

29 February 2024

Positive preliminary assessment of the satisfactory fulfilment of milestones and targets related to the first payment request submitted by Poland on 15 December 2023, transmitted to the Economic and Financial Committee by the European Commission

Executive summary

In accordance with Article 24(2) of Regulation (EU) 2021/241, on 15 December 2023, Poland submitted a request for payment for the first instalment of the non-repayable support and the first instalment of the loan support. The payment request was accompanied by the required management declaration and summary of audits.

To support its payment request, Poland provided due justification of the satisfactory fulfilment of the 26 milestones of the first instalment of the non-repayable support and 12 milestones and targets of the first instalment of the loan support, as set out in Section 1 paragraphs 1 and 2.2 of the Council Implementing Decision of 17 June 2022 on the approval of the assessment of the recovery and resilience plan for Poland¹.

Upon receipt of the payment request, the Commission has assessed on a preliminary basis the satisfactory fulfilment of the relevant milestones and targets. Based on the information provided by Poland, the Commission has made a positive preliminary assessment of the satisfactory fulfilment of all 38 milestones and targets.

The milestones and targets positively assessed as part of this payment request demonstrate significant steps in the implementation of Poland's Recovery and Resilience Plan. This includes, among others, reforms aiming at improving the labour market situation of parents by increasing access to childcare for children up to the age of three (A4.2); reducing regulatory and administrative burden (A1.2); (fostering) clean air and energy efficiency (B1.1), enhancing transport safety (E2.2), improving the conditions for development onshore wind farms (B3.6). The payment request also includes reforms related to strengthening important aspects of the independence of the Polish judiciary (F1.1.) remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court (F1.2) and the use of Arachne, an IT tool that supports Member States' audit systems (F3.1).

The milestones and targets also confirm progress towards the completion of investment projects related to the diversification and shortening of the supply chain of agricultural and food products and building the resilience of entities in the chain (A1.4.1); modernisation and retrofitting of teaching facilities with a view to increasing admission limits for medical studies (D2.1.1), as well as increasing the potential of sustainable water management in rural areas (B3.3.1).

By the transmission of this positive preliminary assessment and in accordance with Article 24(4) of Regulation (EU) 2021/241, the Commission asks for the opinion of the Economic and Financial Committee on the satisfactory fulfilment of the relevant milestones and targets.

¹ ST 15835 2023 INIT, ST 15835 2023 ADD 1, not yet published.

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Non-repayable support

Number: A1G	Related Measure: A1.1 Reform of the fiscal framework
Name of the Milestone: Development of a Concept Note on the Standardised Chart of Accounts integrated with budget classification	
Qualitative Indicator: Publication on the Ministry of Finance website	Time: Q1 2022
Context: <p>The measure aims to increase the transparency and efficiency of public spending by enabling a more efficient management of public funds, as well as enhancing the accountability in the management of public funds and increasing the sustainability of public finances and preventing an unsustainable increase of expenditure.</p> <p>Milestone A1G concerns the publication of the Concept Note on the Standardised Chart of Accounts (SCoA) integrated with budget classification, which shall present the description and set-up of a new classification system. A classification system provides the basis for recording and reporting budgetary, financial and statistical data.</p> <p>Milestone A1G is the second step of the implementation of the reform, and it is accompanied in this payment request by milestone A3G, related to the entry into force of an amendment to the Act on Public Finances to extend the scope of the stabilising expenditure rule (SER). It will be followed by milestone A2G, related to the entry into force of amendments to the Act on Public Finances (APF) establishing a new budgetary classification system, a new model of budget management and a redefined medium-term budgetary framework, and milestone A4G, related to the publication of a review on the functioning of the SER.</p> <p>The reform has a final expected date for implementation on 31 March 2025.</p>	
Evidence provided: <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none">i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;ii. Concept Note of a New Classification System "Structure and detailed classifications of the uniform chart of accounts integrated with the budget classification" issued by the Ministry of Finance and composed of two volumes alongside a confirmation of publication. The Concept Note was published on 31 March 2022 on the Biuletyn Informacji Publicznej (Bulletin of Public Information) website of the Ministry of Finance: https://www.gov.pl/web/finanse/reforma-systemu-budzetowego.	
Analysis:	

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone. In particular:

Publication of the Concept Note on the Biuletyn Informacji Publicznej (Bulletin of Public Information) website of the Ministry of Finance.

The Concept Note was published on the Biuletyn Informacji Publicznej (Bulletin of Public Information) website of the Ministry of Finance on 31 March 2022, on <https://www.gov.pl/web/finanse/reforma-systemu-budzetowego>.

The Concept Note shall present the description and set-up of the new classification system.

The Concept Note provides the description and the set-up of the new classification system for recording and reporting budgetary, financial and statistical data which constitutes an information basis for other elements of the new budgetary system. The Concept note presents the new classification system which is planned to have a multidimensional structure with different attributes of budgetary, financial and statistical data coded in different classification segments (administrative, source of financing, economic, and based on budget programs) (pages 16-152 of volume 1 of the concept note). The economic segment is designed in a manner supporting the budgetary cycle and the budget execution process (pages 1-47 of volume 2 of the concept note). The SCoA integrated with budget classification is planned to be used for planning and executing the government budget and for recording budgetary, financial and statistical data (pages 153-154 of volume 1 of the concept note).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A3G	Related Measure: A1.1 Reform of the fiscal framework	
Name of the Milestone: Entry into force of an amendment to the Act on Public Finances extending the scope of the stabilising expenditure rule (SER) to include state special purpose funds		
Qualitative Indicator: Provision in the amendment to the Act on Public Finances indicating its entry into force		Time: Q3 2021
Context:		
<p>Milestone A3G is part of the wider reform of the fiscal framework in Poland, which aims to increase the transparency and efficiency of public spending. The reform envisages measures to enable a more efficient management of public funds, enhance the accountability in the management of public funds, increase the sustainability of public finances, and prevent an unsustainable increase of expenditure.</p> <p>Milestone A3G requires that the Act on Public Finances (APF) is amended by extending the scope and coverage of the Stabilising Expenditure Rule (SER) - which limits expenditure of covered public entities in the annual Budget Act approved by the Parliament in line with a predefined formula - to more units of the general government, specifically the state special-purpose funds.</p> <p>Milestone A3G is the first step in the implementation of the reform of the fiscal framework, and it is accompanied in this payment request by milestone A1G, related to the publication of the Concept Note on the Standardised Chart of Accounts integrated with budgetary classification. It will be followed by milestone A2G, related to the entry into force of amendments to the APF establishing a new budgetary classification system, a new model of budget management and a redefined medium-</p>		

term budgetary framework, and milestone A4G, related to the publication of a review of the functioning of the SER.

The reform of the fiscal framework has a final expected date for implementation on 31 March 2025.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled.
- ii. **Copy of the publication in the Journal of Laws of the Act of 11 August 2021 amending the Act on Public Finances and certain other acts** (Journal of Laws of 2021, item 1535).
<https://www.dziennikustaw.gov.pl/DU/2021/1535>
- iii. **Copy of the Act of 23 June 2022 amending the Act on Public Finances and the Act – Environmental law** (Journal of Laws of 2022, item 1747).
<https://www.dziennikustaw.gov.pl/DU/rok/2022/pozycja/1747>
- iv. **Copy of the Act of 7 October 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market** (Journal of Laws of 2022, item 2127) - Article 50. <https://www.dziennikustaw.gov.pl/DU/rok/2022/pozycja/2127>
- v. **Copy of the Act of 16 November 2022 amending the Act on Tax on Certain Financial Institutions and Certain Other Acts** (Journal of Laws of 2022, item 2745).
<https://www.dziennikustaw.gov.pl/DU/2022/2745>
- vi. **Copy of a letter of 14 June 2021 from the Finance Minister to the Chancellery to the Council of Ministers regarding amendment of the Act on Public Finances and certain other acts.**
<https://legislacja.rcl.gov.pl/docs//2/12348054/12796722/12796723/dokument509206.zip>

Analysis:

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone.

Entry into force of an amendment to the Act on Public Finances (APF) to extend the scope of the stabilising expenditure rule (SER).

A number of amendments affecting the SER scope and functioning came into force in 2021 and 2022.

- The Act of 11 August 2021 amending the Act on Public Finances and certain other acts in Article 1 point 8(a) amending the APF extended the scope of units covered by the SER to include all state special purpose funds. The amendment was published in the Journal of Laws (item 1535) on 20 August 2021 and entered into force on 21 August 2021, except Article 1 point 1 and 2 which entered into force on 1 January 2022, in accordance with Article 31[specific provision]. Other exceptions in Article 31 are not relevant for the fulfilment of the milestone.
- The Act of 23 June 2022 amending the Act on Public Finances and the Act – Environmental law in Article 1 point 2 (a) amended the APF and introduced a further extension of the scope of the SER to the National Fund for Environmental Protection and Water Management

(NFOŚiGW) starting with the 2023 Budget Act. The Act of 23 June 2022 was published in the Journal of Laws of 2022 (item 1747) on 19 August 2022 and entered into force on 20 August 2022 in accordance with Article 7.

- The Act of 7 October 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market in Article 50 amended the APF and allowed state-owned special-purpose funds, funds under the BGK and the NFOŚiGW, to increase spending above the limit set by the SER for 2022 and 2023. This Act entered into force on 18 October 2022 in accordance with Article 61.
- The Act of 16 November 2022 amending the Act on Tax on Certain Financial Institutions and Certain Other Acts in Article 4 repealed Article 50 of the Act of 7 October 2022 thereby no longer allowing state-owned special-purpose funds, funds under the BGK and the NFOŚiGW, to increase spending above the limit set by the SER for the Budget Act in 2023. The Act of 16 November 2022 was published in the Journal of Laws of 2022 (item 2745) on 23 December 2022 and Article 4 entered into force on 24 December 2022 in accordance with Article 6.

The effects of the changes include covering a larger number of units of the general government (state special purpose funds) within the scope of the SER, which shall allow for increasing the transparency and efficiency of public finance management.

The amendments of the APF and other acts have increased the **coverage** of the SER to a larger number of general government units including the state special purpose funds. In particular:

- Additional units of the general government covered by the SER due to Article 1 point 8(a) of the Act of 11 August 2021 include state special purpose funds, which were not covered by the SER before. Before the adoption of the Act of 11 August 2021, the SER covered only the state special purpose funds managed by the Social Insurance Institution and by the President of the Agricultural Social Insurance Fund, and the Labour Fund. The 2024 budget act contains 40 financial plans of state special purpose funds, including funds related to social policy, privatisation, security, culture, sport and health, all of which are covered by the SER. BGK Moreover, in accordance with Article 1 point 8 (a), any newly created state special purpose funds are included in the SER automatically (similarly to funds established at BGK), and not after discretionary decisions of the Government, as was the case before adoption of the Act of 11 August 2021.
- Additional units of the general government covered by the SER due to Article 1 of the Act of 23 June 2022 include the National Fund for Environmental Protection and Water Management.

The amendments of the APF and other acts from 2021 and 2022, listed above, increased the transparency of public finance management in Poland. This is confirmed in particular by the following facts:

- As a result of covering a larger number of units of the general government (state special purpose funds and the National Fund for Environmental Protection and Water Management) within the scope of the SER, the budget act sets limits on spending of a broader set of institutions including state special funds, thus allowing the public and the Parliament to scrutinize the spending limits of a broader set of institutions during parliamentary budget approval process.

- Art. 1 point 4 of the Act of 11 August 2021 specified the requirements for adoption and amendment of financial plans of state special-purpose funds (specified in Article 29 of the APF), including with the obligation to obtain the consent of the Minister for Finance and the opinion of the Budget Committee of the Sejm (lower chamber of the Parliament) for any changes in the financial plans. Since previously special funds were not covered by this obligation, the amendment has enhanced the oversight role of the parliament and transparency of the budget approval process.

Higher level of coverage of the general government units by the SER achieved by the amendments of the APF in 2021 and 2022 should strengthen incentives for more **efficient** public expenditure due to extending the scope of application of more demanding budgetary constraints included in the SER (Article 1 of the Act of 11 August 2021), increasing parliamentary scrutiny of public finance management and extending the scope of application of the obligation for the Ministry of Finance to agree to changes in the financial plans of SER covered units (Articles 1 and 27 of the Act of 11 August 2021).

In line with the description of the measure, **the Ministry of Finance was responsible for the preparation of the amendment of the APF.** The Finance Minister of Poland in his letter of 14 June 2021 requested the Chancellery to the Council of Ministers to discuss the draft act amending the Act on Public Finances and certain other acts. The adopted amendment was published in the Journal of Laws (item 1535) on 20 August 2021 and entered into force on 21 August 2021.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A5G	Related Measure: A1.2 Further reducing regulatory and administrative burden	
Name of the Milestone: Entry into force of a legislative package to reduce administrative burden to businesses and citizens		
Qualitative Indicator: Provisions in the legislative package indicating its entry into force		Time: Q2 2022
<p>Context:</p> <p>This reform aims to reduce the administrative and regulatory burden affecting businesses in Poland, as well as to foster private investment, particularly for SMEs.</p> <p>Milestone A5G concerns the entry into force of a new law to simplify administrative and legal procedures, minimise legal requirements for businesses and entrepreneurs, and speeding up decision-making, in particular by: 1) simplifying administrative and silent procedures in at least 12 procedures, in particular related to the seafarers professions and trade and commerce of alcoholic beverages; 2) reducing the use of the two-instance procedure in at least 10 procedures, related in particular to geological resources; 3) digitalising the way of dealing with requests in at least eight administrative procedures, related for example to the submission of declarations by tourist operators and entrepreneurs to the Insurance Guarantee Fund and the submission of applications for social benefits by students as well as regarding the geodetic proceedings; 4) introducing other rationalisations of administrative procedures (such as the limitation of the number of documents or fewer formalities to accomplish) related in particular to introducing a number of improvements in</p>		

the spatial planning process, in the construction process and in the land consolidation process; 5) prolonging the deadline for the accomplishment of obligations of entrepreneurs and natural persons towards the administration in some cases of administrative procedures, for example prolonging from 30 to 60 days the deadline for registering a car bought in other Member States or prolonging the deadline for the use of the touristic voucher from 31 March 2022 to 30 September 2022.

Milestone A5G is the only milestone or target of this reform. The reform has a final expected date for implementation on 30 June 2023.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled.

Copy of the publication in the Official Journal of the Act of 7 October 2022 amending certain acts with a view to simplifying administrative procedures for citizens and businesses (Official Journal of 2022, item 2185).

The authorities also provided:

- ii. **Copy of the publication in the Official Journal of the Act of 11 March 2022 on the Defense of the Homeland** (Official Journal of 2022, item 655);
- iii. **Copy of the publication in the Official Journal of the Act of 2 December 2021 amending the Act on land consolidation and exchange, the Act on the loss of legal force of certain land and mortgage registers and the Act on public roads** (Official Journal of 2022, item 32);
- iv. **Copy of the publication in the Official Journal of the Act of 17 September 2021 amending the Construction Law and the Act on Spatial Planning and Zoning** (Official Journal of 2021, item 1986);
- v. **Copy of the publication in the Official Journal of the Regulation of the Minister of Development and Technology of 20 December 2021 on determining the template of the application form for determining the location of a public purpose investment or development conditions** (Official Journal of 2021, item 2462);
- vi. **Copy of the publication in the Official Journal of the Act of 24 June 2021 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and certain other acts** (Official Journal of 2021, item 1192);
- vii. **Copy of the publication in the Official Journal of the Act of 17 November 2021 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and certain other acts** (Official Journal of 2021, item 2368).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of a legislative package that shall aim at eliminating legal barriers affecting the investment climate, in particular by (...):

The Act amending certain acts with a view to simplifying administrative procedures for citizens and businesses (the so called "Legal Shield Act") was adopted on 7 October 2022. It entered into force 14

days after its publication, in accordance with its Article 81 of the Act, that is on 9 November 2022, with several exceptions listed in Article 81, including the latest entry into force of points (10) to (12) of Article 22 and Article 62(1) of the Legal Shield Act on 1 January 2024 (as specified in Article 81, point 6). It was published in the Official Journal on 26 October 2022 under number 2185.

In addition, some provisions were implemented in separate acts:

- Act of 11 March 2022 on the Defence of the Homeland that was published in the Official Journal 2022 as item 655 on 23 March 2022 and entered into force on 22 April 2022 pursuant to Article 824 of said Act.
- Act of 2 December 2021 amending the Act on land consolidation and exchange, the Act on the loss of legal force of certain land and mortgage registers and the Act on public roads that was published in the Official Journal 2022 as item 32 on 10 January 2022 and entered into force on 10 February 2022 pursuant to Article 6 of said Act.
- Act of 17 September 2021 amending the Construction Law and the Act on Spatial Planning and Zoning that was published in the Official Journal 2021 as item 1986 on 2 November 2021 and entered into force on 3 January 2022 pursuant to Article 6 of said Act.
- Regulation of the Minister of Development and Technology of 20 December 2021 on determining the template of the application form for determining the location of a public purpose investment or development conditions that was published in the Official Journal 2021 as item 2462 on 29 December 2021 and entered into force on 3 January 2022 pursuant to Article 1(2) of said Regulation.
- It is noted that the Council Implementing Decision required the entry into force of a *legislative* package. The “template of the application form for determining the location of a public purpose investment or development conditions” was however adopted through a ministerial regulation rather than an act of the parliament. Whilst this constitutes a minimal formal deviation from the requirement of the Council Implementing Decision, this deviation is justified considering that the legal basis for this regulation lies in an act, notably Article 64b(b) 2 of the Spatial Planning and Development Act of 27 March 2003 (Journal of Laws 2021, item 741, 784, 922, 1873 and 1986), and that in accordance with the established law-making practice in Poland, technical matters, such as the “template of the application form for determining the location of a public purpose investment or development conditions”, are regulated in regulations rather than in Acts of Parliament. Consequently, the deviation concerns internal procedures of the Member State. Moreover, although a regulation is lower in the hierarchy of sources of law in Poland than an Act of Parliament, provisions included in a regulation are legally binding and, as such, are able to produce real-world effects. As of this, this minimal deviation does not affect the progress towards achieving the reform that the milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.
- Act of 24 June 2021 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and certain other acts that was published in the Official Journal 2021 as item 1192 on 1 July 2021 and entered into force on 23 July 2023 pursuant to Article 15 of said Act.
- Act of 17 November 2021 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and certain other acts that was published in the Official Journal 2021 as item 2368

on 21 December 2021 and entered into force on 22 December 2022 pursuant to Article 10 of said Act.

Simplifying administrative and silent procedures in at least 12 procedures, in particular related to the seafarers' professions and trade and commerce of alcoholic beverages;

The Legal Shield Act introduces in Article 33 points 2 and 3, the application of simplified procedures (of which the characteristics are further clarified below) in the following 4 proceedings linked to professions of seafarers: 1) procedure for the issue of evidence of professional qualifications necessary for the holding of posts on board; 2) procedure for issuing evidence of professional qualifications necessary to hold positions on commercial yachts; 3) procedure for issuing documents confirming the completion of additional training required by international regulations; 4) procedure for issuing documents confirming the qualification of a sea pilot or specific pilot ratings.

In addition, the Legal Shield Act introduces the application of simplified procedures in the following 6 proceedings: 1) for the granting of mountain guide qualifications (Article 12 point 1), 2) for the registration of a name mark in the Register of Name Marks (Article 31); 3) for the entry of the invitation in the invitation register for foreign nationals (Article 35); 4) for the issuing of a fishing license (Article 36 point 1); 5) for the issuing of a permit to fish for marine organisms for the purpose of scientific research or development or education (Article 36 point 2); 6) for the issuing of a seaman's book (Article 37 point 2).

Subsequently, the Legal Shield Act introduces the application of silent procedures (of which the characteristics are further clarified below) in the following 5 proceedings: 1) Officers' cases subject to the act on the Internal Security Agency and the Intelligence Agency, concerning the monetary equivalent for renovation of occupied housing and the monetary equivalent for lack of housing (Article 18), 2) approval of the auditor controlling the performance of duties at the airports (Article 19 point 2); 3) on the right to issue certificates documenting the confirmation of medicinal properties of natural medicinal raw materials and the medicinal properties of the local climate (Article 24); 4) on concluding an agreement defining the rules of operation of a professional league (between a Polish sports association and a company managing a professional league (Article 30 point 1); 5) for the approval of the statutes of Polish sports associations and amendments thereto (Article 30 point 2).

Finally, the Legal Shield Act introduces the application of simplified procedures in the following 3 proceedings linked to the trade and commerce of alcoholic beverages: 1) on wholesale trade in the country of alcoholic beverages with a content of up to and above 18% (Article 4 point 1), 2) proceedings on the authorization (with a deadline) for the sale of stocks of alcoholic beverages (wholesale trade) (Article 4 point 2); and 3) Proceedings for a permit (with a deadline) for the sale of owned, inventoried stocks of alcoholic beverages (Article 4 point 3).

