid schemes nor individual aids to the new consolidated version of GBER after the entry into force of the Amendment.

We also require that this amending regulation shall enter into force after at least six months after its publishing in the Official Journal of the European Union. Some measures require longer time to adapt for the new version of the GBER after it is officially known the final version. During this amending process is not possible prepare these measures according only suggested changes, nor is acceptable to prepare this measures, if the period between the publishing and entering into force is short.

Alternatively, a grace period of more then 6 months (at least 12) would also be sufficient to prepare for the new version of the GBER. Or at least current paragraphs 4 and 5 in Article 58 GBER should be more specified, what does this 6-month period really mean, in the way, that within this period new state aid schemes can still be published under this current version of GBER and shall be exempted as a whole under this current version until fully implemented without the need to change the rules throughout the implementation period of such a scheme.

Comments on current GBER:

- We recommend to amend **Article 1 paragraph 2 letter (a)** follows:

  "(a) schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article **42, 42a, 43 and** 44) and 10 of Chapter III of this Regulation, if the average annual State aid budget exceeds EUR 150 million, from six months after their entry into force. The Commission may decide that this Regulation shall continue to apply for a longer period Jto any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force;…"

  Justification:

  The aim of the suggested change is to reduce administrative burden for Member states and provide for easier achievement of EU's climate and energy targets.

- We would like to suggest **that Article 1 point (3) letter (a)** of the GBER should include an exception for environmental protection aid measures as well. This exception would ensure that undertakings active in the fishery and aquaculture sector could make use of aid under amended Article 45 "*Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity or the implementation of nature-based solutions for climate change adaptation and mitigation*".

- **General comment of "single economic unit" and "undertaking in difficulty" -** GBER should state, that if somewhere has the „undertaking" meaning not just single undertaking (one legal entity), it should be written explicitly. For example like Art. 14/13 states „at group level", which is still unclear, but at least we know, that it does not mean just single undertaking. On the other hand the undertaking in difficulty is very serious example of violation of legal certainty principle, when there is no similar wording (such as group level), but yet single economic unit is stated according to legal praxis of ECJ. Does that mean, that every undertaking everywhere in GBER means single economic unit? And if so, why some articles states explicitly group level, like for example Art. 14/13? Or is there some difference between group level and single economic unit? Anyway new GBER should deal with this and explain such problems, but the most important thing we see, is that the criterion of only single undertaking should be used (practically everywhere), because the administration with considering other subjects in the group is enormous and unjustified. Especially in this undertaking in difficulty definition, which is always big theme and highly problematic. One of the most disturbing aspect of this is, that the authorities are forced to evaluate such criteria both at the level of single economic unit and the one legal entity itself. We find this interpretation not in compliance with the definition, because there is simply no such demand of both levels, and the results are built just on the case law. The EU authorities should finally choose the single legal entity or the group level or change the definition, so this is more clear. But note that the group level is extremely hard to evaluate, especially when some companies are abroad and the other daughter companies has big problems to gain relevant data. The final data of group can be also different whether they use consolidated accounts or simple mathematical summation of data of all members in the group. We simply believe, that ff the mother company (especially situated in foreign

country) has some financial problems, it should not affect the potential beneficiary of the aid.

- **Article 1 –** par. 2 (d) is very similar to par. 5 (b). We ask Commission to unify these sentences into one.
- **Article 1 par. 3 –** It is not clear, where is difference between using the general and agriculture provisions. We miss some explanation, what activities could be considered as primary production and if it means also some related activities (direct or indirect), for example production of energy reused for primary agri production activities. We ask for better clarification of mainly "agricultural production sector". Could it be defined by reference to NACE classification, which is used in practical implementation anyway?
- **Article 4** – this Article should be removed piece by piece to the articles in Chapter III. It is quite chaotic, that each aid category has its own conditions in its specific article, but just the notification thresholds are in one place somewhere else. It also doesn´t help with using the GBER that in Article 4 are the references made not by the numbers of the relevant articles, but only by their headings.