It is to be noted that simplified and silent procedures only apply if a special provision so provides. Both types of procedures are therefore the exception, not the rule. The characteristics of simplified and silent procedures are further specified in the Code of Administrative Procedure:

- The characteristics of simplified procedures are defined in Articles 163b-g of Chapter 14 of the Code of Administrative Procedure (Official Journal 2023 No. 775). One of the characteristics of a simplified procedure is that decisions issued through a simplified procedure can only be challenged in specific circumstances, thereby leading faster to a final decision. In addition, decisions issued under the simplified procedure benefit from simplified motivation rules.

- The characteristics of silent (tacit) procedures are defined in Articles 122a-h of Chapter 8a of the Code of Administrative Procedure (Official Journal 2023 No. 75). A case is deemed to have been settled tacitly in a manner which fully grants a party's request, if that body (within one month from the date of delivery of the party's request) fails to issue a decision or a decision ending the proceedings in the case or does not raise an objection by way of a decision. Making decisions subject to the silent procedure therefore also leads faster to a final decision.

For the reasons outlined above, applying a simplified or silent procedure instead of a normal procedure can be considered a simplification of the administrative procedure.

Reducing the use of the two-instance procedure in at least 10 procedures, related in particular to geological resources;

The Legal Shield Act abolishes the two-instance procedure in the following 8 types of proceedings:

- 1) the decision of the road manager to make the technological channel available and the decision to refuse to provide a technology channel in the absence of free resources in that channel (Article 6, point 1);
- 2) the decision to transfer the rights and obligations arising from the permit for the use of a road lane for purposes not related to the construction, reconstruction, renovation, maintenance and protection of roads, to the entity that is the buyer of telecommunications infrastructure, as well as drainage lines, pipes and equipment for the transmission or distribution of liquids, steam, gases and electricity and other underground facilities and equipment necessary for the use of these lines and equipment or on the need to perform the concessions referred to in Article 22(1) of the Act of 9 June 2011 – Geological and Mining Law, at the request of this entity (Article 6, point 2);
- 3) the decision on entry or refusal of entry in the register of valuers in the area of agri-food sector (Article 16);
- 4) the decisions on receivables from payments to the Polish Film Institute (Article 23);
- 5) the decision to reclassify geological resources (Article 32, point 1);
- 6) the decision to order the measurement of excavations and submit the cadastral report at a different time (Article 32, point 2);
- 7) the decision to withdraw the authorisation to carry out certification activities in 5 integrated plant production if the operator submits an application to that effect (Article 34); and
- 8) the decisions in proceedings for the approval and amendment of approved tables of remuneration for the use of works or subject matter of related rights (Article 41).

In addition, the Act of 11 March 2022 on the Defence of the Homeland abolishes the two-instance procedure in the following 2 types of proceedings:

- 1) the decision to order to perform official tasks outside the military unit (Article 122, paragraph 2, point 3) and
- 2) the decision to nominate a person to a military rank (Article 122, paragraph 2, point 1).

Digitalising the way of dealing with requests in at least eight administrative procedures, related for example to the submission of declarations by tourist operators and entrepreneurs to the Insurance Guarantee Fund and the submission of applications for social benefits by students as well as regarding the geodetic proceedings;

The Legal Shield Act digitalises the following 16 types of procedures:

- 1) report on the activities of a foundation (Article 5, point 2);

- 2) laying out a descriptive and cartographic report in geodetic proceedings (Article 7, point 1);
- 3) application on the use of the technical zone for purposes other than to maintain the shore in a condition consistent with safety and environmental requirements (Article 8, point 2);
- 4) a book of records of stay on individual hunting (Article 9, point 2);
- 5) application for granting the rights of a mountain guide (Article 12, point 2);
- 6) changes in relation to the data submitted to the insurance registers (Article 13);
- 7) remote hearings in litigation procedures before the Patent Office (Article 14, point 2);
- 8) remote meetings of the National Council of Patent Agents and its Presidium, the Revision Committee and the District Councils of Patent Agents and adopting resolutions by those parties (Article 17);
- 9) reporting obligations of aircraft users in the performance of air operations (Article 19, point 1);
- 10) application for the permits referred to in Article 56, points 1, 2 and 2b of the Nature Conservation Act of 16 April 2004, as published in the Journal Of Laws 2022, item 916 and 1726 (Article 21, point 1);
- 11) application for authorisation to remove a tree or shrub (Article 21, point 2);
- 12) notification of conducting forms of nature protection in areas, within the protective areas designated on the basis of the Act of 18 April 1985 on inland fishing, as well as within natural watercourses, listed in the provision of activities (Article 21, point 3);
- 13) application for a decision on the conditions for conducting different types of earthworks (Article 21, point 4);
- 14) application for an environmental permit as specified in Article 73 of the Act of 3 October 2008 on the provision of information on the environment and environmental protection, public participation in environmental protection and environmental impact assessments (Article 28);
- 15) submitting declarations to the Insurance Guarantee Fund by tourist operators and entrepreneurs facilitating the purchase of related tourist services (Article 39);
- 16) applications for social benefits by students (Article 42, point 3).

At least 8 of the above procedures relate to requests / applications (notably the procedures mentioned under numbers 3, 5, 7, 10, 11, 13, 14 and 16) so that this requirement of the milestone can be considered to be satisfactory fulfilled. In line with the requirement of the Council Implementing Decision, the aforementioned procedures have been digitalised, by foreseeing the possibility to submit the request / application electronically.

Introducing other rationalisations of administrative procedures (such as the limitation of the number of documents or fewer formalities to accomplish) related in particular to introducing a number of improvements in the spatial planning process, in the construction process and in the land consolidation process;

The Legal Shield Act introduces rationalisation in 4 procedures, in the following ways:

- 1) reduction of the number of application documents from 9 to 1, for the application for a permit establishing the location and specifying the conditions for the use in Polish maritime areas of artificial islands, structures and devices (Article 8, point 1);
- 2) abolishment of the requirement to appear in person before the voivode or consul, in the case of making statements in matters related to the acquisition or loss of Polish citizenship (Article 29);
- 3) abolishment of the requirement to submit to the headquarters of the water supervision authority an application for a water law permit, water law assessment, decisions referred to

in Article 77(3) and (8) and Article 176(4), that is [what those decisions referred to in those articles are], as well as a water law notification (Article 38, point 5).

In addition, the Act of 2 December 2021 abolishes the obligation to read the decision regarding the initiation of the consolidation process and regarding the approval of the land consolidation project at the meeting of the participants in the amalgamation (*postępowanie scaleniowe*) (art. 1, §2, points 3 and 4).

Subsequently, the Act of 17 September 2021 has made the construction of free-standing, no more than two-storey single-family residential buildings with a building area of up to 70m² possible without the need to obtain a building permit, appoint a construction manager and keep a construction diary, in the procedure of the so-called construction notification with a construction project (Article 1, point 2). As a result, it is now possible to start construction immediately after having submitted a complete notification to the architectural and construction administration body, without having to wait 21 days for the decision of this body.

Finally, the Regulation of 20 December 2021 introduces a model application form (including in the form of an electronic document) for determining the location of a public purpose investment or development conditions (see Annex to the Regulation). In line with the Council Implementing Decision, the aforementioned rationalisations relate in particular to the spatial planning process (e.g. the abovementioned legal changes in the Act of 17 September 2021), in the construction process (e.g. the abovementioned legal changes in the Regulation of 20 December 2021) and in the land consolidation process (e.g. the abovementioned legal changes in the Act of 2 December 2021);

Prolonging the deadline for the accomplishment of obligations of entrepreneurs and natural persons towards the administration in some cases of administrative procedures, for example prolonging from 30 to 60 days the deadline for registering a car bought in other Member States or prolonging the deadline for the use of the touristic voucher from 31 March 2022 to 30 September 2022.

The Legal Shield Act prolongs the deadlines in respect of the following 2 obligations:

- 1) extension of the deadline for submitting information to the Central Register of Beneficial Owners from 7 to 14 days (Article 40);
- 2) extension of the deadline to 31 December 2022 for the return of the first instalment referred to in Article 15kb, point 7 of the Act of 2 March 2020 on special arrangements related to the prevention, prevention and control of COVID19, other infectious diseases and crisis situations caused by them (Journal of Laws 2021, item 2095) by tour operators in case of low participation level in the organised events (Article 45).

In addition, the Act of 24 June 2021 extends the deadline for registering a car purchased in another Member State from 30 to 60 days (Article 1.29).

Finally, the Act of 17 November 2021 extends the deadline for using the tourist voucher from 31 March 2022 to 30 September 2022 (Article 6).

The abovementioned legal changes cover both entrepreneurs (e.g. tour operators) as well as natural persons (e.g. the owner of a car that has purchased a car in another Member State).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A18G	Related Measure: A1.4 Reform to improve the competitiveness and protection of producers/consumers in the agricultural sector	
Name of the Milestone: Entry into force of a new law to fight against the unfair use of contractual advantages in the agricultural and food trade sector		
Qualitative Indicator: Provision in the new law to fight against the unfair use of contractual advantages in the agricultural and food trade sector indicating its entry into force	Time: Q1 2022	
<p>Context:</p> <p>This reform aims to strengthen the position of consumers and producers in the agri-food supply chain, particularly SMEs and small producers, especially by creating a set of principles and good practices in vertical relations in the agri-food supply-chain.</p> <p>Milestone A18G concerns the entry into force of a new law to fight against the unfair use of contractual advantages in the agricultural and food trade sector, endorsing a set of principles on good practices in vertical relations in the food supply chain, as well as ensuring a minimum harmonisation of standards as foreseen in Directive (EU) 2019/633.</p> <p>Milestone A18G is the first step in the implementation of this reform. It will be followed by milestone A19G which is a mid-term review of the law adopted under milestone A18G. The reform has a final expected date for implementation on 30 June 2025.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ul style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of the Act on combating unfair use of contractual advantage in the agricultural and food trade sector (Official Journal of Laws 2021, item 2262). iii. Table of comments submitted during the public consultations on the draft law combating unfair use of contractual advantage in the agricultural and food trade sector (the table of 6 May 2021 prepared by the Ministry of Agriculture and Rural Development https://legislacja.rcl.gov.pl/docs/2/12343513/12764983/12764985/dokument502026.pdf). <p>The authorities also provided:</p> <ul style="list-style-type: none"> iv. Copy of Code of Food Ethics including good practices in relations in the food supply chain approved by the Minister of Agriculture and Rural Development on 20 April 2020. 		
<p>Analysis:</p> <p>The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular,</p> <p>Following a public consultation [...]</p> <p>On 11 February 2021, the draft Act on fight against the unfair use of contractual advantages in the agricultural and food trade sector was submitted for public consultations, as evidenced by</p>		

<https://legislacja.rcl.gov.pl/projekt/12343513/katalog/12764983#12764983>. Comments were published on the website of the Government Legislation Center <https://legislacja.rcl.gov.pl/projekt/12343513/katalog/12764983#12764983> and they are included in the table of comments submitted during the public consultations on the draft Act (point iii in the section with evidence).

Entry into force of a new law to fight against the unfair use of contractual advantages in the agricultural and food trade sector, which shall:

The Act on combating unfair use of contractual advantage in the agricultural and food trade sector (hereinafter called the “Act”) was adopted on 17 November 2021. It was published in the Official Journal of Laws on 8 December 2021, under item 2262. According to Article 62 of the Act, the Act entered into force on 23 December 2021.

Give the basis for a better functioning of the food supply chain

The aim of the Act is to eliminate the unfair exploitation of the economic dependence of the supplier on the buyer but also of the buyer on the supplier who has a stronger negotiating position. Under Article 1 of the Act, in order to protect the public interest, rules and procedures for preventing practices unfairly exploiting a contractual advantage by purchasers of agricultural or food products or suppliers of those products are laid down. In order to give basis for a better functioning of the food supply chain, as required by the milestone, the Act prohibits the use of practices involving the unfair use of the contractual advantage of a buyer over a supplier or a supplier over a buyer (Article 5) and provides a definition of the unfair use of a contractual advantage (Articles 6 and 7). According to Article 6 of the Act, the use of contractual advantage is unfair if it is contrary to good practices and threatens the vital interest of the other party or undermines such an interest. The provision formulated in this way enables wider protection of the entities of the food supply chain. Thanks to the entry into force of those provisions, the negotiating position of smaller players in the food supply chain has been improved, just like their position against economically stronger players, in their business contacts. The entry into force of these provisions also contributes to maintaining good relations between all the stakeholders within the chain by making their positions more equal. This, in turn, gives the basis for a better functioning of the food supply chain as equal position of buyers and suppliers is one of the conditions for a good functioning of the chain.

And endorse a set of principles on good practices in vertical relations in the food supply chain,

Articles 8-10 of the Act provide a catalogue of unfair practices in the food supply chain that apply to the relationship between buyers and suppliers, along with the exceptions to this catalogue (Article 8 point 2 of the Act). They include among others: 1) cancellation of an order by the buyer less than 30 days before the planned delivery date of perishable agricultural or food products (Article 8 point 1(2) of the Act), 2) the buyer’s demand from the supplier for payments unrelated to the sale of agricultural or food products by the supplier (Article 8 point 1(5) of the Act), 3) threatening or carrying out of acts of commercial retaliation against the supplier if the supplier exercises his/her contractual or legal rights (Article 8 point 1(9) of the Act). This catalogue further complements the catalogue of good practices elaborated in the Code of Food Ethics that was approved by the Minister of Agriculture and Rural Development in April 2020.

As well as ensure a minimum harmonisation of standards as foreseen in the Directive (EU) 2019/633;

The Act includes a number of articles that ensure a minimum harmonisation of standards as foreseen in the Directive (EU) 2019/633 that establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities. In particular, it concerns establishing the subject matter and scope of application (Articles 1, 2, 5, 7, 60 of the Act) as well as the definitions (Article 3 of the Act), in accordance with Articles 1 and 2 of the Directive (EU) 2019/633 which establish the applicability of the Directive to certain unfair trading practices that occur in relation to sales of agricultural and food products. Articles 5 and 8 of the Act define the unfair commercial practices that are prohibited in accordance with Article 3 of the Directive (EU) 2019/633. As required by Article 4 of the Directive (EU) 2019/633, Article 11 of the Act introduces the rules on the designation of an enforcement authority as well as its powers. Articles 13 to 18, 21, 27 and 28, 31, 32, 36 and 37, and 41 to 47 of the Act include provisions on enforcement measures and sanctions – those provisions are well aligned with Articles 6, 7 and 8 of the Directive (EU) 2019/633. Finally, dealing with complaints and confidentiality is regulated by Articles 13, 14, 15, 17, 30 and 31 of the Act, in line with Article 5 of the Directive (EU) 2019/633.

The assessment of the compliance with Articles 1-8 of Directive (EU) 2019/633 for the purposes of payments from the Recovery and Resilience Facility does not prejudice the assessment by the Commission in any other proceedings regarding the conformity of the national law with the Directive.

Protect all trade transactions of agricultural and food products against unfair trade practices;

All trade transactions of agricultural and food products are protected by the Act (Article 2 of the Act). In the event of unfair trade practices in these transactions, the President of the Office of Competition and Consumer Protection (UOKiK) conducts proceedings not only in the case of applying unfair practices indicated directly in the Act (Article 8 of the Act), but also in situations where an identified practice with the features of using contractual advantage is contrary to good practice and threatens the significant interest of the other party or violates such an interest (Article 6 of the Act).

Go beyond the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. This law goes beyond the Unfair Trading Practices Directive in the following ways: (a) While the Directive provides a closed list of Unfair Trading Practices, the new law shall, in addition to this list, introduce an open definition of unfair trading practices.

An open definition of unfair trading practices is introduced in Article 6 of the Act which states that the use of contractual advantage shall be unfair if it is contrary to good conduct and threatens or undermines a vital interest of the other party. This definition is further accompanied by the list of examples of unfair trading practices in Article 8 of the Act.

In particular, such additional trading practices shall be identified as unfair by the Office of Competition and Consumer Protection (UOKiK) if (i) they are contrary to the requirements of good commercial conduct; (ii) and they materially distort or are likely to materially distort the interest of the other contract party;

According to Article 11 point 1, the President of the Office of Competition and Consumer Protection (UOKiK) shall be the body responsible for: 1) practices involving the unfair use of contractual advantage, and 2) cooperation with the European Commission and the authorities of the Member States of the European Union whose remit includes enforcing provisions on practices involving the unfair use of contractual advantage.

Furthermore, according to Article 13 point 1, the President of the Office initiates the proceedings on practices involving the unfair use of contractual advantage and those proceedings may be preceded by an investigation (Article 13 point 3 of the Act). According to Article 14 point 1, investigations shall aim in particular to establish on a preliminary basis whether there has been an infringement of this Act justifying the initiation of proceedings on practices involving the unfair use of contractual advantage. This would include establishing if the use of contractual advantage is contrary to good conduct as well as if the practices threaten or undermine a vital interest of the other party (Article 6 and Article 7 paragraph 1 of the Act). This is in line with the requirement of the milestone that the practices shall be identified as unfair if they materially distort or are likely to materially distort the interest of the other contract party. The practices which are enumerated as examples in Article 8 of the Act clearly show the material element of the distortion of the interest of the other contract party, e.g. cancellation of an order by the buyer less than 30 days before the planned delivery date of perishable agricultural or food products (Article 8 point 1(2); the buyer's demand from the supplier for payments unrelated to the sale of agricultural or food products (Article 8 point 1(5) of the Act), the buyer returns unsold agricultural or food products without paying for the products or their disposal (Article 8 point 1(11)), the buyer requires the supplier to pay for the advertising by the buyer of agricultural or food products (Article 8 point 1(14)).

(b) While the Directive only protects suppliers of agricultural and food products, the new law shall protect all trading operators, including buyers of agricultural and food products.

According to Article 1 point 1 of the Act, it lays down the rules and procedure for combating practices involving the unfair use of contractual advantage both by buyers and suppliers of agricultural or food products. This is further strengthened by Articles 5 and 6 of Act that prohibit practices involving the unfair use of the contractual advantage of a buyer over a supplier or a supplier over a buyer. As defined in Article 7 point 1, contractual advantage is the existence of a significant imbalance in the economic capacity of the buyer relative to the supplier's or of the supplier vis-à-vis the buyer's. For example, the interests of the buyer are protected by Article 8 point 2 of the Act which states that different practices cannot be considered as the practices that unfairly exploit contractual advantage if they were clearly and unambiguously agreed in the contract between the buyer and the supplier prior to their application.

The reform shall allow the Office of Competition and Consumer Protection to investigate not only the cases submitted by market participants but to undertake its own investigations.

Article 14 paragraph 1 of the Act stipulates that the President of the Office of Competition and Consumer Protection may open *ex officio*, by way of an order, an investigation if the circumstances indicate that the provisions of the Act may be infringed. Additionally, as stipulated in Article 15 point 1, any person may notify the President of the Office of suspected practices involving unfair use of contractual advantage. In accordance with Article 16 of the Act, the President of the Office of Competition and Consumer Protection may, without initiating proceedings, contact an enterprise or an entity within the meaning of Article 4 of the Public Procurement Law Act, that is [an explanation of what that meaning is], on matters relating to practices involving the unfair use of contractual advantage.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A20G	Related Measure: A1.4.1 Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of entities in the chain	
Name of the Milestone: Adoption of criteria for the selection of beneficiaries for all the projects under this investment		
Qualitative Indicator: Publication on the website of the Ministry of Agriculture and Rural Development and the Agency for Restructuring and Modernisation of Agriculture the adoption of the criteria for the selection of beneficiaries		Time: Q1 2022
<p>Context:</p> <p>The objective of the investment is to enhance the competitiveness and resilience of the agri-food and fisheries sector in Poland.</p> <p>Milestone A20G concerns the adoption of criteria for the selection of beneficiaries for all the projects under this investment.</p> <p>Milestone A20G is the first milestone or target of this investment. It is followed by six targets which focus on the implementation of projects supporting: distribution and storage centres and wholesale markets (target A21G), SMEs in the agri-food and fisheries sector (targets A22G and A23G), charitable organisations in the food sector (target A24G) and farmers and fishermen (targets A25G and A26G). The investment has a final expected date for implementation on 31 December 2025.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled. The summary document contains links to the website of the Ministry of Agriculture and Rural Development and the Agency for Restructuring and Modernisation of Agriculture where the selection criteria have been published. ii. Annex 1 – Copy of Horizontal principles and criteria for selecting projects for the National Recovery and Resilience Plan (NRP), developed by the Ministry of Development Funds and Regional Policy and published on 27 November 2021 on the website of the Ministry of Funds and Regional Policy: Zasady horyzontalne – Ministerstwo Funduszy i Polityki Regionalnej (funduszeuropejskie.gov.pl). iii. Annex 3 – Copy of Criteria for selecting the final recipients of support for projects under investment A1.4.1. “Investments for the diversification and shortening of the supply chain of agricultural and food products and building the resilience of the entities participating in the chain”, approved by the Minister of Agriculture and Rural Development on 26 May 2022, following public consultations, published on the website of the Ministry of Agriculture and Rural Development: Zapraszamy do udziału w konsultacjach społecznych! – Ministerstwo Rolnictwa i Rozwoju Wsi – Portal Gov.pl (www.gov.pl) and on the website of the Agency for Restructuring and Modernisation of Agriculture: https://www.gov.pl/web/arimr/krajowy-plan-odbudowy-i-zwiekszenia-odpornosci. iv. Annex 4 – Report of 25 May 2022, issued by the Ministry of Agriculture and Rural Development, from the public consultation on the selection criteria for investment A1.4.1 “Investments for the diversification and shortening of the supply chain of agricultural and 		

food products and building the resilience of the entities participating in the chain” which took place between 5-18 April 2022.