  It would be helplful to use the same definitions where appropriate (to unify: project, investment project) and to define what is meant by the term (all necessary total costs or only eligible costs).

- **Article 7, point 1** – "The amounts of eligible costs may be calculated in accordance with the **simplified cost options** set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council (1), provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision...". **This paragraph needs to include also reference to the Recovery and Resilience Fund (- RRF - respectively Regulation 2021/241 of 12. February 2021,)** since this RRF Regulation includes the possibility to use the simplified cost option as well, but the GBER does not. This means that the GBER blocks the other Regulation and only the ESI funds can use this method, although the other Regulation for RRF enables it, too. This is a serious mistake that needs to be recovered since the National Recovery Plan (NRP) that is financed from RRF works with various time limits and using simplified costs greatly helps to meet the deadlines. It was the point of the RRF and NRP instruments to bring some change quickly. If the simplified method is not used, the project implementation will be lagging behind.

- **Article 8 par. 1** – we ask to delete this first paragraph of Article 8, because is confusing and redundant. From the other provisions is or should be clear (see comment on Article 4), how to indicate the thresholds.

- **Article 13** – we ask for addition of the same provision as in the **Art I GBER point 3, last paragraph** ("Where an undertaking is active in the excluded sectors as referred to in points (a), (b) or (c) of the first subparagraph and in sectors which fall within the scope of this Regulation, this Regulation applies to aid granted in respect of the latter sectors or activities, provided that Member States ensure by appropriate means, such as separation of activities or distinction of costs, that the activities in the excluded sectors do not benefit from the aid granted in accordance with this Regulation..)" so that it is clear that also the recipients in the area of regional aid can use the same method of division of activities or costs when they are active in various economic fields/sectors of which some are covered by the Art 13 and some are excluded from it **or to change the par. 3 of the Art 1 so as the**

regional aid is added (“Where an undertaking is active in the excluded sectors as referred to in points (a), (b), (c) **or e)** of the first subparagraph...”). This means that e.g. a recipient that is active in say processing industry can be recipient of regional aid in this area even if its other activity were for instance transportation or energy production or agriculture, if the firm uses the method for separation of activities or division of costs.

- **Article 14 par. 8 letter a) –** under letter a) there is a wording “establishment receiving the aid” (or in Czech version “provozovna, která je příjemcem podpory”), which is wrong, because the establishment is not a beneficiary but a part of its business property. In letter d) is the wording “undertaking receiving the aid”. In our opinion the letter a) should read as follows: “they must be used exclusively in the establishment which is the object of the aid.” We propose the same wording for the other relevant Articles (for example 17/4).

- **Article 14 par. 8 letter b)** - We propose to **remove** this letter b), meaning the condition “they must be amortisable” **or insert** “with the exception of licences”

  In the case where the undertaking starts the initial investment, the necessary licenses can also be eligible costs, especially their lease Cloud Computing (software as a service: SaaS). At present days the rental of licenses prevails, while the purchasing software licenses has almost completely disappeared. However these leased licenses cannot be subject of depreciation. Therefore, we propose to remove this condition or add an exemption for rental licenses, otherwise GBER cannot be used effectively for aiding the digitization and the current trend would be ignored.

- **Art 14, point 13** - Point 13 of Art 14 can be interpreted in various ways, namely – do the initial investments include all investments carried by the investor in the NUTS III region in that period or only those that include a state aid element, it is calculated as total investment costs of all investments or only the state aid elements included in all projects concerned? We at least ask to add to this paragraph the same provision as in the beginning of the Art 14 point 16 (“The beneficiary shall confirm that...), and change the text accordingly.

- **Article 19 -** we ask to extend the scope of eligible costs, because many measures using this article have to be combined with de minimis aid and thus it makes them unnecessary complicated and also the limit in de minimis could not be sufficient anymore. Therefore we propose to add other eligible costs related typically to attendance in fairs, such as costs for transport, advertising costs, insurance of transported goods etc.