- v. **Annex 5 – Copy of the document of 3 October 2022, issued by the Agency for Restructuring and Modernisation of Agriculture, explaining the internal procedures** that the Agency for Restructuring and Modernisation of Agriculture follows to ensure consistency, transparency and to prevent double funding.

The authorities also provided:

- vi. **Annex 2 – Copy of the criteria for selecting the final recipients of support for projects as part of investment A1.4.1.** ‘Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of entities in the chain’, submitted for public consultation on 5 April 2022 and published under the link: [Zapraszamy do udziału w konsultacjach społecznych! – Ministerstwo Rolnictwa i Rozwoju Wsi – Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl/web/arimr/krajowy-plan-odbudowy-i-zwiekszenia-odpornosci)

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Following public consultation (...)

Public consultations of the draft selection criteria as evidenced by the Copy of the Criteria for selecting the final recipients of support for projects as part of investment A1.4.1. were held on 5-18 April 2022 using the interactive questionnaire form available on the website of the Ministry of Agriculture and Rural Development. In addition, as evidenced by the Report from the public consultation on the selection criteria for investment A1.4.1, on 8 April 2022, an invitation to participate in public consultations on the draft selection criteria was sent to the members of the Agricultural Alliance, the National Council of Agricultural Chambers, the National Union of Farmers, the Agricultural Circles and Organizations, and the Council of Women in Agriculture and other ministries with a request to submit comments. In total, 21 submissions were received. Most comments were made by farmers, representatives of agricultural chambers and producer organizations. The participants and comments submitted are described in the Report from the public consultations on the selection criteria for investment A1.4.1.

adoption of the criteria for the selection of beneficiaries

The final version of the criteria was adopted by the Minister of Agriculture and Rural Development on 26 May 2022, as evidenced in Annex 3 – Criteria for selecting the final recipients of support for projects under investment A1.4.1. The selection criteria were published on the website of the Ministry of Agriculture and Rural Development: [Zapraszamy do udziału w konsultacjach społecznych! – Ministerstwo Rolnictwa i Rozwoju Wsi – Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl/web/arimr/krajowy-plan-odbudowy-i-zwiekszenia-odpornosci) and on the website of the Agency for Restructuring and Modernisation of Agriculture: <https://www.gov.pl/web/arimr/krajowy-plan-odbudowy-i-zwiekszenia-odpornosci>.

The selection criteria are divided into three access criteria and eleven bonus criteria.

Those selection criteria specifically adopted for investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of entities in the chain” are complemented by the horizontal criteria applicable for all projects supported under the

RRP in Poland adopted by the Minister of Development Funds and Regional Policy on 29 November 2021, as evidenced in Annex 1 – Horizontal principles and criteria for selecting projects for the National Recovery and Resilience Plan, available at: <https://www.funduszeuropejskie.gov.pl/media/107285/przed.pdf>). Failure to comply with any horizontal criterion (assessment “0”) results in the exclusion of the project from further assessment and thus renders it impossible to finance the project under this measure unless the horizontal criterion in question implies the possibility of indicating and justifying the assessment “not applicable”. The same rule applies to three access criteria specific for measure A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” as evidenced in Annex 3 – Criteria for selecting the final recipients of support for projects under investment A1.4.1.

for all the projects under this investment.

The selection criteria adopted specifically for investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” are used for all competitions aimed at selecting all projects under this investment as described on the website of the Ministry: [Nabory wniosków – Ministerstwo Rolnictwa i Rozwoju Wsi – Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl).

The selection criteria shall follow the principles of non-discrimination and transparency.

The selection criteria follow the principle of non-discrimination since only the horizontal criteria as evidenced in Annex 1 – Horizontal principles and criteria for selecting projects for the National Recovery and Resilience Plan, as well as three access criteria as evidenced in Annex 3 – Criteria for selecting the final recipients of support for projects under investment A1.4.1, can result in the exclusion of the project from further assessment and thus renders it impossible to finance the project under this measure. Since they concern such conditions as confirming that the entity is active in the agricultural and food sector, or that the project is in line with objectives and the timeline of the RRP, they are not of a discriminative nature.

In addition, Criterion 5 from the Horizontal principles and criteria for selecting projects for the Recovery and Resilience Plan (Annex 1) requires from all projects supported under investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” to be compliant with the principle of equal opportunities and non-discrimination, including equal opportunities between women and men.

All selection criteria applicable for the investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of entities in the chain” are made publicly available on the website of the Ministry: [Informacje o planowanych naborach – Ministerstwo Rolnictwa i Rozwoju Wsi – Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl) as well as on the webpage of the Polish RRP as “upcoming calls”: [Nabory wniosków – Krajowy Plan Odbudowy – Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl). They are clearly described, publicly accessible and the discretion of experts assessing the applications is limited by their use. Therefore, by following the transparency principle, the criteria ensure transparency of the process.

The selection criteria shall give preference to the areas of:

- digitalisation

Bonus criterion 1 as evidenced in the Criteria for selecting the final recipients of support for projects under investment A1.4.1. “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” requires that the supported project results in the use of information and communication technologies by the final recipient of the

support. All applicants that fulfil this criterion will receive additional points in the competition which will give preference to the area of digitalisation.

- **job creation;**

Bonus criterion 2 as evidenced in the Criteria for selecting the final recipients of support for projects under investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” verifies if the project is implemented in districts with a disadvantage on the labour market. The criterion requires checking if the registered unemployment rate in the district where the project is being implemented is above the average registered unemployment in the country.

All applicants that fulfil this criterion receive additional points in the competition which will give preference to the area of job creation.

- **environmental protection and sustainable food production practices;**

Access criterion 3 as evidenced in the Criteria for selecting the final recipients of support for projects under investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” requires from all the projects to ensure the safe removal of listed elements harmful to the environment. It is verified whether the disassembled elements are collected or disposed.

In addition, bonus criterion 5 from the selection criteria adopted for investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” promotes projects that involve the production or marketing of organic food, or processing of organic products which belong to sustainable food production practices.

All applicants that fulfil those criteria receive additional points in the competition which will give preference to the area of environmental protection and sustainable food production practices.

- **the circular economy, including actions related to preventing food waste.**

Bonus criterion 10, as evidenced in the Criteria for selecting the final recipients of support for projects under investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” promotes projects where the final recipient was continuously engaged in the storage, preparation or distribution of food or the provision of meals free of charge for a period of at least 2 years. This criterion will be used in the special competition focused on supporting robotization involved in the redistribution of food from its sellers (mainly from retail chains) for charity purposes, thus contributing to preventing food waste and supporting the objectives of the circular economy. The activities of final recipients in this area (usually non-governmental organisations and food banks) are regulated by the provisions of the Act of 19 July 2019 on counteracting food waste (Journal of Laws 2019 item 1680).

All applicants that fulfil this criterion receive additional points in the competition which will give preference to the area of environmental protection and the circular economy, including actions related to preventing food waste.

The application and verification process shall be carried out by the Agency for Restructuring and Modernisation of Agriculture (ARMA), in order to ensure consistency, transparency, and prevent double funding.

The application process has been launched and the verifications are carried out by the Agency for Restructuring and Modernisation of Agriculture, as evidenced by the Agency’s webpage: [Krajowy Plan Odbudowy i Zwiększania Odporności – Agencja Restrukturyzacji i Modernizacji Rolnictwa – Portal Gov.pl \(www.gov.pl\)](https://www.gov.pl).

In addition, the Agency for Restructuring and Modernisation of Agriculture follows the rules described in the internal note adopted on 3 October 2022 (No. ZP- -DOPI.844.1.2022.KK) and submitted as Annex 5, to ensure consistency and transparency (Part III of the document) as well as to prevent double funding (Part IV of the document).

Furthermore, in line with the description of the measure, it is expected that this measure does not do significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852, taking into account the description of the measure and the mitigating steps set out in the recovery and resilience plan in accordance with the DNSH Technical Guidance (2021/C 58/01).

As evidenced by the Horizontal principles and criteria for selecting projects for the National Recovery and Resilience Plan (Annex 1), the selection criterion requires from all projects supported under investment A1.4.1 “Investments to diversify and shorten the supply chain of agricultural and food products and build the resilience of the entities in the chain” to be compliant with the principle of ‘do no significant harm’ (DNSH). Furthermore, according to the definition of this criterion, compliance is verified following the rules in the RRF Regulation and the Technical Guidance (2021/C 58/01) on the application of the principle of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A27G	Related Measure: A2.1 Accelerating robotisation and digitalisation and innovation processes	
Name of the Milestone: Entry into force of a new law for supporting the automation and digitisation and innovation of enterprises by introducing a tax relief for robotisation		
Qualitative Indicator: Provision in the new law for supporting the automation and digitisation and innovation of enterprises indicating its entry into force		Time: Q2 2022
<p>Context: The measure aims to strengthen demand for innovation by accelerating the deployment of innovative technologies in the business sector.</p> <p>Milestone A27G requires the introduction of a tax relief for the purchasing of robots for production processes by businesses and entrepreneurs. To that end, the tax relief should allow all businesses and entrepreneurs to write-off part of robotisation-related costs from their tax base at the end of the tax year.</p> <p>Milestone A27G is the only milestone or target of this reform. The reform has a final expected date for implementation on 30 June 2022.</p>		

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of the Act of 29th October 2021 amending the Corporate Income Tax Act, Personal Income Tax Act and certain other acts** (Journal of Laws 2021, item 2105) introducing the robotisation tax relief.
- iii. **Copy of the Act of 16th November 2022 amending the Act on tax on certain financial institutions and certain other acts** (Journal of Laws 2022, item 2745) updating the robotisation tax relief with the DNSH requirement.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of a new law for supporting the automation and digitisation and innovation of enterprises by introducing a tax relief for robotisation

The Act of 29 October 2021 amending the Corporate Income Tax Act, Personal Income Tax Act and certain other acts (Journal of Laws from 2021 item 2105) introducing the robotisation tax relief, referred to as '*the amending Act I*' thereof, entered into force on 1 January 2022 in accordance with its Article 89, with the exception of certain provisions, which entered into force on 1 January 2024 in accordance with its Article 89 (4), but they are not relevant for the fulfilment of the milestone.

The Act of 16 November 2022 amending the Act on tax on certain financial institutions and certain other acts (Journal of Laws from 2022, item 2745) updating the robotisation tax relief with the DNSH requirement, referred to as '*the amending Act II*' thereof, entered into force on 1 January 2023 in accordance with its Article 6, with the exception of certain provisions, which entered into force on 1 February 2023 in accordance with its Article 6(1)(2), but they are not relevant for the fulfilment of the milestone.

A new law shall introduce a tax relief so that an entrepreneur shall be entitled to an additional write-off of part of the robotisation costs from the tax base at the end of the tax year. The tax relief shall be available to all entrepreneurs regardless of their size and place of business.

Article 2 (76) of the amending Act I added a new article 38eb to the Corporate Income Tax Act of 15 February 1992. Article 38eb (1) allows enterprises to deduct 50 % of the robotisation costs incurred in a year from their tax base at the end of the tax year, regardless of their size and place of business.

Article 1 (80) of the amending Act I added a new article 52jb to the Personal Income Tax act of 26 July 1991. Article 52jb (1) allows any taxable person, including entrepreneurs, to deduct 50 % of the robotisation costs incurred in a year from their tax base at the end of the tax year, regardless of their size and place of business.

The following costs shall be considered to be eligible: costs of purchasing new robots; machines and peripheral devices for robots functionally related to them; machines, devices and other things functionally related to robots, used to ensure ergonomics and work safety; machines, devices or systems for remote management, diagnosis, monitoring or servicing of robots; human-machine interaction devices for cobots or high- sensitivity robots; costs of intangible assets concerning fixed assets mentioned above; costs of training services concerning robots; fees referred to leasing agreements concerning fixed assets listed above, if after the end of the basic period of the leasing contract the ownership of the fixed assets is transferred to the taxpayer.

Article 2 (76) of the amending Act I added a new article 38eb into the Corporate Income Tax Act of 15th February 1992. Article 38eb specifies that the following is regarded as a cost incurred for robotisation for the purposes of the tax relief: (2.1a) *'the acquisition of new items, in particular industrial robots'*; (2.1b) *'machinery and peripheral equipment for industrial robots'*; (2.1c) *'machinery, equipment and other objects functionally linked to industrial works intended to ensure ergonomics and occupational safety in relation to workstations where human interaction with an industrial robot occurs, in particular sensors, controllers, relays, locks without baking, physical barriers (fences, guards) or opto-electronic protective devices (light curtains, area scanners)'*; (2.1d) *'machines, equipment or systems for the remote management, diagnosis, monitoring or servicing of industrial robots, in particular sensors and cameras'*; (2.1e) *'devices for human-man-machine interactions for industrial robots'* (which should be interpreted including cobots or high- sensitivity robots, which are robots allowing for a direct human-robot interaction); (2.2) *'the acquisition costs of intangible assets necessary for the proper commissioning and acceptance of industrial robots and other fixed assets referred to in point 1 of Article 38eb'*; (2.3) *'the cost of acquiring training services for industrial robots and other fixed or intangible assets referred to in points 1 and 2 of Article 38eb'*; (2.4) *'the fees related to leasing agreements concerning the fixed assets listed under article 38eb 1 and 2, if after the expiry of the lease term, the lessor transfers ownership of those fixed assets to the beneficiary'* (the concerned fees for leasing and related conditions are listed in Article 17b and Article 17f of the Corporate Income Tax Act of 15 February 1992).

Article 1 (80) of the amending Act I added a new article 52jb into the Personal Income Tax act of 26th July 1991. Article 52jb specifies that the following is regarded as a cost incurred for robotisation for the purposes of the tax relief: (2.1a) *'the acquisition of new items, in particular industrial robots'*; (2.1b) *'machinery and peripheral equipment for industrial robots'*; (2.1c) *'machinery, equipment and other objects functionally linked to industrial works intended to ensure ergonomics and occupational safety in relation to workstations where human interaction with an industrial robot occurs, in particular sensors, controllers, relays, locks without baking, physical barriers (fences, guards) or opto-electronic protective devices (light curtains, area scanners)'*; (2.1d) *'machines, equipment or systems for the remote management, diagnosis, monitoring or servicing of industrial robots, in particular sensors and cameras'*; (2.1e) *'devices for human-man-machine interactions for industrial robots'*; (2.2) *'the acquisition costs of intangible assets necessary for the proper commissioning and acceptance of industrial robots and other fixed assets referred to in point 1 of Article 52jb'*; (2.3) *'the cost of acquiring training services for industrial robots and other fixed or intangible assets referred to in points 1 and 2 of Article 52jb'*; (2.4) *'the fees related to leasing agreements concerning the fixed assets listed under Article 52jb', if after the expiry of the lease term, the lessor transfers ownership of those fixed assets to the beneficiary'* (the concerned fees for leasing and related conditions are listed in Article 23b and Article 23f of the Personal Income Tax Act of 26th July 1991).

It is expected that this measure does not do significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852, taking into account the description of the measure and the mitigating steps set out in the recovery and resilience plan in accordance with the DNSH Technical Guidance (2021/C 58/01). In particular, the reform shall support low-impact investments which are technologically neutral at the level of their application.

Article 3 of the amending Act II added a new paragraph 5a to Article 38eb of the Corporate Income Tax Act. Similarly, Article 2 of the amending Act II added a new paragraph 5a to the Article 52jb of the Personal Income Tax Act. In accordance with the newly added provisions, the following activities and assets are excluded from the tax relief for robotization purposes:

- a) Assets and activities referred to in Article 2(1) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, unless the projected GHG emissions are below the average value of the 10 % most efficient installations in 2016 and 2017 (tCO₂ equivalents/t) and below the benchmark value (allowances/t) for 2021-2025, set out in the Commission Implementing Regulation (EU) 2021/447;
- b) Activities related to mining, particularly related to the extraction or storage of fossil fuels and activities consisting of the conversion, distribution or combustion of fossil fuels, with the exception of projects for the generation of electricity or heat and associated transmission and distribution infrastructure, which meet the conditions laid down in Annex III to the EC Technical Guidelines on the application of the ‘Do no significant harm’ principle (2021/C58/01);
- c) Activities or assets related to landfills, waste incineration plants, or mechanical biological treatment installations.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A38G	Related Measure: A2.4 Strengthening cooperation mechanisms between science and industry	
Name of the Milestone: Entry into force of an act amending the law on higher education and science with regard to the catalogue of entities that may create special purpose vehicles together with universities		
Qualitative Indicator: Provision in the act amending the law on higher education and science indicating its entry into force		Time: Q1 2022
Context: The measure aims to strengthen cooperation between science and industry in Poland, with a view to encourage technological transfer and innovation. Milestone A38G concerns the entry into force of an act amending the Law on Higher Education and Science to allow for the creation of special purpose vehicles (SPV) for the commercialisation of research and development (R&D) results. To this end, the milestone requires a broadening of the categories of entities with which universities should be able to create SPV.		

Milestone A38G is the first milestone of the reform, and it is accompanied in this payment request by milestone A39G on the establishment of the rules for the use of laboratories and knowledge transfer of institutes supervised by the Ministry of Agriculture and Rural Development.

The reform has a final expected date for implementation on 31 March 2022.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;
- ii. **Copy of the Act of 7 October 2022 amending certain acts to simplify administrative procedures for citizens and businesses**, published in the Official Journal on 26 October 2022 (Journal of Laws 2022, item 2185).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of an act amending the law on higher education and science with regard to the catalogue of entities that may create special purpose vehicles together with universities. Furthermore, in line with the description of the measure, **these shall be research institutes, institutes of the Polish Academy of Sciences and institutes of the Łukasiewicz Research Network.**

Article 42 paragraph 1 of the Act amending certain acts to simplify administrative procedures for citizens and businesses introduced a new Article 150a to the Act of 20 July 2018 on the law on higher education and science provides the possibility for universities to create special purpose vehicles (SPVs) in which research institutes, institutes of the Łukasiewicz Network or institutes of the Polish Academy of Sciences may be shareholders or partners together with universities. Until now, only universities could be partners or shareholders in a special purpose vehicle (article 150 of the Act of 20 July 2018 on higher education and science, Journal of Laws 2018, item 1668).

In accordance with the provision of its Article 81, the Act amending certain acts to simplify administrative procedures for citizens and businesses entered into force 14 days after the date of publication, i.e., on 10 November 2022.

The Council Implementing Decision states: **‘The amending act shall allow for the creation of special purpose vehicles designed especially for the commercialisation of R&D results.’** The Council Implementing Decision also indicates, in the name of the milestone, that the milestone shall provide for the **‘entry into force of an act amending the law on higher education and science with regard to the catalogue of entities that may create special purpose vehicles together with universities.’** Therefore, the name of the milestone provides for the change of the catalogue of entities that may create special purpose vehicles together with universities. The Recovery and Resilience Plan provides for the following description of the corresponding reform 4.2: “Within the scope of the reform, measures will be provided to complement the indirect commercialisation system already envisaged for universities by allowing research institutes, institutes of the Łukasiewicz Research Network and institutes of the Polish Academy of Sciences to be included in the catalogue of potential shareholders

or partners in special purpose vehicles. This may contribute to increasing the efficiency of knowledge transfer and commercialisation processes.”

Given the above, the milestone should be interpreted to require that the catalogue of entities that may create special purpose vehicles together with universities be amended (see the analysis of the fulfilment of this requirement above) rather than that the possibility of creating special purpose vehicles designed especially for the commercialisation of research and development results be created. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A39G	Related Measure: A2.4 Strengthening cooperation mechanisms between science and industry	
Name of the Milestone: Establishment of rules for the use of laboratories and knowledge transfer of institutes supervised by the Minister of Agriculture and Rural Development		
Qualitative Indicator: Document containing the established rules		Time: Q1 2022
<p>Context:</p> <p>The measure aims to strengthen cooperation mechanisms between science and industry in Poland, with a view to encourage technological transfer and innovation.</p> <p>Milestone A39G relates to establishing rules for the use of laboratories and knowledge transfer of institutes supervised by the Minister of Agriculture and Rural Development. The rules shall determine the procedures regarding the use of the research infrastructure within science-science and science-business cooperation and shall follow the principles of non-discrimination and transparency.</p> <p>Milestone A39G is the second and last milestone or target of the reform, and it is accompanied in this payment request by milestone A38G concerning the entry into force of an act amending the Law on Higher Education and Science to allow for the creation of special purpose vehicles (SPVs) for the commercialisation of research and development (R&D) results.</p> <p>The reform has a final expected date for implementation on 31 March 2022.</p>		

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of** the publication in the Bulletin of Public Information on the website of the Ministry of Agriculture and Rural Development of **the recommendations of 31 March 2022 of the Minister of Agriculture and Rural Development related to the principles of using research infrastructure as well as knowledge transfer and the commercialization of scientific research results and development works** (hereafter called "Recommendations") as published on the website of the Ministry of Agriculture and Rural Development under the link: <https://www.gov.pl/web/rolnictwo/realizacja-kamienia-milowego-reformy-a24-kpo>.
- iii. **Explanatory note of 9 November 2022** issued by the Ministry of Agriculture on how the provisions follow the principles of non-discrimination and transparency.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular, the following:

- **The rules for the use of laboratories and knowledge transfer shall determine the procedures regarding the use of the research infrastructure within science-science and science-business cooperation.**

The Council Implementing Decision required that rules must be established for the use of laboratories and knowledge transfer of institutes supervised by the Minister of Agriculture and Rural Development. The Minister of Agriculture and Rural Development however adopted recommendations of 31 March 2022. Whilst this constitutes a minimal formal deviation from a formal requirement of the Council Implementing Decision, it is acceptable considering that pursuant to Article 14 (1) of the Recommendations "*the Directors of the Institute shall implement these Recommendations at the Institutes no later than 31 December 2022*". It should also be noted that in the Polish administration, recommendations are used to instruct the public entities that are under supervision of a minister. In light of the foregoing, these recommendations consist of a set of rules that are binding on the institutes by the Minister. As of this, this minimal deviation does not affect the progress towards achieving the reform that the milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

It is noted that the Recommendations also contain provisions to the benefit of subordinated units under the supervision of the Ministry of Agriculture and Rural Development:

- Article 9 (1) of the Recommendations for example determines that the provision of research infrastructure to units subordinate to or supervised by the Minister for Agriculture and Rural Development, can be done free of charge.

- Article 10 (3) of the Recommendations furthermore states that the institutes shall ensure that subordinate or supervised entities of the Minister for Agriculture and Rural Development have access free of charge to the information contained in the Research Infrastructure Database.

Article 1(12) and article 10(4) of Recommendations provide that laboratories are part of the research infrastructure.

Article 4 of Recommendations sets out the rules, including procedural rules, for the **use of research infrastructure**. In particular, article 4(1) requires that research institutes use research infrastructure in response to the needs of the State's economic, innovative and scientific policies, as well as for the purposes of knowledge transfer and the implementation of research results. Article 4(12) requires that the use of research infrastructure is based on a contract or agreement concluded with the party/entity that will make use of the research infrastructure. In addition, Article 4(6) establishes that, once a financing contract for the use of research infrastructure is signed, it should be carefully checked that the use of research infrastructure is in line with the provisions set out in the contract. Article 4(9) and article 4(10) establish that institutes make the research infrastructure available free of charge to other entities subordinate to or supervised this should close by the Minister responsible for rural development, as well as to third parties, as long as the research projects are consistent with the activities set out in the Recommendations, particularly under Article 4(1).

The Recommendations also establish rules and procedures regarding the **use, sharing and protection of intellectual property rights** related to the use of the research infrastructure (Article 11). In particular, Article 11(2) sets out that the process for the protection of intellectual property rights (referred to as "Intellectual Property Protection Process"). In accordance with Article 11(12), the Commercialization cell should provide Recommendations to the Director (as further defined in Article 1(2)) of the research institute regarding the way in which intellectual property protection of the research results should be ensured. The Director should then decide how intellectual property protection should be ensured, and in particular the choice of the form of legal protection.

The Recommendations also set out the rules and procedures for the **commercialization of research results** under article 12. Article 12(4) indicates that, if appropriate, the institute should carry out an assessment of the commercial potential of intellectual property, consisting of (i) an analysis of the commercial potential of an intellectual property-based solution or technology; (ii) the identification of potential markets, users and recipients, (iii) identify opportunities and barriers to preparation organization and commercialization, and (iv) prepare a business model for a given commercialization. An assessment of the commercial value of intellectual property should also be carried out by means of an external valuation order.

The Recommendations cover the use of research infrastructure both within the context of science-science cooperation, and within the context of science-business cooperation .

- The science-science cooperation is for example covered by Article 4(9), which states as follows: "*Institutes may make the Research Infrastructure available free of charge or against payment to other entities subordinate to or supervised by the Minister responsible for rural development for purposes relating to the performance of their own or their primary, ancillary activities, including for the performance of tasks arising from the consortium agreement or within the cluster in a manner consistent with its intended purpose, these recommendations and legal provisions*".

- The science-business cooperation is covered by Article 4(10), which states as follows: *“Institutes may make research infrastructures available against payment to third parties for the purposes of carrying out research projects and other activities, in particular scientific activities, including the implementation of projects resulting from the consortium agreement, in a manner consistent with its intended purpose, these recommendations and legal provisions.”*
- **The provisions shall follow the principles of non-discrimination and transparency.**

The Recommendations include two articles that ensure that the research infrastructure is used in a non-discriminatory and transparent manner. In particular:

- In accordance with Article 4(8), the use of research infrastructure in business activities (including making them available to others) must be carried out on an equal and non-discriminatory basis.
- In accordance with Article 11(3), persons taking part in the intellectual property protection process should act objectively, without undue delay, on a clear and transparent basis, and in a legally compliant manner.

Transparency was also ensured by:

- consulting both the organisational units of the Ministry and the supervised research institutes prior to approval by the Minister for Agriculture and Rural Development and publication in the Ministry of Agriculture and Rural Development’s Public Information Bulletin.
- publishing the Recommendations on the Ministry’s website: <https://www.gov.pl/web/rolnictwo/realizacja-kamienia-milowego-reformy-a24-kpo>.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A59G	Related Measure: A4.2 Reform to improve the labour market situation of parents by increasing access to childcare for children up to the age of three	
Name of the Milestone: Entry into force of an act amending the Act on the care of children up to three years of age aimed at changing the organisation of the system of financing care for children up to the age of three with a view to implementing a single coherent financing management system for creation and functioning of the childcare services for children up to the age of three		
Qualitative Indicator: Provision in the act amending the Act of 4 February 2011 on the care of children up to three years of age indicating its entry into force	Time: Q2 2022	
Context: The objective of this reform is to improve access to childcare facilities by reorganising the system of financing for care of children up to three years, including by providing for stable long-term financing and setting up quality standards for education and care. The milestone requires amending the Act of 4 February 2011 on the care of children up to three years of age to combine various financial streams that support the creation and functioning of the childcare facilities into one financing management system that should be organised in the framework of the Maluch+ programme.		

Milestone A59G is the first step in the implementation of the reform, and it will be followed by milestone A57G, related to the adoption of quality standards for childcare, and milestone A58G on entry into force of the act amending the Act on the care of children up to three years of age ensuring a stable long-term domestic financing of the childcare services for children up to the age of three.

The reform has a final expected date for implementation on 30 June 2024.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;
- ii. **Copy of the Act of 17 November 2021** on family care capital, published in the Journal of Laws in 2021, item 2270, with the relevant provisions that entered into force on 1 April 2022.

The authorities also provided:

- iii. **Copy of the Programme** for the development of childcare institutions for children up to the age of 3 "Maluch+" 2022-2029 issued by the Minister of Family and Social Policy on 19 January 2023 and published on the same date on the ministerial website:
<https://www.gov.pl/web/rodzina/ogloszenie-nabor-wnioskow-o-dofinansowanie-na-zadan-z-zakresu-rozwoju-instytucji-opieki-nad-dziecmi-w-wieku-do-lat-3-maluch-2022-2029>.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of an act amending the Act of 4 February 2011 on the care of children up to three years of age [...]

Article 48(10) of the Act of 17 November 2021 on family care capital ("Act of 2021") amended article 62 of the Act of 4 February 2011 on the care of children under the age of three. By virtue of the article 58(1) of the Act of 2021, its article 48(10) entered into force on 1 April 2022.

[...] shall streamline the management of financing of the creation and functioning of the childcare facilities by:

- implementing a single coherent financing management system for the creation and functioning of the childcare services for children up to the age of three;

Article 48(10) of the Act of 2021 introduced a new wording of article 62(4) of the Act of 4 February 2011 on the care of children under the age of three that facilitates the access to resources for the creation and functioning of the childcare facilities coming from the different sources – state budget, Labour Fund, European funds by applying for these resources under one management system.

A single coherent financing management system for the creation and functioning of the childcare services for children up to the age of three had been implemented by the decision of the Minister of

Family and Social Policy from 19 January 2023 on establishing the multi-annual Maluch+ programme for the period 2022-2029 for the creation and functioning of childcare facilities.

Prior to the entry into force of the Act of 2021, there were different schemes supporting childcare institutions for children up to the age of three: operational programmes that distributed the cohesion policy resources and managed by the regional authorities and the governmental programme providing for state resources. Both schemes followed different rules and often competed against each other.

Article 62 of the Act of 4 February 2011 on the care of children under the age of three was further changed by Article 49(4) of the Act of 7 July 2023 on support service (Journal of Laws 2023, item 1429) that entered into force on 10 August 2023 in accordance with Article 71(3) of this Act. By this act, a new point 1a was added to article 62 which specifies that programmes for supporting the creation and functioning of childcare facilities may be financed from the state budget, Labour Fund, the Cohesion Policy and the Recovery and Resilience Facility (RRF): this explicitly spells out the RRF resources and cohesion policy resources as the law previously used the generic category 'European funds'. The act on support service was not submitted by Poland with the payment request, neither was it mentioned in the summary document. Nevertheless, the Commission services were bound to verify whether it may affect the fulfilment of the milestone. After having assessed these provisions, the Commission services conclude that article 49(4) of the Act of 7 July 2023 on support service does not change the substance of article 48(10) of the act on family care capital ("Act of 2021").

In accordance with the Recovery and Resilience Plan submitted by Poland in May 2021, the reform shall include the amendment of the Act of 4 February 2011 on the care of children under the age of three and development of the multiannual Maluch+ programme. In addition, with regard to implementation, the Plan states that there will be a multi-annual programme for the development of childcare institutions for children up to 3 years old, in which RRF funds will be a source of funding for one of the modules. The CID Annex must be read in such a way that a change in the law is required in order to implement the reform, however, as follows from the Plan submitted by Poland, implementation does not require a legislative amendment but is to be achieved through the establishment of a multi-annual programme. As indicated above, both requirements are fulfilled.

bringing the management of funds coming from various financing sources under the Maluch+ programme. Furthermore, in line with the description of the measure, **the reform shall consist of setting up a dedicated multi-annual programme for the creation and functioning of childcare facilities.**

The dedicated multi-annual programme for the creation and functioning of childcare facilities was set up on 19 January 2023 and is called "Programme for the development of childcare institutions for children up to the age of 3 "Maluch+" 2022-2029".

Chapter 2 of the "Maluch+" 2022-2029 Programme sets out, among its objectives, the concentration of different sources of funding under the management of the Minister of Family and Social Policy which cater for better coordination of the policy actions in the field of childcare. (Chapter 2 Introduction, Section 2.1 Programme objective, page 4-5).

The sources of funding for the programme are described in Chapter 5 'Funding'. This chapter includes also the amounts allocated to this programme coming from the RRF, cohesion policy and national resources (Section 5.1 Funding of Programme Activities and Amount of Funding Requested, p. 21). According to Section 5.2 of the same chapter, the Minister for family affairs is responsible for the breakdown of resources allocation in accordance with the criteria described therein (p. 22-24).

Furthermore, in line with the description of the measure, **the amendment shall bring together the management of three distinct financing sources for the creation and functioning of childcare facilities: domestic financing, European Social Fund+ and the Recovery and Resilience Facility.**

Article 62(1a) of the Act of 4 February 2011 on the care of children under the age of three, as amended by Article 49(4)-point a) of the Act of 7 July 2023 on support service, stipulates that programmes set up to support the creation and functioning of childcare facilities may be financed from:

- State budget subsidies
- Labour Fund resources
- European Structural Funds (this mean ESF+)
- European Funds referred to in Article 5(3) point 1 of the Act of 27 August 2009 on the public finances (Journal of Laws 2023, item 1270) (which means Recovery and Resilience Facility).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A60G	Related Measure: A4.2.1. Support for childcare facilities for children up to three years of age (nurseries, children’s clubs) under Maluch+.	
Name of the Milestone: Creation of an IT system to manage the financing and creation of childcare facilities for children up to the age of three, that shall combine different sources of financing childcare.		
Qualitative Indicator: Fully functioning IT system		Time: Q2 2022
<p>Context:</p> <p>The measure aims to increase the accessibility of institutional forms of care for children below 3 years of age by providing financial support for the creation of new places and setting the financing management system of childcare facilities.</p> <p>Milestone A60G provides for the creation and deployment of an operational IT system that comprises of different sources of financing to manage the creation and the running of childcare facilities for children up to three years of age.</p> <p>Milestone A60G is the first milestone of this investment, and it will be followed by target A61G, related to the support for childcare facilities for children up to three years of age. The investment has a final expected date for implementation on 30 June 2026.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of ‘Handover protocol for RZ (RZ – Rejestr Żłobków/Nursery Register) software, version 4.15.0, ZMO-05’ signed on 4 February 2022 by the representative of the contractor and representative of the contracting authority (the Ministry of Family and Social Policy) confirming that the new Maluch+ module has been transferred to the appropriate ministerial server. 		

- iii. **Copy of ‘Test scenarios for change RZ2022_03 Maluch+’** that describe the type of tests carried out on new Module, confirmation of passing of all these tests, signed by the representative of the contracting authority (the Ministry of Family and Social Policy) on 4 February 2022.
- iv. **Copy of ‘Protocol validating the delivered RZ software ZMO-06’** confirming that no mistake has been found in the software, signed by the representative of the contracting authority (the Ministry of Family and Social Policy) on 4 February 2022.
- v. **Link to the IT system** with credentials to access the test environment:
<https://rejestrzlobkowtest.mpips.gov.pl:8443>

The authorities also provided:

- vi. **Video recording of the on-the-spot-check** made on 14 December 2023 by the Commission services.
- vii. **Material of 18 January 2023 concerning further specific information regarding the fulfilment of the milestone following the on-the-spot-check**, prepared by the Ministry of Family and Social Policy (hereafter called “Ministerial material”).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Fully functioning IT system

The full operationalisation of the IT system is certified by the contracting authority, which confirmed that the software passed all the tests through the ‘Test scenarios for change RZ2022_03 Maluch+’.

Secondly, the Commission services performed an on-the-spot-check on 14 December 2023 in the form of a videoconference, where the contractor presented all the functionalities of the IT system and the contracting authority explained how these functionalities correspond with the requirements of the Maluch+ programme. The on-the-spot check confirmed that the IT system is fully functioning, and it was finalised by the and this was documented in a summary note registered in the Commission's digital archive ARES.

Finally, the Commission services received temporary access to the IT system, by which they could log in to the system to check how it is operating and what functionalities are available at the three different levels (municipalities, regional authority – voivod, and national authority – the Ministry of Family and Social Policy). The checks carried out through the temporary access to the IT system on 2 February 2024 confirmed the findings from the on-the-spot-check.

Creation and deployment of an operational IT system (or the expansion of one of the existing systems) [...].

Poland expanded the existing Nursery Register system (*Rejest żłobków*) by a new module no. 2 that enables municipalities (that is, entities creating and running childcare institutions) to apply for the financing and creation of childcare facilities from the Maluch+ programme (‘Protocol validating the delivered RZ software ZMO-06’). The Nursery Register is a system established under Act of 4 February 2011 on childcare for children up to the age of three (Section 3, article 26 et seq.)

[...] which shall be used to support projects by the final recipients of the financial support, namely entities creating and running childcare institutions [...]

The Council Implementing Decision requires the IT system to be used by the final recipients of the financial support During the on-the-spot-check on 14 December 2022, the Commission services found

that access to the Module 2 of the Nursery Register is limited to municipalities (public entities that create and run childcare institutions) and does not concern private entities. Whilst this constitutes a minimal substantive deviation from the requirement of the Council Implementing Decision, it should be noted that private entities creating and running childcare institutions apply for the financial support for creating and running childcare institutions through the Emp@tia portal that, while not being part of the Module 2 of the Nursery Register, is integrated with it. Module 2 allows voivods for handling the applications for the MALUCH+ 2022-2029 programme support, which are submitted by entities other than the municipality via the Emp@tia portal. Therefore, the IT system supports projects submitted by all final recipients - public and private entities creating and running childcare institutions. As of this, this minimal deviation does not change the nature of the measure and does not affect the progress towards achieving the investment that the milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

As referred to in section 6 (Formal requirement for submitting the applications) of the Maluch+ Programme for 2022-2029, municipalities may apply for the support through Module 2 of the Nursery Register exclusively. This means that there is no other option that a municipality may apply for the creation and the running of childcare facilities. Likewise, private entities may only apply for this support through the Emp@tia portal.

The outcomes of the first call for support for financing the creation and functioning the childcare facilities confirmed that the IT tool had been used by the final recipients. 2 256 applications were submitted, of which 1 008 were submitted by municipalities (45%) and 1,248 by other entities (55%). A total of 991 applications from municipalities and 1 069 from non-public entities were qualified for the support <https://www.gov.pl/web/rodzina/wyniki-pierwszego-naboru-wnioskow>.

[...] at every stage of their implementation.

As shown during the on-the-spot-check on 14 December 2022 the final recipient of support may implement its project, consisting in creating care places, in stages. If the entity decides to do so, it successively registers new care places (corresponding to new stages of the implementation of a project) in the Nursery Register system.

Each stage of the implementation of a project represents a defined pool of new care places being created (e.g. 10 care places have been registered out of 40 planned) and is subject to separate monitoring and accountability in the IT system. This is confirmed in Section 8 'Encoding data of the concluded agreement between the regional authority and the final recipient into the Nursery Register - regional user' of the Ministerial material, p. 18-20.

The system shall be used by institutions supervising and implementing the reform as well.

Access to the Nursery Register Module 2 can be granted at three levels of authorisation:

- municipal user – for final recipients;
- regional user – for the voivods (implementing bodies);
- central user - level of the Ministry of Family and Social Policy (supervisory body).

Each level has its own functionalities.

As has been presented during the on-the-spot-check on 14 December 2023, the voivod qualifies applications for support in Module 2 of the Nursery Register system. The voivod communicates with the applicant through the IT system at the stage of examination of the application. For instance, if the application fails to comply with formal or substantial requirements, the voivod returns the application

to the municipality asking for a correction via the system. (See also Section 4 'Handling of the application by the voivod office' p. 9-10 of the Ministerial material).

The Commission services saw as well during the on-the-spot-check on 14 December 2023 how the central user can encode in the system the essential data to launch a call for applications for financial support under the programme. Municipal users are informed about the publication of the call via the IT system (see Section 2 'Establishment of the MALUCH+ 2022-2029 edition - central user (Ministry of Family and Social Policy)' of the Ministerial material page 5). For each edition of the Maluch+ programme, the central user defines basic parameters such as the allocated amount according to the algorithm, sources of financing and deadlines (pages 6 and 11-12 of the Ministerial material).

The fact that this system was used by the institutions supervising and implementing the reform is confirmed by the launch and award of the first call for applications under the new Maluch+ Programme for 2022-2029. The call for applications specifies that municipalities can only apply using Module 2. <https://www.gov.pl/web/rodzina/ogloszenie-nabor-wnioskow-o-dofinansowanie-na-zadan-z-zakresu-rozwoju-instytucji-opieki-nad-dziecmi-w-wieku-do-lat-3-maluch-2022-2029>. This means that the Ministry, acting as the central user, had to enter data into the system as described above.