- **Article 25 par. 2** - In the background note it is stated, that „the Commission will include a targeted amendment of the R&D&I-relevant GBER provisions in line with what has been proposed for the RDIF to ensure coherence of the State aid rules on R&D&I.“ We support this effort and repeatedly ask that GBER has the same term as RDIF, which is **„applied research“**, so the industrial research and experimental development is under this type of research with same aid intensity (same as RDIF contains) - at least 50%. This two types of research are very similar and in praxis it is quite impossible to separate one of each other, so it is useless to ask the beneficiaries to do so, for example for the purposes of paragraph 3 and 5 or Article 4. We asked to solve this problem many times, but we have no reaction about this topic so far.

- **Article 26 par. 7** – We require to erase this provision, because it is confusing and redundant. We don´t really understand, what a claw-back mechanism should be used in praxis, or what aid providers should do. If we provide for example aid according to GBER for economic activity, how can we assess, if another public authority provides aid for non-economic activity? Or it is not our problem and the other provider shall deal with this condition? We understand this condition, as we have to take into consideration ratio between both activities and if the ratio of economic activity rises, there is the risk that the beneficiary shall receive aid intensity not allowed. But is this not a problem in all field of state aid? Every time beneficiary changes his activities and the economic one is higher than before, there is always the risk of unlawful state aid, and claw back mechanism is contained in procedural rules (European and national). Why GBER states this general problem specifically in this Article (or some other Articles) as it is something extraordinary? In our opinion this paragraph should be erased, because is only confusing, and the mechanisms are stated for such occasions in other rules in general.

- **New Article 43a** - We propose to **implement new Article 43a to GBER** as follows**:**

"Article 43a

Investment aid to electricity storage

1. Investment aid for user (behind-the-meter) electricity storage 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. Aid for user electricity storage shall be provided to newly built capacity.

3. The aid intensity shall not exceed 30 % of the eligible costs.

4. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

5. Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid amount may reach 100 % of the eligible costs . Such a bidding process must be non-discriminatory and provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations."

The reason for this proposal is, that the GBER even after implementing the proposed Amendment does not contain any possibility to provide aid to energy storage investments outside of electricity distribution infrastructure at users – "behind-the-meter".

From energy policies point of view, this does not make any sense, because *behind-the-meter* storage provides at least the following functionalities essential for broader use of energy from renewable sources:

Peak-shaving. The reserved power input corresponds with the consumer's maximum power demand. The local power supply must be ready to provide the consumer with this power at any given moment, even though this load is not utilised most of the time. As a

result, excessive costs are incurred: the power supplier invests and maintains infrastructure a full capacity of which is utilised only sometimes, and the consumer pays for this in its regular power bills. The energy storage equipment installed behind the meter of the consumer (or in the local distribution network) will allow to reduce the maximum consumption peaks and thus lower the reserved power input. The charging and discharging of the storage equipment can be seen as the change in the consumption diagram of the consumer reducing the demand. The consumers with the most variable demand (with the highest consumption peaks) are the natural candidates for installations of battery applications and savings of the related costs.

Interruptibility in the electricity grid. There are production facilities that are sensitive to the quality of electricity (e.g. voltage drop caused by remote short circuits). The use of accumulation in the area of interruptibility in the electricity grid (power micro-failure (in millisecond) will lead to elimination of increased effects of production technologies on the environment in the mode of transitional states in the shutdown and start-up period of production technologies. At the time of shutdown and start-up, the electricity is consumed either with reduced efficiency or absolutely without producing output products, e.g. when heating up processed materials, or in operation of transport routes at the time when there are no products transported yet due to interrupted operation. Installation of an accumulation facility in these cases will also lead to reduced number of faulty products, thus to saving of materials and energies. This outcome is in accordance with the energy efficiency and circular economics policy.

Correction of the interpretation of the Czech language version of the proposed text

- on page 6 point 42) – to replace text „*v souvislosti investicí*“ with „*v souvislosti s investicí*“.
- on page 13 letter h) – to replace text „*CO2*“ with „CO_2“.
- on page 27 para. 3 letter b) – to replace text „*přezvaly*“ with „*převzaly*“.