The information on the outcome of the call provides that 991 applications submitted by the municipalities and 1069 applications of non-public entities were qualified, which substantiates the fact that the voivods had to handle the applications in Module 2 of the Nursery Register system that municipalities submitted electronically via Module 2 and private entities via Emp@tia portal. <https://www.gov.pl/web/rodzina/wyniki-pierwszego-naboru-wnioskow>

The Council Implementing Decision also requires **that the system shall combine different sources of financing childcare (European funds, national financing from the central budget, local governments financing)**. In the new module 2 of the Nursery Register concerning the Maluch+ programme, a new functionality has been added for applying for resources from the national budget, the Recovery and Resilience Facility (RRF) and cohesion policy programmes. This does not concern local government financing. Whilst this constitutes a minimal substantive deviation from the requirement of the Council Implementing Decision, it should be noted that the municipalities (local government entities) are the ones responsible for creating and running childcare institutions (Article 8(1) of Act of 4 February 2011 on the care of children under the age of three in relation to the article 7(1) point 6a of the Act of 8 March 1990 on municipal self-government, Journal of Laws in 2023, item 40), have their own resources dedicated for this purpose and do not need to apply for them. Moreover, the IT system only mirrors the rules of the Maluch+ Programme which has been created as a state (central government) support to municipalities and private entities for creation or functioning of childcare places. As of this, this minimal deviation does not change the nature of the measure and does not affect the progress towards achieving the investment A4.2.1. that this milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: A62G	Related Measure: A4.3 Implementation of the legal framework for social economy entities
Name of the Milestone: Entry into force of an act on the social economy	

Qualitative Indicator: Provision in the act on the social economy indicating its entry into force	Time: Q2 2022
Context: <p>The objective of this reform is to set up a framework for the functioning of the social economy sector. This should lead to an increase in the professional activity rate of people at risk of social exclusion and to support the deinstitutionalisation of social services.</p> <p>Milestone A62G concerns the introduction of social enterprise as a new entity in this sector, as well as a new framework of cooperation between social economy enterprises and the local authorities.</p> <p>Milestone A62G is the only milestone of this reform which has a final expected date for implementation on 30 June 2022.</p>	
Evidence provided: <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of the Act of 5 August 2022 on the social economy, published in the Official Journal of 2022, item 1812, https://dziennikustaw.gov.pl/DU/2022/1812. 	
Analysis: <p>The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone. In particular:</p> <p>Entry into force of an act on the social economy. Furthermore, in line with the description of the measure, the reform shall consist of an adoption of a law on the social economy.</p> <p>In accordance with its article 86, the Act on the social economy entered into force two months after the date of publication i.e., on the date of 6 October 2022, with the exception of Article 67 and Article 72pt. 2(b) and pt. 3, which entered into force on 1 January 2023.</p> <p>[...] an act on the social economy which shall regulate the basic issues related to this sector, including in particular:</p> <ul style="list-style-type: none"> • the definition of a social enterprise <p>Heading II of the Act “Social enterprise” defines the conditions for an entity to be considered as a “social enterprise” e.g. the rules for the organisation of social enterprises and the rules for obtaining or losing the status of a social enterprise. The definition of a “social economy entity”, which corresponds to ‘social enterprise’, is provided in Article 2, point 5 of the Act on the social economy.</p> <ul style="list-style-type: none"> • the principles of functioning and supporting a social economy enterprise <p>Chapter 1 (“Organisation and operating principles of a social enterprise”) of Heading II of the Act on the social economy provides the principles for the organisation and functioning of a social economy enterprise, e.g. the type of activity to be carried out (Article 3 para 1), the minimum number of persons employed in the enterprise, including the minimum number of people at risk of social exclusion (Article 5), the obligation to create an advisory body composed of all persons employed in the enterprise (Article 7). Chapter 3 (“Instruments to support social enterprise”) of Heading II of the Act provides for instruments to support social enterprises, e.g. temporary coverage of a part of the</p>	

salary of employees of a social enterprise who are at risk of social exclusion (Article 21). Heading III (“Support for the development of the social economy by public administrations”) of the Act provides additional instruments for public administrations to support the development of the social economy, at national and regional level (Chapter 2). For instance, Articles 31-35 introduce the possibility of creating a ministerial program to support the social economy.

- **new models of cooperation between social economy enterprises and the local government in the implementation of social services**

New forms of cooperation are as follows: Chapter 3 (“Principles and forms of support for social economy actors at regional level”) of Heading III of the Act on the social economy provides for different ways in which the social economy enterprises and the local government should cooperate for the implementation of social services, e.g. through the creation of a Regional Committee for the Development of the Social Economy in each Voivodship, which notably includes representatives of the Marshal of the Voivodship, provincial governors, local government units and social economy actors (Article 57); through the development of a regional development programme (Article 54), through dedicated rules specifying how the local government should support social economy actors (Article 59). Article 71 obliges local government units to define in their local strategies social services and public tasks to be commissioned under the Act on social economy.

- **as well as the principles of policy coordination in the field of social economy development**

Heading III (“Support for the development of the social economy by public administrations”) of the Act on the social economy provides an obligation for public authorities to support the development of the social economy sector, in particular through the coordination of measures taken by public administrations to support the creation of social economy actors and social enterprises and providing support for them (Article 28). Furthermore, at national level, the Minister responsible for social security shall coordinate the development of the social economy, e.g. by drawing up a development programme for the social economy and providing support services for social economy actors at national level (Article 30). Article 54 defines the coordination tasks carried out by the regional government (voivodships) that includes in particular: drawing up a regional development programme for the social economy, supporting the creation of joint ventures between social economy actors, popularization of social economy at regional level.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B1G	Related Measure: B1.1 Clean air and energy efficiency	
Name of the Milestone: Entry into force of an act amending the Energy Efficiency Act and associated legislative acts		
Qualitative Indicator: Provision in the act amending the Energy Efficiency Act and the associated legislative acts indicating its entry into force		Time: Q1 2022
Context: Milestone B1G is part of reform B1.1 “Clean air and energy efficiency”, whose objective is to reduce greenhouse gas emissions, increase the energy efficiency of selected economic sectors and improve air quality by accelerating the process of replacing polluting sources of heat and power generation. Milestone B1G requires that the Energy Efficiency Act and the associated legislative acts are amended to enable entities covered by the Energy Efficiency Obligation Scheme to settle energy savings		

obligations and clarify the possibilities of using Energy Performance Contracts in the public sector. In addition, the amendments shall enable Energy Services Companies to participate in the Energy Efficiency Obligation Scheme.

Milestone B1G is the second step in the implementation of the reform. It is preceded by milestone B3G (under this same instalment) related to the update of the National Air Protection Programme and will be followed by milestone B2G

related to update of the “Clean Air” Priority Programme, milestone B4G related to the entry into force of new quality standards for coal-based solid fuels and milestone B5G related to entry into force of quality standards for biomass based solid fuels.

The reform has a final expected date for implementation on 30 September 2023.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of the Act of 20 April 2021 amending the Energy Efficiency Act and certain other acts** (*Ustawa z dnia 20 kwietnia 2021 roku o zmianie ustawy o efektywności energetycznej oraz niektórych innych ustaw*), published in the Official Journal of 7 May 2021, item 868.
- iii. **Copy of the Act of 29 September 2022 amending certain acts supporting improvement of housing conditions** (*Ustawa z dnia 29 września 2022 roku o zmianie niektórych ustaw wspierających poprawę warunków mieszkaniowych*) published in the Official Journal of 30 November 2022, item 2456.
- iv. **Copy of the Act of 29 October 2021 amending the act on renewable energy sources and certain other acts** (*Ustawa o zmianie ustawy o odnawialnych źródłach energii oraz niektórych innych ustaw*) published in the Official Journal of 21 December 2021, item 2376.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

- **Entry into force of an act amending the Energy Efficiency Act and the associated legislative acts (law on supporting thermo-modernisation and renovations and on the central emission register of buildings; the law on financial support for the creation of residential premises for rent; the law on some types of housing support; and the law on renewable energy sources)**

The Act amending the Energy Efficiency Act and certain other acts (hereinafter “the Energy Efficiency Act”) was adopted on 20 April 2021. It entered into force 14 days after its publication, in accordance with its Article 18, that is on 22 May 2021, Article 1(4) entered into force on 1 January 2022, in accordance with Article 18(3) of the Act; other exceptions to the entry into force on 22 May 2021 are not relevant for the fulfilment of the milestone. The Act was published in the Official Journal on 7

May 2021, item 868. Only amendments introduced by the Act amending the Energy Efficiency Act and certain other acts are relevant to the assessment of the fulfilment of the milestone.

The Act amending certain acts supporting improvement of housing conditions (hereinafter “the Housing Act”) was adopted on 29 September 2022 and entered into force on 1 December 2022, in accordance with its Article 12, with the exception of certain provisions. The Housing Act amended the Act on supporting thermo-modernisation and renovations and on the central emission register of buildings (Article 6 of the Housing Act), the Act on financial support for the creation of residential premises for rent (Article 5 of the Housing Act) and the Act on some types of housing support (Article 1 of the Housing Act). Provisions of these Acts are relevant to the support of energy efficiency projects but are not relevant for the fulfilment of the milestone.

The Act amending the act on renewable energy sources and certain other acts (the “Act on renewable sources”) was adopted on 29 October 2021 and entered into force on 1 April 2022, in accordance with its Article 9, with the exception of certain provisions. Provisions of this Act are relevant to the support of investments using renewable energy sources but are not relevant for the fulfilment of the milestone.

- **which shall enable entities covered by the Energy Efficiency Obligation Scheme to settle energy saving obligations within the framework of so-called subsidy programmes.**

Article 1(12) of the Energy Efficiency Act adds Article 15a on the implementation of non-refundable subsidy programmes to co-finance energy efficiency improvement projects. In accordance with this provision, the subsidy programmes only cover projects for the installation of equipment or installations for heating or domestic hot water production with a higher energy efficiency standard. They may be implemented by obliged entities (i.e. entities referred to in Articles 10(2) and 15(1) of the Energy Efficiency Act, that is entities covered by the Energy Efficiency Obligation Scheme) or entities authorized by them. Article 14 of the Energy Efficiency Act defines the level of final energy savings to be achieved by the obliged entities. The savings achieved through the implementation of non-refundable subsidy programmes shall be counted towards the obligation to achieve energy savings in the meaning of Article 10(1).

- **It shall clarify the possibilities of using Energy Performance Contracts in the public sector.**

Article 1(4) of the Energy Efficiency Act clarifies that obligations arising from an Energy Performance Contract (EPC) in the public sector do not affect the level of public debt, where the provider of services related to energy consumption (the entity that performs the energy efficiency improvement services) bears the majority of the construction risk and the risk of achieving the guaranteed level of annual average energy savings, taking into account the impact on these risks of factors such as guarantees and financing by the energy consumption service provider and asset allocation at the end of the contract. In line with the description of the measure, this shall facilitate the use of EPC in the public sector. Prior to this change, Energy Performance Contracts were considered as a public debt accumulated by public authorities which was identified as a barrier to the use of this instrument in the public sector.

- **It shall enable Energy Services Companies to participate in the Energy Efficiency Obligation Schemes.**

Article 1(12) of the Energy Efficiency Act added Article 15a indicating that obligated entities or entities authorised by obligated entities, i.e., Energy Service Companies, may implement non-refundable subsidy programmes to co-finance energy efficiency improvement projects. The energy savings obtained as a result of the implementation of these projects shall count towards the obligation of obliged entities, i.e. entities covered by the Energy Efficiency Obligation Scheme, to achieve the annual energy savings set out in Article 14 of the Act. Through the possibility of implementing the programmes of non-refundable subsidies to co-finance energy efficiency improvement projects, it was made possible for entities authorised by obliged entities, inter alia, Energy Service Companies, to participate in the Energy Efficiency Obligation Schemes.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B3G	Related Measure: B1.1 Clean air and energy efficiency	
Name of the Milestone: Update of the National Air Protection Programme		
Qualitative Indicator: Adoption of the updated National Air Protection Programme by the Minister of Climate and Environment		Time: Q4 2021
<p>Context:</p> <p>Milestone B3G is part of investment B1.1 “Clean air and energy efficiency”, whose objective is to reduce greenhouse gas emissions, increase the energy efficiency of selected economic sectors and improving air quality by accelerating the process of replacing polluting sources of heat and power generation.</p> <p>Milestone B3G concerns the adoption of the updated “National Air Protection Programme (<i>Krajowy Program Ochrony Powietrza</i>)”. This document, developed by the Minister of Climate, lays out short, medium, and long-term air quality improvement strategies and objectives for local and regional authorities.</p> <p>Milestone B3G is the first step of the implementation of the reform and it will be followed by milestone B1G (under the same instalment) related to amendments of the Energy Efficiency Act and associated legislative acts, milestone B2G (under the third instalment) related to update of the “Clean Air” Priority Programme, milestone B4G (under the second instalment) related to adoption of new quality standards for coal-based solid fuels and milestone B5G (under the fourth instalment) related to adoption of quality standards for biomass based solid fuels.</p> <p>The reform has a final expected date for implementation on 30 September 2023.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p>		

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **A copy of the Communication of the Minister of Climate and Environment of 30 December 2021 on the update of the National Air Protection Programme** (*Komunikat Ministra Klimatu i Środowiska z dnia 30 grudnia 2021 r. w sprawie Aktualizacji Krajowego Programu Ochrony Powietrza*) and a link to the publication in the Official Gazette (Monitor Polski 2021 poz. 1200) <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20210001200> and on the website of the Ministry of Climate and Environment <https://www.gov.pl/web/klimat/krajowy-program-ochrony-powietrza>.

The authorities also provided:

- iii. **A copy of the Update of the National Air Protection Programme to 2025** (with an outlook to 2030 and 2040) (*Aktualizacja Krajowego Programu Ochrony Powietrza do 2025 r. (z perspektywą do 2030 r. oraz do 2040 r.)*), of December 2021.
- iv. **A copy of an annex to the “Warm Home Priority Programme** (*Program Priorytetowy Ciepłe Mieszkanie*) detailing eligible costs under the programme.
- v. **A copy of a document titled “Types of low-emission projects under the Stop Smog programme** (*Rodzaje przedsięwzięć niskoemisyjnych w programie “Stop Smog”*)” which types of renovation works eligible for support under the programme
- vi. **A copy of the Clean Air Priority Programme** (*Program Priorytetowy “Czyste Powietrze”*) laying down the scope and terms and conditions of financial support for home renovations under the Programme, version in force as of 15 July 2022.
- vii. **A copy of the Programme for Regional Support of Ecological Education** (*Program Regionalnego Wsparcia Edukacji Ekologicznej*) laying down the scope and terms and conditions of financial support for educational activities under the programme, with an Annex No. 1 specifying eligible costs under the programme.
- viii. **A copy of the Plan of actions included in the Update of the National Air Protection Programme to 2025** (with an outlook to 2030 and 2040) (*Plan działań określonych w dokumencie pn. „Aktualizacja Krajowego Programu Ochrony Powietrza do 2025 r. (z perspektywą do 2030 r. oraz do 2040 r.)”*).
- ix. **A copy of the Regulation of the Minister of Development and Technology of 30 November 2021 amending the Regulation laying down the catalogue of construction materials, devices and services related to termo-modernization projects** (*Rozporządzenie Ministra Rozwoju i Technologii z dnia 30 listopada 2021 r. zmieniające rozporządzenie w sprawie określenia wykazu rodzajów materiałów budowlanych, urządzeń i usług związanych z realizacją przedsięwzięć termomodernizacyjnych*).
- x. **A copy of the Act of 9 November 2018 amending the Act on personal income tax and flat rate income tax** (*Ustawa z dnia 9 listopada 2018 r. o zmianie ustawy o podatku dochodowym od osób fizycznych oraz ustawy o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne*).

- xi. **A copy of the letter by Juliusz Tetzlaff, Director of the Housing Department, Ministry of Economic Development and Technology, of 20 February 2024, on the non-eligibility of coal heaters under the TERMO scheme.**

Analysis:

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone. In particular:

Adoption of the Update of the National Air Protection Programme by the Minister of Climate and Environment

The Communication of the Minister of Climate and Environment of 30 December 2021 on the update of the National Air Protection Programme indicates that the Update of the National Air Protection Programme entered into application on 1 January 2022.

The National Air Protection Program shall define new tasks to be implemented by 2025, 2030 and 2040 at the national, provincial and municipal levels

The updated National Air Protection Programme (NAPP) introduces, on pages 118-137, new tasks broken down into short-term (by 2025), mid-term (by 2030) and long-term (by 2040). Particular types of tasks (so-called *intervention directions – kierunki interwencji*) were assigned to the relevant entities, respectively at national, regional or municipal level.

(1) Establishing standards for low-emission zones for municipalities where the permissible NO₂ levels have been exceeded

The updated National Air Protection Programme (NAPP) introduces, on p. 125, a task specifying that by 2025 additional requirements for clean transportation zones will be put in place for cities with populations over 100,000 residents, where permissible levels of NO₂ have been exceeded as determined by the Main Inspectorate for Environmental Protection (GIOS). NO₂ EU annual limit value is 40 µg/m in line with the EU air quality standards. According to the European Environment Agency's air quality statistics, three Polish cities exceeded the EU standard in 2022: Warsaw, Katowice and Wrocław. In 2021 it was four, the three above plus Krakow. All of these cities have a population of more than 100 000. The condition has therefore been met de facto. This amendment also includes the possibility of gradually implementing transport restrictions.

(2) Commitment of 'voivodeships' to adopt anti-smog resolutions in towns where certain air quality standards are not respected;

The updated NAPP introduces, on p. 119, a task for the minister for climate to ensure, by 2025, that the "Act of 27 April 2001 – Environmental Protection Law (*Ustawa z dnia 27 kwietnia 2001 r. - Prawo ochrony środowiska*)" includes provisions obligating voivodeships to adopt anti-smog resolutions in municipalities where specified air quality standards are not being upheld.

(3) Financial support to regional and local authorities for the promotion of the implementation of activities specified in the anti-smog resolutions and the preparation of information points for residents applying for funding under the Clean Air Priority Program; Furthermore, in line with the description of the measure, local and regional authorities shall be also allocated a specific budget for enforcing air protection rules, notably set as part of so-called 'anti-smog resolutions'.

The updated NAPP introduces, on p. 132-133, the following tasks for the National Fund for Environmental Protection and Water Management, Regional Funds for Environmental Protection and Water Management and the minister for climate:

- to promote the Clean Air, My Electricity and other programmes that directly impact air quality, thus practically assisting local and regional authorities in their anti-smog policies,
- step up the implementation of the Stop Smog Priority Programme which provides financial support to municipalities' efforts to improve air quality,
- co-operate to facilitate the exchange of information between ministries and public bodies, on the one hand, and local and regional authorities, on the other, also on the creation of financing mechanisms.

Furthermore, in line with the NAPP provisions on ecological education, which on page 131 mandates the National Fund for Environmental Protection and Water Management and the Regional Funds for Environmental Protection and Water Management to promote ecological education, the National Fund for Environmental Protection and Water Management has established the "Programme for Regional Support of Ecological Education", a support scheme providing funds to Regional Funds for Environmental Protection and Water Management to finance awareness raising and environmental education on several topics including air pollution. Its statute shows in section 7.4 Beneficiaries on p. 3, that financial support is available to local government authorities, among other types of recipients, for the promotion of activities stemming from anti-smog resolutions under that programme.

As regards the task concerning the preparation of information points for residents, under the Clean Air priority programme, municipalities can receive PLN 35,000 (EUR 7,800) to finance the cost related to the establishment and maintenance of an information point for one year and provided a link to a portal where this information can be accessed <https://czystepowietrze.gov.pl/dla-gmin>. The maximum amount obtainable by the municipality is PLN 35,000 (EUR 7,800) for the launch and operation of the Clean Air Programme consultation and information point for one year from the date of conclusion of the agreement or annex. The amount of the subsidy, detailed payment conditions and the payment procedure are described in the model agreement concluded by the municipalities with the provincial environmental protection and water management funds. This model is available under the following link [Materiały dla gmin – 2023 r. \(czystepowietrze.gov.pl\)](#).

(4) Introduction of the task consisting in strengthening the provisions on the control system for the enforcement of the implementation of tasks specified in anti-smog resolutions;

The updated NAPP introduces, on p. 119, a task for the minister for climate related to strengthening the existing control system for enforcement of implementing the tasks defined by regional assemblies (*sejmiki województwa*) in anti-smog resolutions and the compliance with restrictions, orders or prohibitions laid down in the resolutions of regional assemblies on the air quality programmes.

- introduction into the "Act of 27 April 2001 – Environmental Protection Law" and into some other acts of the provisions strengthening the existing control system for enforcement of implementing the tasks defined by regional assemblies in anti-smog resolutions and the compliance with restrictions, orders or prohibitions laid down in the resolutions of voivodeship sejmiks on the air protection programmes;
- amendment to the "Regulation of 17 November 2003' of the Minister of Interior and Administration of the Regulation on offences for which municipal police guards are entitled

to impose fines in the form of penalty notices (Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 17 listopada 2003 r. w sprawie wykroczeń, za które strażnicy straży gminnych są uprawnieni do nakładania grzywien w drodze mandatu karnego)” to authorise municipal guards to impose fines for failure to file a declaration on a building’s heat source with the Central Register of Building Emissions (CEEB);

- introduction into Article 315a of the “Act of 27 April 2001 – Environmental Protection Law” of additional provisions that impose financial penalties on communal self-governments or district self-governments that fail to prepare a report on implementing the measures specified in the NAPP and their updates or the short-term action plan.

(5) Exclusion of new coal-fired heaters from public support programs as of January 1st, 2022. Furthermore, in line with the measure description, the updated National Air Protection Programme shall mandate the end of any public support for investments in new coal-fired heaters by 31 December 2021.

The task of ending public support to coal-fired heaters as of 1 January 2022 is directly indicated in the updated NAPP on p. 132. Moreover, Polish authorities provided a list of public support programmes that have explicitly excluded the new coal-fired heaters from being eligible for their support:

- As per the provided copy of the Clean Air Priority Programme, the national home renovation programme that is the keystone of the NAPP implementation, in the version in force as of 15 July 2022, the programme does not support the installation of coal-fired boilers.
- The financial mechanism in the form of the thermomodernisation tax credit, introduced in 2019, has removed coal-fired boilers from the list of eligible building materials and equipment for which a thermomodernisation tax credit may be obtained. This change has taken place further to the entry into force, on 1 January 2022, of the “Regulation of the Minister of Development and Technology of 30 November 2021 amending the Regulation laying down the catalogue of construction materials, devices and services related to thermo-modernization projects” (published in the Journal of Laws of 1 December 2021, item 2214), which amended the list of types of building materials, equipment and services related to the implementation of thermal modernization projects.
- The "Stop Smog" Program, which the updated NAPP mentions on page 133 as one of the measures under Intervention 6: Promoting financial mechanisms for the improvement of air quality, is another financial program in Poland that provides support to energy-poor people in municipalities with poor air quality. The program includes projects to replace heating devices or systems with low-emission standards and to perform comprehensive thermal modernization of buildings. The projects are implemented by the commune and funded up to 100% of their value, with 70% of the funding coming from the state budget through the thermomodernisation and Renovation Fund. The "Stop Smog" Program does not cover the replacement of old coal boilers with new coal boilers in the modernization projects. The link to the website [„Stop Smog” - Program „Czyste Powietrze”](#).
- Coal-fired heaters are also not supported under the “Warm Home Priority Programme, in line with the annex to the “Warm Home Priority Programme listing its eligible costs.
- Finally, coal heaters are also not supported under the TERMO scheme (Thermo-modernization premium with thermo-modernization grant option) operated by Bank Gospodarstwa Krajowego. As clarified in the letter of the Ministry of Economic Development

and Technology of 20 February 2024, support under that scheme is granted under the Act of 21 November 2008 on supporting thermal renovations and overhauls and the central register of building emissions (Journal of Laws of 2023, item 2496). Under Article 2(2) letter d of that Act, public support can only be granted to thermal renovation projects consisting in complete or partial replacement of a heat source by a renewable heat source. This excludes coal heaters.

Furthermore, in line with the description of the measure, **the authorities shall be mandated to take specific measures to lower the level of air pollutants emitted from household heating and transport when a given air polluting threshold is exceeded.**

As noted above in point 2, the updated NAPP introduces, on p. 119, a task for the minister for climate to ensure, by 2025, that the “Act of 27 April 2001 – Environmental Protection Law (Ustawa z dnia 27 kwietnia 2001 r. - Prawo ochrony środowiska)” includes provisions obligating voivodeships to adopt anti-smog resolutions in municipalities where specified air quality standards are not being upheld. Moreover, the updated National Air Protection Programme (NAPP) introduces, on p. 125, a task specifying that by 2025 additional requirements for clean transportation zones will be put in place for cities with populations over 100,000 residents, where permissible levels of NO₂ have been exceeded as determined by the Main Inspectorate for Environmental Protection (GIOS).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B16G	Related Measure: B2.1 Improving the conditions for the development of hydrogen technologies and other decarbonised gases	
Name of the Milestone: Entry into force of acts amending the legislative acts for hydrogen as an alternative fuel for transport		
Qualitative Indicator: Provisions in the amending legislative acts indicating their entry into force		Time: Q4 2021
<p>Context: The objective of this reform is to improve the conditions for the development of hydrogen technologies, in particular renewable and low-carbon hydrogen, and other decarbonised gases.</p> <p>Milestone B16G concerns the creation of a regulatory framework for the functioning of hydrogen as an alternative fuel for transport, setting safety and technical requirements for hydrogen refuelling stations, monitoring and control systems of the quality of hydrogen fuels and overall promote the development of renewable and low carbon hydrogen.</p> <p>Milestone B16G is the first step of the implementation of the reform B2.1 and it will be followed by milestone B17G, related to the entry into force of a law laying down the rules for the hydrogen market design and infrastructure.</p> <p>The reform has a final expected date for implementation on 31 December 2023.</p>		
Evidence provided:		
In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:		

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of the Act of 2 December 2021 amending the Act of 11 January 2018 on electromobility and alternative fuels and certain other acts** (Journal of Laws 2021, 2269)
- iii. **Copy of the Act of 11 August 2021 amending the Act of 25 August 2006 on the fuel quality monitoring and control system and certain other acts** (Journal of Laws 2021, 1642)

The authorities also provided:

- iv. **Copy of the Act of 15 December 2022 on the special protection of certain customers of gaseous fuels in 2023 in view of the situation on the gas market** (Journal of Laws 2022, 2687) amending the Act of 11 January 2018 on electromobility and alternative fuels and certain other acts (Journal of Laws 2018, item 317, 2269)
- v. **Copy of the Act of 7 October 2022 on the detailed technical requirements for hydrogen stations** (Journal of Laws 2022, item 2158)

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular,

Provisions in the amending legislative acts indicating their entry into force

- The Act of 2 December 2021 amending the Act of 11 January 2018 on electromobility, and alternative fuels and certain other acts (Journal of Laws 2021, 2269), hereinafter the “Act of 2 December 2021”, was published on 9 December 2021 in the Journal of Laws. According to Article 41, the Act shall enter into force 14 days following the day of announcement, that is 24 December 2021.
- The Act of 11 August 2021 amending the Act of 25 August 2006 on the system of monitoring and controlling quality of fuels (Journal of Laws 2021, 1642), hereinafter the “Act of 11 August 2021”, was published on 7 September 2021 in the Journal of Laws. According to Article 22, the Act shall enter into force 14 days following the day of announcement, that is 22 September 2021, except:
 - Article 1 paragraph 1c) and (e-g), paragraph 2 and 3, paragraph 6 to 9, paragraph 10b), paragraphs 11 and 12, paragraphs 14-16, and 27, paragraph 28 as regards to Article 35a paragraph 14 and finally paragraph 31a), second indent, shall enter into force on 1 January 2023.
- The Act of 15 December 2022 on the special protection of certain customers of gaseous fuels in 2023 in view of the situation on the gas market (Journal of Laws 2022, 2687), hereinafter the “Act of 15 December 2022”, was published on 20 December 2022 in the Journal of Laws. According to Article 89, the Act shall enter into force on the day following its publication, that is the 21 December 2022, except:
 - Article 48 paragraph 3 shall enter into force on 31 December 2022
 - For the remaining paragraphs in Article 48 (paragraphs 1 and 2) on 31 December 2022.

Amendment to the Electromobility Act (January 11, 2018; Dz. U. z 2018 r. poz. 317) shall introduce the definitions for the hydrogen refuelling infrastructure.

- Article 1 paragraph 2d) of the Act of 2 December 2021 introduces Article 2 paragraph 8a) in the Act of 11 January 2018 on electromobility and alternative fuels and certain other acts (hereinafter the “Electromobility Act”) defining a hydrogen refuelling station operator. The operator is an entity responsible for the management of the hydrogen station, the operational safety, operation, repair and modernization of this station and for providing services of hydrogen refuelling.
- Article 1 paragraph 2i) of the Act of 2 December 2021 introduces Article 2 paragraph 27a) in the Electromobility Act and defines hydrogen station as a set of devices, including hydrogen refuelling point with the necessary auxiliary infrastructure and storage tanks used for refuelling hydrogen.

shall [...] set the general safety and technical requirements for the refuelling stations (according to the Alternative Fuels Infrastructure Directive) in line with the measure description requirement to introduce provisions for the construction, safe operation and upgrading of hydrogen stations.

- Article 1 paragraph 15 of the Act of 2 December 2021 introduces Article 29a) in the Electromobility Act, setting out the general safety and technical requirements for the hydrogen refuelling stations.
 - Article 29a sets out the general obligations for the safe operation of the stations and introduces the requirement for the Ministry to construct, operate, repair and upgrade hydrogen refuelling stations in accordance with the technical requirements adopted by Ministerial Regulation pursuant to Article 29d. The article determines that hydrogen stations shall have available documentation specifying the stations’ construction, technical and operational characteristics and ensure user and fire safety, access for people with disabilities and proper technical conditions of the infrastructure used.
 - Moreover, Article 29d lists the elements to be further detailed by way of Ministerial Regulation including detailed technical specifications for the safe operation, repair and retrofitting of hydrogen stations and the types of tests (and fees) to be carried out by the relevant authorities.
- The Electromobility Act is the result of the transposition of Directive (EU) 2014/94 on the deployment of alternative fuels infrastructure (AFID). The regulation on detailed technical requirements for hydrogen refuelling stations of the Ministry of Climate and Environment, was published on 21 October 2022 and entered into force on 5 November 2022. In line with Annex II of the AFID Directive, provisions § 2 and § 5 require investors to apply the standards ISO 19880-1, PN-EN 17127 and PN-EN ISO 17268.

shall [...] determine the procedures and competent authorities relevant for the inspection of this infrastructure. Furthermore, in line with the description of the measure, the reform should determine the authorities responsible for authorising the use of hydrogen stations and their necessary technical inspection.

- Article 1 paragraph 15 of the Act of 2 December 2021 introduces Articles 29c, e and f in the Electromobility Act:
 - Articles 29c, e and f define the competent authorities and the procedures for conducting the technical tests of hydrogen refuelling stations and for suspending their activities where needed. Pursuant to these articles, the authorities entitled to

validate the application for the construction of a hydrogen stations and for its safe operation, repair and upgrading as well as to carry out the inspections for its safe operation, repair and upgrading are the Office of Technical Inspection (UDT) or Transportation Technical Supervision (TDT).

- According to Article 29c the The President of UDT or the Director of TDT shall issue a decision on suspending the operation of a hydrogen refuelling station if it is found that the station did not meet the requirements laid down in the regulation.
- Article 29f determines the information that triggers an inspection as well as the scope of the inspection. Compliance is determined based on technical examinations, documentation and statements. On the basis of the results, decisions shall be taken about the suspension or the continued operation of the stations.

Amendment to the Act on the system of monitoring and controlling quality of fuels (August 25, 2006; Dz.U. Nr 169, poz. 1200) shall introduce the notion of hydrogen following the combined nomenclature CN 2804 10 00 code.

Article 1 paragraph 1c of the Act of 11 August 2021 introduces subparagraph 10a in the Act of 25 August 2006 on the system of monitoring and controlling quality of fuels, hereinafter the “Act on monitoring and controlling the quality of fuels”. Subparagraph 10a introduces the notion of hydrogen to fuel a vehicle following the combined nomenclature CN 2804 10 00 code for hydrogen within the sub-group 2804 “hydrogen, rare gases and other non-metals”.

shall [...] set the procedures of monitoring and controlling the quality of hydrogen. Furthermore, in line with the description of the measure, **it shall set out a system to monitor and control the quality of hydrogen fuels used for the propulsion of vehicles.**

The Act of 25 August 2006 on the fuel quality monitoring and control system and certain other acts outlines the procedures for controlling the quality of fuels and its frequency for a periodic monitoring.

- Article 1 paragraph 9 of the Act of 11 August 2021 introduces Article 13a in the Act on monitoring and controlling the quality of fuels:
 - Article 13a defines entities subject to control (economic operators who manufacture, store and sell hydrogen or own a hydrogen wholesaler) as well as the frequency of the control (once per quarter) enabling the monitoring of the quality of hydrogen.
 - In addition, the “Manager” (i.e. the President of the Office of Competition and Consumer Protection, as per Article 12 of the Act on monitoring and controlling the quality of fuels) is empowered to carry out the control more than once per quarter in case any information on incorrect hydrogen quality or circumstances pointing at the possible occurrence of incorrect hydrogen quality is gathered.
- Article 1 paragraph 2 of the Act of 11 August 2021 introduced Article 3 paragraph 2 point (7) in the Act on monitoring and controlling the quality of fuels, specifying that quality requirements for hydrogen shall be identified by way of a Ministerial Regulation.
- Article 1 paragraph 10b of the Act of 11 August 2021 introduces in Article 16 of the Act on monitoring and controlling the quality of fuels, paragraphs 4b and 4c which define the types of documents that the inspector is entitled to control.
- Article 1 paragraph 14 of the Act of 11 August 2021 introduces Articles 25a to 25d in the Act on monitoring and controlling the quality of fuels which set out the rules and procedures for subject entities to carry out the quality test of the hydrogen they produce.

shall [...] determine relevant authorities.

- Article 1 paragraph 10b and paragraph 11 of the Act of 11 August 2021 add paragraphs 4b and 4c in Article 16 and Article 17a in the Act on monitoring and controlling the quality of fuels. Article 16(4a), Article 16(4c) and Article 17a lay down the duties and tasks of the “Inspector” entitle to carry out the control related to hydrogen.
- Article 12 of the Act on monitoring and controlling the quality of fuels establishes that the system is managed by the President of the Office of Competition and Consumer Protection, referred to as the “Manager” of the system. Article 12 defines the tasks of the Manager. Since hydrogen is added to the scope of the monitoring and control of the quality of fuels, the provisions pertaining to the tasks of the Manager also apply to hydrogen unless specified otherwise.

The notion of hydrogen shall be in compliance with the ‘Do no significant harm’ (DNSH) Technical Guidance (2021/C 58/01).

- Article 48 paragraph 1b) of the Act of 15 December 2022 introduces paragraphs 28a) to 28c) in Article 2 of the Electromobility Act.
- Article 2 paragraphs 28a) to 28c) define low-emission hydrogen, electrolytic hydrogen and renewable hydrogen respectively.

The definitions of low-emission hydrogen, electrolytic hydrogen and renewable hydrogen introduced in the Electromobility Act are compliant with the DNSH principle ensuring that no harm to the six environmental objectives outline in the DNSH Technical Guidance (2021/C58/01). Electrolytic hydrogen and renewable hydrogen are de facto contributing to climate change mitigation and are considered activities and assets required for a climate neutral economy.

For “low-emission hydrogen”, the Act of 15 December 2022 introduces with article 48 in paragraph 28a in the Electromobility Act additional safeguards by indicating that only hydrogen with a life cycle GHG emissions lower than 3tCO₂e/tH₂ is eligible, thus ensuring that the technology is in line with the DNSH Technical Guidance (2021/C 58/01). Finally, Article 48 paragraph 1a of the Act of 15 December 2022 introduces in article 2 of the Electromobility Act paragraph 15a which embeds the “no significant harm to environmental objectives” principle and its six environmental objectives in the Polish law.

The reform shall not make the use and marketing of renewable hydrogen more difficult than other sources of hydrogen.

Article 48 paragraph 1b of the Act of 15 December 2022 introducing Article 2 paragraphs 28c in the Electromobility Act introduces the definitions of renewable hydrogen. There are no legal provisions discriminating against the use of renewable hydrogen in refuelling infrastructure and its commercialisation as an alternative fuel whereas Article 48 paragraph 2a of the Act of 15 December 2022 introduces article 43 paragraph 3a and 3 set national targets for renewable and electrolytic stations as well as their share in total transport with the aim to “support the development of electrolytic hydrogen and renewable hydrogen”, encouraging the development of a renewable hydrogen market.

The reform shall primarily aim at developing renewable hydrogen or hydrogen produced from electrolyzers.

Article 48 paragraph 2a of the Act of 15 December 2022 introduces Article 43 paragraph 2 point 3a and 3b and amends Article 43 paragraph 2 point 4 in the Electromobility Act:

- Article 43 paragraph 2 points 3a and 3b introduce a requirement for the Minister to define national targets for the number of hydrogen refuelling stations offering electrolytic and renewable hydrogen, and for the share of electrolytic, low-emission and renewable hydrogen used in the transport sector in its national framework of the policy to develop alternative fuels infrastructure. All the targets shall be set at a level “that supports the development of electrolytic hydrogen and renewable hydrogen”.
- Article 43 paragraph 2 point 4 requires the Minister to define the activities that will be put in place to reach the above-mentioned targets on hydrogen.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B39G	Related Measure: B3.1 “Support sustainable water and wastewater management in rural areas”	
Name of the Milestone: Development of rules for the territorialisation of support for water supply or sewage investments RRP in rural areas		
Qualitative Indicator: Adoption of guidelines by Minister of Agriculture and Rural Development		Time: Q4 2021
<p>Context:</p> <p>Milestone B39G is part of reform B3.1 “Support sustainable water and wastewater management in rural areas” which aims at increasing the sustainability of water supply and waste-water management in rural areas by introducing legislation laying down the rules for monitoring, maintenance and control of individual wastewater disposal installations and defining territorial criteria for the selection of projects concerning investments in collective water supply and waste—water disposal infrastructure in rural areas.</p> <p>Milestone B39G concerns the adoption of rules for the territorialisation, also referred to as territorial criteria, for the support for water supply or waste-water disposal investments in rural areas under the RRP.</p> <p>Milestone B39G is the first step of the implementation of the reform, and it will be followed by milestone B40G (under the same instalment) related to the entry into force of legislation establishing an obligation to regularly monitor and control individual waste-water disposal installations. The reform has a final expected date for implementation on 30 June 2022.</p>		
Evidence provided:		

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled, of 17 October 2022, drawn up by the Ministry of Agriculture and Rural Development.
- ii. **Copy of the adopted document “Rules for the territorial distribution of support to water and sewage investments in rural areas under the National Recovery Plan – Update** (*Zasady terytorializacji wsparcia inwestycji wodno-kanalizacyjnych na obszarach wiejskich w ramach Krajowego Planu Odbudowy – Aktualizacja*), of September 2022, drawn up by the Ministry of Agriculture and Rural Development, with a link to the document <https://www.gov.pl/attachment/bdf3b7cc-a952-417a-9820-366dbc19718f>
- iii. **A copy of “A note explaining how the selection criteria in the guidelines measure the capacity of municipalities to finance investments from their own resources and how those with the lowest capacity are prioritised”.**
- iv. **A copy of “A note explaining the involvement of voivodship self-governments”.**
- v. **A copy of the “Report of consultations with regional authorities on the Criteria for the selection of beneficiaries for projects under investment B3.1.1 “Investments in wastewater treatment systems and water supply in rural areas” under the National Recovery and Resilience Plan** (*Raport z konsultacji z samorządami Województw Kryteriów wyboru beneficjentów dla przedsięwzięć w ramach inwestycji B.3.1.1. „Inwestycje w zrównoważoną gospodarkę wodno-ściekową na obszarach wiejskich” Krajowego Planu Odbudowy i Zwiększania Odporności*)” of August 2022 with a link to the report
- vi. **A copy of the “Report of public consultation of the “Rules for the territorial distribution of support to water and sewage investments in rural areas under the National Recovery Plan** (*Raport z konsultacji społecznych - Zasady terytorializacji wsparcia inwestycji wodociągowo-kanalizacyjnych na obszarach wiejskich w ramach Krajowego Planu Odbudowy*)” of August 2022 with a link to the report <https://www.gov.pl/attachment/28193759-5d61-4022-8f92-45c46790f2da>

The authorities also provided:

- vii. **Copies of consultation contributions** submitted by the authorities of the Podlaskie, Warmińsko-Mazurskie, Podkarpackie, Wielkopolskie and Lubelskie regions, drawn up by the regional executive office (Urząd Marszałkowski) on behalf of the respective regional governors (marszałek województwa).
- viii. **Copies of invitations to consultation** sent by the Ministry of Agriculture and Rural Development to the President of the Union of Regions of the Republic of Poland (*Związek Województw RP*) and the Marshals of all regional executive bodies.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Adoption of territorial criteria for selecting beneficiaries.

The updated territorial criteria for the distribution of support under this measure were adopted by the Ministry of Agriculture and Rural Development in September 2022.

The direct link for downloading this document is (<https://www.gov.pl/attachment/bdf3b7cc-a952-417a-9820-366dbc19718f>). The document can also be accessed from the section of the Ministry's website devoted to the RRP <https://www.gov.pl/web/rolnictwo/dokumenty-do-pobrania2>.

The selection criteria shall give priority to municipalities with the least ability to finance investments from their own resources.

The "Rules for the territorial distribution of support to water and sewage investments in rural areas under the National Recovery Plan – Update" of September 2022 include one eligibility criterion (whether the project is in a rural or rural-town municipality, excluding towns of more than 5000 inhabitants), as well as five bonus criteria, three of which award bonus points to municipalities facing difficulties in self-financing projects due to their difficult economic situation. Specifically, under Criterion 1, extra points are awarded to projects in municipalities with higher-than-average unemployment and, under Criterion 2, extra points are awarded to projects located in municipalities that used to host State Agricultural Farms (*Państwowe Gospodarstwo Rolne, PGR*). Both characteristics correlate with lower levels of economic activity and lower tax revenues. Under Criterion 3, extra points are awarded to projects in municipalities facing significant development barriers, measured using a composite index that covers: percentage of population with access to sewage network, municipality's per capita tax revenue, change of per capita tax revenue between 2019 and 2021, percentage of registered unemployed in the total population (average for the previous five years), change of the share of registered unemployed in total population between 2019 and 2021, and the balance of migration (average for the last five years), which reflects both the scale of investment needs and the level of tax revenues available to finance them.

Furthermore, in line with the description of the measure, the selection criteria shall give priority to projects with the greatest potential of mitigating existing negative environmental impacts.

This requirement is addressed, firstly, by awarding higher scores to projects that offer the highest number of new connections per one kilometre of water supply or sewage infrastructure under Criterion 5, which ensures that support will be granted to projects that offer the best environmental value for money (the more connections per kilometre, the higher the score). Secondly, it is also covered under Criterion 3, under which the composite index measuring development barriers includes the percentage of population with access to sewage facilities. This enables the identification of those municipalities which have not made the necessary investments in the field of wastewater management to date, and in this way prioritizes areas facing the greatest problem with irregular sewage disposal.

Voivodeship self-governments shall be involved in the process of defining the criteria for selecting beneficiaries.

Poland demonstrated the involvement of voivodeship self-governments (regional authorities) in the preparation of the territorial criteria by providing the invitations to consultation sent on 27 May 2022 by the Ministry for Agriculture and Rural Development to all sixteen regional authorities and their representative body, the Union of Regions of the Republic of Poland. Five regions responded to the consultation and provided their input: (Warmińsko-Mazurskie in letters of 30 May 2022 and 8 June 2022 from the Office of the Marshal of the Warmińsko-Mazurskie Region, Podkarpackie in a letter of 10 June 2022 from the Office of the Marshal of the Podkarpackie Region, Wielkopolskie in a letter of 3 June

2022 from the Office of the Marshal of the Wielkopolskie Region, Podlaskie in a letter of 9 June 2022 from the Office of the Marshal of the Podlaskie Region and Lubelskie in a letter of 8 June 2022 from the Office of the Marshal of the Lubuskie Region) based on which the initial versions of Criteria 2, 3 and 5 were modified. Details of the input and the modifications are discussed in the Table in Section 4 “Manner in which comments and opinions expressed in the public consultation were taken into consideration” on p. 3-6 of the “Report of consultations with regional authorities on the Criteria for the selection of beneficiaries for projects under investment B3.1.1 “Investments in wastewater treatment systems and water supply in rural areas” under the National Recovery and Resilience Plan” of August 2022.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B40G	Related Measure: B3.1 Support of sustainable water and wastewater management in rural areas	
Name of the Milestone: Entry into force of legal act establishing an obligation to carry out regular monitoring and control of appropriate individual systems		
Qualitative Indicator: Provision in the legal act indicating its entry into force		Time: Q2 2022
<p>Context:</p> <p>Milestone B40G is part of reform B3.1 “1 Support sustainable water and wastewater management in rural areas” which aims at improving the quality of wastewater management and drinking water supply in rural areas by amending relevant legislation on wastewater disposal and providing territorial guidance to investments in wastewater and water supply infrastructure.</p> <p>Milestone B40G concerns the amendment of legislation to introduce the obligation for municipalities to monitor and control the disposal of sewage and use instruments to prevent improper disposal.</p> <p>Milestone B40G is the second milestone of the reform, and it follows the completion of milestone B39G (under this same instalment), related to the adoption of territorial criteria for granting support to water supply and waste-water disposal infrastructure projects in rural areas. The reform has a final expected date for implementation in June 2022.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of the Act of 7 July 2022 amending the Water Law act and certain other acts (<i>Ustawa z dnia 7 lipca 2022 r. o zmianie ustawy – Prawo wodne oraz niektórych innych ustaw</i>) (Journal of Laws 2022, item 1549) and a link to the publication https://dziennikustaw.gov.pl/DU/rok/2022/pozycja/1549 		

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of a legal act [...]

The Act of 7 July 2022 amending the Water Law act and certain other acts (the “amending Act”) was published on 25 July 2022 in the Journal of Laws, item 1549. Provisions relevant for the fulfilment of the milestone concern the amendment of the Act of 13 September 1996 on maintaining cleanliness and order in municipalities (*Ustawa z dnia 13 września 1996 r. o utrzymaniu czystości i porządku w gminach*, Official Journal 2022 item 1297) which details the obligations of municipalities and property owners with regards to the disposal of wastewater. According to Article 17 of the amending Act, it enters into force after 14 days of its promulgation, that is on 8 August 2022, except for Article 1(12), Article 2(2) and (8) and Article 10, which enter into force on 1 January 2023. The provisions amending the “Act of 13 September 1996 on maintaining cleanliness and order in municipalities” (Official Journal 2022 item 1297) (the Cleanliness and Order Act) are included in Article 2. All provisions relevant for the milestone have entered into force.

[...] which shall introduce the obligation for communes to monitor and control the disposal of sewage [...]. Furthermore, in line with the description of the measure, the reform shall introduce [...] an effective enforcement mechanism.

Article 2(1) letter c) of the amending Act expands the definition of ‘liquid waste’ in Art. 2(1) point 1) of the Cleanliness and Order Act to include wastewater temporarily stored in sedimentation tanks of domestic treatment plants. It clarifies the legal status of liquid waste from domestic treatment plants.

Article 2(2) letter b) of the amending Act amends Article 3(3) of the Cleanliness and Order Act, imposing new obligations on mayors to collect and keep accurate records on liquid waste disposal and draw up reports based on such records and submit them annually to competent environmental and water management authorities, thus creating a monitoring mechanism.

Article 2(4) letter b) of the amending Act amends Art. 6 of the Cleanliness and Order Act by adding a new paragraph 5aa) which imposes an obligation on mayors to carry out checks of contracts concluded by property owners with municipal or licensed private operators for the disposal of liquid waste, and receipts for the performance of such services, at least once every two years in line with the municipality’s schedule of controls. It also adds a new paragraph 5ab) on the applicability of control mechanisms under Art. 379 and 380 of the Act of 27 April 2001 – Environmental Protection Law (*Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska*) to compliance with the above obligations. Those provisions establish an enforcement mechanism.

[...] and use instruments to prevent improper disposal, including the mechanism of so-called substitute performance, i.e. organising the emptying of septic tanks by the commune for property owners who have not concluded contracts for emptying septic tanks.

Article 2(3) of the amending Act amends Art. 5(1) of the Cleanliness and Order Act, imposing an obligation on property owners to collect liquid waste in septic tanks or sedimentation tanks of domestic treatment plants.

Article 2(4) letter c) of the amending Act amends Art. 6(6) of the Cleanliness and Order Act by imposing an obligation on municipalities to organize disposal of liquid waste from properties whose owners have not concluded contracts for such a service (the so-called substitute performance). Article 2(4) letter d) of the amending Act amends Art. 6(7), which in subparagraph (1) mandates mayors to impose payments for the substitute performances of liquid waste disposal under Art. 6(6) and under subparagraph (4) to define the obligations of property owners to make their properties available.

Article 2(5) letter a) amends Art. 7(1) subparagraph 2 of the Cleanliness and Order Act by introducing an obligation for liquid waste disposal service providers to hold a license, while Article 2(7) letter b) and Article 2(10) amend Art. 9xb of the Cleanliness and Order Act by defining sanctions that such service providers face for failing to properly report on the services provided or irregularly disposing of collected liquid waste.

Article 2(11) letter b) amends Art. 9z of the Cleanliness and Order Act by adding a new paragraph 7 which defines financial penalties that mayors face for failing to fulfil their obligations regarding substitute performance under Art. 6(6).

Article 2(14) letter a) amends Art. 10(2d) of the Cleanliness and Order Act by introducing a provision on fines for hindering or preventing the controls of contracts, their performance and payments for waste disposal services.

Article 12(2) of the amending Act obligates municipalities to start applying the obligation to organize substitute performance under Art. 6(6) within 12 months of the amending Act's entry into force.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: C1G	Related Measure: C1.1 Facilitating the development of network infrastructure to ensure universal access to high-speed internet	
Name of the Milestone: Framework prepared by the Chancellery of the Prime Minister to co-finance broadband projects in white Next Generation Access (NGA) areas, where no NGA network exists at present		
Qualitative Indicator: Publication of the framework on the Chancellery of the Prime Minister and Digital Poland Project Centre websites		Time: Q2 2022

Context:

This measure aims at guaranteeing universal access to high-speed internet and digital services throughout Poland, including the so-called 'white spots' where no high-capacity broadband infrastructure exists.

Milestone C1G consists of setting up a framework as a basis for the proposal to co-finance broadband projects in white Next Generation Access (NGA) areas, where no NGA network exists at present. The framework shall include provisions to ensure full compliance with the 'Do no significant harm' Technical Guidance (2021/C58/01) of supported projects under this measure through the use of sustainability proofing, an exclusion list, and the requirement of compliance with the relevant EU and national environmental legislation.

Milestone C1G is the first step of the implementation of this reform, and it will be followed by milestones C2G and C3G (under the 3rd and 2nd instalment accordingly), related to the entry into force of the amendment to the regulation on annual telecommunications infrastructure and services inventory and the amendment to the regulation on Single Information Point, respectively. The reform has a final expected date for implementation by 31 March 2023.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;
- ii. **Copy of the Regulation of the Minister of Digital Affairs** of 7 December 2022 on granting financial support for the development of broadband infrastructure under the National Recovery and Resilience Plan, published in the Official Journal of 2022 on 13 December 2022, item 2604.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Framework prepared by the Chancellery of the Prime Minister to co-finance broadband projects in white Next Generation Access (NGA) areas, where no NGA network exists at present. Setting up of the framework as a basis of the call for proposal.

The framework was prepared by the Minister of Digital Affairs when operating within the structure of the Chancellery of the Prime Minister. The legal basis indicating the scope of competences of the Minister of Digital Affairs and their location in the structure of the Chancellery of the Prime Minister was the Regulation of the Prime Minister of 6 October 2020 on the detailed scope of activities of the Minister of Digitization (Official Journal of 2020, item 1716).

The Regulation of the Minister of Digital Affairs of 7 December 2022 on granting financial support for the development of broadband infrastructure under the National Recovery and Resilience Plan ("the Regulation") entered into force on 14 December 2022 in accordance with its section 9.

The Regulation sets up a framework as a basis for the following call for proposal, which is a part of the investment C1.1.1 *Ensuring access to very high-speed internet in white spots*. Section 1 of the

Regulation states: *“The regulation specifies the detailed purpose, conditions and procedure for granting public support under the investment C1.1.1: Ensuring access to very high-speed internet in white spots, indicated in Component C “Digital Transformation”, covered by the National Recovery and Resilience Plan, hereinafter referred to as “support”, as well as the entity providing assistance.”* Section 4 provides that the Digital Poland Project Centre is responsible for granting the support. Section 5 lays down the conditions that need to be fulfilled while applying for the support. Section 6 specifies the indexation mechanism and the exchange rate application. Section 7 of the Regulation lays down that the amount of support is determined by verifying the applicants’ needs, with the aim of limiting the support to a necessary minimum, enabling the implementation of the project.

Publication of the framework on the Chancellery of the Prime Minister and Digital Poland Project Centre websites

Poland published the Regulation on the Digital Poland Project Centre website under the below links: <https://www.gov.pl/web/cppc/inwestycja-c111-zapewnienie-dostepu-do-bardzo-szybkiego-internetu-na-obszarach-bialych-plam-1-nabor-uruchomiony>

<https://www.gov.pl/web/cppc/inwestycja-c111-kpo-drugi-nabor.>

Yet, Poland did not publish the framework on the Chancellery of the Prime Minister’s website. Instead, it published the framework in the Official Journal of 2022 on 13 December 2022 (item 2604), which is available online under the link: <https://dziennikustaw.gov.pl/DU/2022/2604https://dziennikustaw.gov.pl/DU/2022/2604>.

Whilst this constitutes a minimal deviation from a formal requirement of the Council Implementing Decision, it is acceptable, considering that the framework was published on the Digital Poland Project Centre website and in the Official Journal, is accessible online and could be easily found via search engines. As of this, this minimal deviation does not affect the progress towards achieving the reform that the milestone C1G represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

The framework shall include provisions to ensure full compliance with the ‘Do no significant harm’ Technical Guidance (2021/C58/01) of supported projects under this measure through the use of sustainability proofing, an exclusion list, and the requirement of compliance with the relevant EU and national environmental legislation.

The Regulation ensures full compliance with the ‘Do no significant harm’ Technical Guidance (2021/C58/01) of supported projects under this measure, as evidenced by section 5, paragraph 2, points 5 and 6 of the Regulation:

“2. Support may be granted to the entity referred to in § 3, which submitted an application for granting support and meets all of the following conditions:

5) [the applicants undertake] to implement the project in accordance with the technical selection criteria set out in Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (Official Journal of the UE L 442 of 9 December 2021), including re-use or recycling of at least 70% of waste from the investment process and subsequent utilization of the NGA network;

6) [the applicant] undertakes to implement the project in accordance with the relevant environmental protection regulations.”

When submitting an application for support for a project, the applicant also submits a declaration based on section 5, paragraph 2, points 5 and 6 of the Regulation. The Applicant may be subject to criminal liability for submitting false declarations, based on the article 233, paragraph 6 of the Penal Code. The applicants sign a templated declaration in their application that they are aware of such penalty.

In line with section 5, paragraph 2, point 5 of the Regulation, the final recipient of the support also undertakes in the signed contract to monitor the obligation to reuse or recycle at least 70% of the waste. As stipulated in section 5, paragraph 3 of the Regulation, this obligation is to be verified at various stages of investment implementation, after reaching a given milestone and at the end of the investment. The sanction for failure to fulfil this obligation included in the signed contract, and therefore also failure to ensure transparent waste monitoring, is the termination of the contract by the entity providing the support without observing the notice period (section 5, paragraph 7 and section 22, paragraph 2, point 3 and point 6 of the templated contract).

The Council Implementing Decision required that “the framework shall include provisions to ensure full compliance with the ‘Do no significant harm’ Technical Guidance (2021/C58/01) of supported projects under this measure through the use of sustainability proofing, an exclusion list, and the requirement of compliance with the relevant EU and national environmental legislation”. Poland set up the framework aiming at ensuring full compliance with the DNSH Technical Guidance (2021/C58/01) through the following elements:

- the provision of the Regulation stipulating that projects in this call shall “*re-use or recycling of at least 70% of waste from the investment process and subsequent utilization of the NGA network*” (section 5, paragraph 2, point 5 of the Regulation);
- the requirement of compliance with environmental legislation (section 5, paragraph 2, point 6 of the Regulation).

Whilst this constitutes a minimal deviation from a substantive requirement of the Council Implementing Decision, it is acceptable as it is not relevant to use the sustainability proofing and the exclusion list due to the well-defined nature of broadband investment projects to be supported within the framework, which de facto exclude activities that would be set out in an exclusion list. The use of a sustainability screening and consequent proofing tends to be limited to financial instruments implemented under InvestEU. Moreover, the use of the proofing was assessed as providing limited additional environmental safeguards compared to the DNSH requirements, creating at the same time the additional administrative burden. Its elements are either i) covered by other DNSH safeguards, ii) not necessary to comply with DNSH or iii) do not significantly improve the environmental safeguards. Thus, the use of sustainability proofing is not necessary for a framework such as the one covered by this milestone because the DNSH compliance is already ensured by an additional safeguard included in the Regulation (section 5, paragraph 2, point 5) to re-use or recycle of at least 70% of waste from the investment process.

Furthermore, all projects under this framework have to comply with “Horizontal principles and criteria for the selection of projects for the Recovery and Resilience Plan” in order to be eligible for financing under the Recovery and Resilience Plan. These Horizontal principles have been published by the Polish authorities under the following link:

https://www.funduszeuropejskie.gov.pl/media/112748/horyzontalne_zasady_aktualizacja.docx

The Horizontal principles include as criterion number 9 the “compliance with the principle of do not significant harm (DNSH)”, that is verified on the basis of the Recovery and Resilience Facility Regulation (2021/241) and the DNSH Technical Guidance (2021/C 58/01)”.

Moreover, the exclusion list does not appear necessary for ensuring compliance with DNSH for this framework as the range and character of projects in the call is well defined (broadband infrastructure), thus the DNSH compliance can be defined ex ante in the project selection procedure.

Whilst these elements described above constitute a minimal substantive deviation from the requirement of the Council Implementing Decision, the framework set up by Poland is acceptable as it ensures full compliance with the ‘Do no significant harm’ Technical Guidance (2021/C58/01) of supported projects under this framework through the ex-ante exclusion of harmful activities by the Horizontal principles (criterion 9), the ex-ante requirement to re-use or recycle of at least 70% of waste from the investment process (section 5, paragraph 2, point 5 of the Regulation) and to comply with the EU and national environmental laws (section 5, paragraph 2, point 6) and the checks during the investment process and ex post by the implementing agency together with the risk of potential financial and judicial follow-up faced by recipients in case of misrepresentation. The framework set up by Poland provides sufficient assurance that investments funded will have no negative impacts on climate or environmental objectives. As of this, this minimal deviation does not change the nature of the measure and does not affect the progress towards achieving the reform that the milestone C1G represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: D23G	Related Measure: D2.1 Creating the right conditions for an increase in the number of medical staff	
Name of the Milestone: Amendment to the Law on Higher Education and Science and on the Professions of Physician and Dentist to provide a legal basis for financial support from academic year 2021/2022 for students in the field of medicine in Poland		
Qualitative Indicator: Provision in the amendment to the Law on Higher Education and Science and on the Professions of Physician and Dentist to provide a legal basis for financial support from academic year 2021/2022 for students in the field of medicine in Poland at a university level (including students who started their studies before academic year 2021/2022) indicating its entry into force		Time: Q4 2021
Context: The objective of the reform is to create incentives for young people to take up and pursue medical studies and subsequently practice medicine in Poland. It comprises (i) the introduction of a scheme for granting loans to students of paid medicine studies, including financial incentives to practice in Poland after their studies, (ii) the creation of second-cycle studies for medical emergency practitioners (paramedics) and (iii) the introduction of legislation to increase flexibility of post-		

graduate training for doctors and dentist and to improve the attractiveness of medical professions and working conditions of medical professionals.

Milestone D23G requires the entry into force of an amendment to the Law on Higher Education and Science and on the Professions of Physician and Dentist introducing financial support in form of loans for students of paid studies in the field of medicine at a university level starting from academic year 2021/2022.

Milestone D23G is the first step of the implementation of the reform, and it will be followed by target D24G related to the minimum number of students having received the loans, milestone D25G and target D26G related to improving competencies and salaries of paramedics and milestone D27G and target D28G related to improving attractiveness of medical jobs and working conditions of medical workers.

The reform has a final expected date for implementation on 30 June 2026.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;
- ii. **Copy of the Act of 17 November 2021 amending the Act of 20 July 2018 on Higher Education and Science and Certain Other Acts**, published in the Journal of Laws of 2021, item 2232 (hereinafter called as “the Act of 17 November 2021”).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular,

The law shall enter into force [...]

The Act of 17 November 2021 was published in the Official Journal on 3 December 2021 (*Dziennik ustaw z 2021 r., poz. 2232*) and it entered into force 14 days after, on 18 December 2021, as per its article 18.

Amendment to the Law on Higher Education and Science and on the Professions of Physician and Dentist to provide a legal basis for financial support from academic year 2021/2022 for students in the field of medicine in Poland

The milestone specifies that the legislation should provide a legal basis for financial support from the academic year 2021/2022 for students in the field of medicine in Poland at a university level (including students who started their studies before academic year 2021/2022). Based on Art. 103f of the Act of on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), Article 11 of the Regulation of 17 March 2022 of the Minister of Health on medical school loans (Journal of Laws item 665), which entered into force on 1 April 2022 in accordance with its Article 12, provides that the applications for loans for medical studies covering the academic year 2021/2022 may be submitted until 30 September 2022. In the other academic years, applications should be submitted within 21 days from the beginning of the semester (as per Article 2 of the Regulation).

The Council Implementing Decision required to provide a legal basis for financial support from academic year 2021/2022 for students in the field of medicine in Poland by amendment to the Act on Higher Education and Science and the act on the Professions of Doctor and Dentist. As analysed above,

while Poland adopted the relevant amendment to the Act of on Higher Education and Science, the requirement to start the provision of financial support in academic year 2021/2022 was fulfilled by adopting the regulation based on the Act. Whilst this constitutes a minimal formal deviation from the requirement of the Council Implementing Decision, it concerns a technical matter that is typically addressed in secondary legal acts implementing legislative acts in the Polish legal system. As of this, this minimal deviation does not affect the progress towards achieving the reform that the milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

[...] and introduce the possibility of using financial support in the form of a loan for students of paid studies in the field of medicine at a university level.

Articles 103a - 103f of the amended Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021) set out in details the criteria for students of paid studies in medicine to apply for a loan, the preferential lending terms, the term of the loan, the method of financing the studies for which the loan was taken, the method and period of repayment of the loan as well as the terms of loan remission. The criteria for applying for a loan stipulate that the applicant shall have the status of a student, but they do not specify the academic year of starting the studies. Hence, the financial support is provided to all students, including students who started their studies before the academic year 2021/2022.

The student shall be able to apply for early repayment of the loan or for an extension of its repayment period.

According to article 103c, point 1 of the amended Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), the repayment of the loan begins 12 years after graduation on the medical major, unless the borrower has applied to the bank for early repayment of the loan for medical studies or for the extension of the repayment period.

After meeting certain conditions specified in the Act, the student shall be able to apply for a partial or complete remission of the loan for medical studies.

According to article 103d, point 2 of the Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), a loan for medical studies may be cancelled partially in the following cases: a) the borrower's particularly difficult life, or b) when the borrower continues the specialisation training but has not completed this training course or has not obtained the title of professional for reasons beyond his/her control; or in full in the following cases: a) the permanent loss of the borrower's ability to repay its liabilities, or b) the lack of legal means of redress against the borrower, or c) the death of the borrower. Article 103d, point 5 of the amended Act on Higher Education and Science sets out the possibility of applying for remission of the loan.

Students who take advantage of the support shall be able to apply for a complete remission of the loan upon meeting the following conditions:

- work after graduation for a period of not less than 10 years within 12 consecutive years counted from the date of graduation, in entities performing medical activities on the territory of the Republic of Poland, which provide health care services financed from public funds, and
- obtain the title of specialist within the above-mentioned period, in a field of medicine recognised as a priority on the day the physician commences the specialisation training.

A person who meets these two conditions shall not have to reimburse the loan for medical studies.

According to article 103d, points 1-2 of the amended Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), a loan for medical studies shall be written off in full if the borrower meets jointly the following conditions:

- The borrower practised as a doctor in the territory of the Republic of Poland, as part of a professional practice or under a medical facility providing publicly funded healthcare services, for 10 years during a period of 12 consecutive years counted from the date of completion of his/her studies, in total working time equivalent to at least one post, and
- The borrower obtained the title of medical specialist within the above-mentioned period in a field of medicine recognised as a priority on the date on which he/she started specialist training, within the meaning of the provisions issued pursuant to Article 16 g. 4 of the Act of 5 December 1996 on the Professions of Doctor and Dentist (Journal of Laws Of Laws 2021, item 790 and 1559).

Detailed conditions and procedure for cancelling the loan shall be specified in the legislative act.

These requirements are addressed by article 103d, point 2 of the Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), as analysed above.

Furthermore, in line with the description of the measure, **the reform should consist of initiatives aimed at incentivising young people to take up and pursue medical studies and subsequently practise medicine in Poland, which comprises (i) the introduction of a scheme for granting loans to medical students, including financial incentives to practice in Poland after their studies end (...).**

As provided by article 103d, points 1-2 of the amended Act on Higher Education and Science (as amended by article 1, point 7 of the Act of 17 November 2021), students of paid studies in the field of medicine at a university level shall get the opportunity of financing their studies from the state budget, which is an important incentive to undertake studies. A graduate of these studies who obtains a title of specialist in a field of medicine recognised as a priority by the Ministry of Health gets the possibility for remission of the entire loan, which is also an important financial incentive for practising medicine in Poland and, thus, increasing the availability of medical professionals in Poland in those fields tailored to actual health needs.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: D29G	Related Measure: D2.1.1 Investments related to the modernisation and retrofitting of teaching facilities with a view to increasing admission limits for medical studies	
Name of the Milestone: Entry into force of a legal act establishing a system of incentives to undertake and continue studies in selected medical university faculties through scholarships, funding for studies and mentoring		
Qualitative Indicator: Provision in the legal act indicating its entry into force		Time: Q2 2022
Context: The objective of investment D2.1.1 is to increase the capacity of medical teaching facilities and support students taking part in medical studies. It consists of several sub-investments, including an		

investment creating a temporary system of incentives to take up and continue studying in selected medical courses.

Milestone D29G requires entry into force of a legal act introducing a temporary system of incentives to increase the attractiveness of medical studies. In particular, the system should include:

- granting scholarships, co-financing paid studies and financing the mentoring of students of nursing, midwifery and emergency medical services; and
- granting scholarships for students in the fields of medicine, medicine and dentistry, medical analytics, as well as pharmacy and physiotherapy.

Milestone D29G is the first step of the implementation of the investment and it will be followed by target D30G, related to the minimum number of students having received support on the basis of the system of incentives introduced by milestone D29G, and target D31G, related to the number of modernized teaching facilities for preclinical education, adapted facilities of the of the clinical base used in teaching in central clinical hospitals, modernized library infrastructures and students' dormitories in medical universities .

The investment has a final expected date of implementation on 30 June 2026.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled;
- ii. **Copy of the Resolution No 251 of the Council of Ministers of 16 December 2022 on the adoption of a public policy entitled “System of incentives for taking up and continuing studies in selected medical faculties and for taking up employment for the period 2022-2026”**, published in the Official Journal of the Republic of Poland ‘Monitor Polski’, item 1237/2022 (hereinafter called “Resolution no 251”).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of a legal act

The Resolution no 251 of the Council of Ministers introduced a new public policy in accordance with the article 21d-21f of the Act of 6 December 2006 on Principles of the Development Policy (article 21d-21f). Resolution no 251 on the adoption of a public policy entitled “System of incentives for taking up and continuing studies in selected medical faculties and for taking up employment for the period 2022-2026” was adopted by the Council of Ministers on 16 December 2022 and published on the same day (the Official Journal of the Republic of Poland ‘Monitor Polski’, item 1237/2022). The resolution entered into force on the following day after its publication, i.e., on 17 December 2022, in accordance with paragraph 4 of the resolution.

The legal act introducing the temporary system of incentives [...]

The system of incentives has been put in place by paragraph 1 of the resolution until the end of the academic year 2025/2026 (June 2026), within the period of validity of the Recovery and Resilience Facility. The schemes of support have started retroactively from the beginning of the academic year 2022/2023, in accordance with chapter III of the annex to the resolution. The detailed content of the temporary system of incentives is analysed below.

[...] to increase the attractiveness of medical studies

Resolution no 251 introduced a system of incentives to undertake and continue studies in selected medical university faculties through scholarships, funding for studies and mentoring, as evidenced by paragraph 1 of the resolution. The system of incentives introduced an important element of encouraging young people to undertake and pursue medical studies, because it increased attractiveness of such studies by providing non-repayable financial support through scholarships and co-financing of paid studies and by addressing identified challenges in taking up work by graduates of medical studies through mentoring, as analysed below.

shall include the possibility of: granting scholarships, co-financing paid studies and financing the mentoring of students of nursing, midwifery and emergency medical services;

- **Granting scholarships for students of nursing, midwifery and emergency medical service**

In accordance with chapter III of the annex to the resolution, the scholarship may be granted to the first-year students of undergraduate studies of the eligible fields (that is, nursing, midwifery and emergency medical services) for the entire study cycle (3 years) of full-time or part-time studies at a public or non-public university (excluding the bridging studies, that is complementary studies for people already working in the concerned medical professions, but who only have secondary vocational education). As follows from chapter III of the annex to the resolution, the scholarship covers the period of 9 months of each academic year (from October till June inclusive). In accordance with chapter III of the annex to the resolution, two full study cycles will be funded (the first cycle starting in academic year 2022/2023 and finishing in academic year 2024/2025 and the second cycle starting in academic year 2023/2024 and finishing in academic year 2025/2026). In accordance with chapter III of the annex to the resolution, the scholarship is awarded to persons who obtain a student status of nursing, midwifery or emergency medical service faculty. In accordance with chapter III of the annex to the resolution, the medical universities awards scholarships for the best students based on the scholarship regulation – this is established by the rector of the university in consultation with the student government. Finally, in accordance with chapter III of the annex to the resolution, bilateral grant agreements are concluded between students who have received the scholarship and the university.

- **Co-financing of paid studies for students of nursing, midwifery and emergency medical service**

In accordance with chapter III of the annex to the resolution, co-financing of paid studies for students of nursing, midwifery and emergency medical service, for an amount that represents the average level of tuition fees is granted to undergraduate students (excluding the bridging studies, that is complementary studies for people already working in the concerned medical professions, but who only have secondary vocational education) of full-time studies at public universities as well as of full-time or part-time studies at non-public universities. In accordance with chapter III of the annex of the resolution, two full study cycles of undergraduate degree are funded (the first cycle starting in academic year 2022/2023 and finishing in academic year 2024/2025 and the second cycle starting in academic year 2023/2024 and finishing in academic year 2025/2026). In accordance with chapter III of the annex to the resolution, the support is awarded to students directly by the Ministry of Health based on national-wide guidelines set out by the Ministry. In accordance with chapter III of the annex to the resolution, grant applications are collected from students by the university and then submitted to the Ministry of Health. In accordance with chapter III of the annex to

the resolution, bilateral grant agreements are concluded between students who have received the co-financing and the university.

- **Financing the mentoring for students of nursing, midwifery and emergency medical service.**

In accordance with chapter III of the annex to the resolution, the target group for support consisting in financing the mentoring includes students of nursing, midwifery and emergency medical service. In accordance with chapter III of the annex to the resolution, the mentoring is available in the academic years 2022/2023 to 2025/2026 for all eligible faculties, that is faculties of nursing, midwifery and emergency medical service. In accordance with chapter III of the annex to the resolution, the mentoring lasts one month for each covered student. In accordance with chapter III of the annex to of the resolution, the mentor must possess minimum five years of professional experience in the eligible field (that is, nursing, midwifery or emergency medical service), have good references and interpersonal skills and be employed on a permanent contract in the establishment where mentoring is granted. In accordance with chapter III of the annex to the resolution, mentors are granted a one-off salary for performing mentoring.

- **and granting scholarships for students in the fields of medicine, medicine and dentistry, medical analytics, as well as pharmacy and physiotherapy.**

In accordance with chapter III of the annex to the resolution, the scholarship may be granted to students of the eligible faculties: medicine, medicine and dentistry, medical analytics, as well as pharmacy and physiotherapy. In accordance with chapter III of the annex to the resolution, a person who is entering the first year of full-time or part-time studies at a public or non-public university, may apply for a scholarship. In accordance with chapter III of the annex to the resolution, the scholarship is paid during 9 months of the academic year (from October until June inclusive). Taking into consideration that, due to the end of the Recovery and Resilience Facility in 2026, it is not possible to grant scholarships for the entire period of studying at these faculties (unified studies are lasting 5 to 6 years), the scholarship is granted for the period of 3 years of studying, in accordance with chapter III of the annex to the resolution. In accordance with chapter III of the annex to the resolution, two tours of granting the scholarships take place: in 2022 for the academic years 2022/2023 to 2024/2025 and in 2023 for the academic years 2023/2024 to 2025/2026. In accordance with chapter III of the annex to the resolution, the medical universities award scholarships for the best students based on the scholarship regulation established by the rector of the university in consultation with the student government. In accordance with chapter III of the annex to the resolution, bilateral grant agreements are concluded between students who have received the scholarship and the university.

The legal act introducing the system shall include an obligation to review the system's performance at the end of the RRF period and to analyse the impact of the implemented incentive scheme on the number of students in education with a view to deciding on its possible resumption.

The Resolution of the Council of Ministers provides for the incentive scheme to be available for the period 2022-2026, in accordance with the provisions indicated above. The Resolution lays down the obligation to review the system's performance through the following references:

(i) paragraph 3 of the Resolution provides that “monitoring of the implementation of the system of incentives is entrusted to the minister responsible for health”;

(ii) chapter IV of the annex to the Resolution (page 46) specifies the content of paragraph 3 of the Resolution, including by stating that “all the measures listed in the incentive scheme, irrespective of the method of financing, will be coordinated and monitored by the minister responsible for health with the assistance of the competent bodies and institutions” and that “monitoring of the project, in accordance with the conditions set out in the Polish RRP, will be carried out in partnership and with the involvement of all stakeholders directly involved in the areas covered by the project”;

(iii) the Polish recovery and resilience plan states that “after completing the financing of the above-mentioned activities under the RRP, an analysis of the impact of the implemented system of incentives on the number of educated students will be carried out, which will be key to making a decision regarding the continuation of this support” (Component D, description of the investment D2.1.1, page 282).

In light of these provisions read together, the Minister of Health is bound, as part of the monitoring of the scheme at the end of the Recovery and Resilience Facility period, to review the system’s performance and to analyse its impact on the number of students in view of its possible resumption in line with the requirements of milestone D29G.

Commission Preliminary Assessment: Satisfactory fulfilment

Number: E8G	Related Measure: E1.1.1 Support for a low-carbon economy	
Name of the Milestone: Establishment of a financial instrument (Fund) for zero/low-emission mobility and energy		
Qualitative Indicator: Approval and registration of the Fund, approval of the investment strategy by the Fund governing bodies		Time: Q2 2022
<p>Context:</p> <p>The measure aims to contribute to the development of low- and zero-carbon economy. The specific objective of the investment is to increase the potential of selected sectors to develop zero- and low-carbon product solutions by establishing a dedicated financial instrument (Fund). Milestone E8G concerns the establishment of the financial instrument (the “Fund”) to support the low-emission economy in Poland.</p> <p>Milestone E8G is the first step of implementation of investment E1.1.1 and it will be followed by milestone E9G (under the second instalment), related to the selection of financial beneficiaries, target E10G (under the ninth instalment), related to installed production capacity of new zero-emission vehicles, target E11G (under the ninth instalment), related to production and storage capacity of zero-emission/low-emission storage and production of alternative fuels/energy, and target E12G (under the eighth instalment), related to the number of SMEs and mid-caps supported by the specific investments targeted by the Fund.</p> <p>The investment has a final expected date of implementation on 30 June 2026.</p>		
Evidence provided:		

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of the resolution nr A/57/4/2022 of 19 October 2022** of the Management Board of the National Fund for Environmental Protection and Water Management (“NFOSiGW”) establishing the Priority Programme (‘Industry for Transition – Increasing the potential of enterprises to produce zero- and low-carbon solutions’) and the Investment Policy of the Low Emission Economy Fund.
- iii. **Copy of the Priority Programme “Industry for Transformation – Enhancing Enterprise’s Manufacturing Potential zero and low carbon solutions”** adopted as an Annex to the resolution nr A/57/4/2022 of 19 October 2022 the Management Board of the National Fund for Environmental Protection and Water Management (“NFOSiGW”).
- iv. **Copy of the investment policy of the “Support for Low-emission Mobility Fund”** approved through a Resolution of the Management Board of the of the National Fund for Environmental Protection and Water Management (“NFOSiGW”) on the adoption of a priority programme of 19 October 2022, to which Investment Policy is an annex.
- v. **Copy of the Investment strategy** approved by the resolution nr 04/01/2024 of 24 January 2024 of the Management Board of the PFR Towarzystwo Funduszy Inwestycyjnych S.A. (Polish Development Fund Investment Fund Company joint-stock company) on the approval of the document on the Investment Strategy of the PFR NFOŚiGW Closed-end Investment Fund of Non-Public Assets.
- vi. **Copy of the call’s announcement** of the National Fund for Environmental Protection and Water Management (“NFOSiGW”) on 21 October 2021 and the link [Przemysł dla transformacji - Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej - Portal Gov.pl \(www.gov.pl\)](https://www.gov.pl/web/gov/przemysl-dla-transformacji-narodowy-fundusz-ochrony-srodowiska-i-gospodarki-wodnej)
- vii. **Copy of the protocol from the first part of the meeting of the Application Evaluation Committee** (hereinafter referred to as "KOW", "Committee") under the project "Industry for transformation - Enhancing Enterprise’s Manufacturing Potential zero and low carbon solutions” of 15 November 2022 signed by the Chairman of the Application Evaluation Committee.
- viii. **Copy of the protocol from the second part of the meeting of the Application Evaluation Committee** (hereinafter referred to as "KOW", "Committee") under the priority programme "Industry for transformation - Enhancing Enterprise’s Manufacturing Potential zero and low carbon solutions” of 16 November 2022.
- ix. **Copy of the resolution nr B/3/19/2023 of 17 January 2023** of the Management Board of the National Fund for Environmental Protection and Water Management (“NFOSiGW”) selecting the PFR TOWARZYSTWO FUNDUSZY INWESTYCYJNYCH S.A. as the Fund Manager.
- x. **Copy of the resolution nr B/45/35/2022 of 15 November 2022** of the Management Board of the National Fund for Environmental Protection and Water Management (“NFOSiGW”) on the approval of the Rules of Procedure and the composition of the Investment Committee.
- xi. **Copy of the Act of 15 December 2022 on the special protection of certain consumers of gaseous fuels in 2023 due to the gas market situation** (*Ustawa z 15 grudnia 2022 roku o szczególnej ochronie niektórych odbiorców paliw gazowych w 2023 r. w związku z sytuacją na rynku gazu*) published in the Official Journal on 20 December 2022, item 2687.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Establishment of the financial instrument ("Fund")

The Fund was established by resolution nr A/57/4/2022 of 19 October 2022 of the Management Board of the National Fund for Environmental Protection and Water Management (hereinafter NFEPWM). The Fund is listed on the website of the Financial Supervision Authority (Komisja Nadzoru Finansowego) with the national code PLFIZ001088 under the name PFR NFOŚiGW Fundusz Inwestycyjny Zamknięty Aktywów Niepublicznych, registration number 1724, registration date 16.12.2022.

to support the low-emission economy in Poland including related investment strategy/policy. The latter shall be adopted by the governing bodies of the Fund,

The Investment Policy was adopted as an annex to the resolution nr A/57/4/2022 of 19 October 2022 of the Management Board of the NFEPWM establishing the Priority Programme ('Industry for Transition – Increasing the potential of enterprises to produce zero- and low-carbon solutions') (hereinafter "the Priority Programme") and the Investment Policy of the Low Emission Economy Fund.

The Investment Strategy was approved by resolution nr 04/01/2024 of 24 January 2024 of the Management Board of the PFR Towarzystwo Funduszy Inwestycyjnych S.A. (Polish Development Fund Investment Fund Company joint-stock company) on 24 January 2024.

[The Investment Strategy/Policy is] in line with the [Commission's Guidance Note of 22 January 2021 related to financial instruments](#)

The Investment Policy and the Investment Strategy are in line with the Commission's Guidance Note of 22 January 2021, which require the following information to be indicated:

- the policy objectives of the measure – are defined in point 4.a. *Investment objectives of The Fund* of the Investment Policy (page 7) and in Section II, sub-section 5 *Objective of the Fund* of the Investment Strategy (pages 8-9);
- references to the State aid dimension of the measure (e.g. applicability of the General Block Exemption Regulations, individual notification, etc.) are included in point 5.a.i. *Compliance with State Aid with respect to Financial Instruments for The Fund* of the Investment Policy (page 14) and points [22.], [43.], [45.], [64.] of the Investment Strategy (pages 9, 16, and 21);
- the target amount of finance and investment to be mobilized is indicated in point [7.] of the Investment Strategy (page 6);
- the type of support to be deployed (e.g. loans, guarantees, equity...) is indicated in the preamble and points [6.] and [38.] of the Investment Strategy (pages 6 and 14-15);
- the targeted beneficiaries (e.g. SMEs, mid-caps) and the nature of the investment (e.g. innovation, broadband, infrastructure) - the targeted beneficiaries are defined in points 4b *Investment description of the Fund* (page 8) and 4c *Investment targets of the Fund* of the Investment Policy (page 9) and point [32.] of the Investment Strategy (page 13); the nature of the investment is defined in point 4.a. *Investment objectives of The Fund* of the Investment Policy (page 7) and section II, sub-section 5 *Objective of the Fund* of the Investment Strategy (pages 8-9);

- the timetable for deploying the financial instrument is set out in point [23.] of the Investment Strategy (page 10);
- the name of the implementing partner is identified in the preamble and point [1.] of the Investment Strategy (page 5);
- a description of the monitoring system to report on the investment mobilized through the financial instrument is included in point 4.g *Organization, decision making process and investment monitoring of the Fund* of the Investment Policy (page 12). The Investment Strategy further specifies that the financial intermediary ensure that it has access to the necessary information from the Portfolio Companies for monitoring purposes (point [55.], page 19);
- the calculation of the loss distribution is presented in point [21.] of the Investment Strategy (pages 8-9).

Beneficiaries shall primarily be SMEs and Mid-Caps.

In accordance with points 4b *Investment description of the Fund* (page 8) and 4c *Investment targets of the Fund* of the Investment Policy (page 9) and point [32.] of the Investment Strategy (page 13), beneficiaries are primarily SMEs and Mid-Caps.

That fund, along with its investment strategy, shall be set up by 30 June 2022.

The Council Implementing Decision required that the fund, along with its investment strategy shall be set up by 30 June 2022. The Fund was set up by resolution nr A/57/4/2022 of 19 October 2022 of the Management Board of the NEPWM. The Investment Strategy was approved by resolution nr 04/01/2024 of 24 January 2024 of the Management Board of the PFR Towarzystwo Funduszy Inwestycyjnych S.A. on 24 January 2024. Whilst this constitutes a minimal deviation from the requirement of the Council Implementing Decision, the delay in the establishment of the Fund is considered to be limited. Furthermore, notwithstanding the late approval, the Investment Strategy, in accordance with paragraph 2 of Resolution nr 04/01/2024 of 24 January 2024, to which it constitutes an annex, entered into force on the date of the adoption of the resolution and therefore during the process of the preliminary assessment of the payment request. As of this, this minimal deviation does not change the nature of the measure and does not affect the progress towards achieving the investment that the milestone represent. On this basis, it is considered that the constitutive element of the milestone is satisfactory fulfilled.

and including selection criteria to ensure compliance with the ‘Do no significant harm’ Technical Guidance (2021/C 58/01) of supported transactions under this measure through the use of...

Compliance with the ‘Do no significant harm’ Technical Guidance (2021/C58/01) is fully ensured, as evidenced by provisions of the Investment Policy and the Investment Strategy. Namely the following elements have been included:

- general reference to the DNSH Technical Guidance (“*Measures will comply with the ‘Do no significant harm’ Technical Guidance (2021/C 58/01).*”) in the Investment Policy’s section 4.d. *Requirements for portfolio companies* (page 9);
- section 4 *DNSH self-assessment* (points [14.]- [17.] of the Investment Strategy (page 8). In line with these provisions, the Fund, having regard to the Guidance Note (2021/C 58/01), states

that it has not carried out previous activities relevant for assessing compliance with the "do no significant harm" principle against the climate objectives set out in Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework to facilitate sustainable investment, amending Regulation (EU) 2019/2088. Compliance of investments with the DNSH principle is one of the fundamental requirements of the Fund.

- In the case of indirect investments, the selection criteria for the Financial Intermediary foresee that the assessment includes compliance with the DNSH principle (demonstrated by an analysis corresponding to the Fund's expectations or, at least, exclusion from the Financial Intermediary's investment strategy (or other relevant document) of activities that do not comply with the DNSH principle) (point [50.], sub-point 4 of the Investment Strategy, page 17);
- Before investing in a portfolio company, the Fund will verify that the activities carried out by such a company comply with the "do no significant harm" principle. For this purpose, a separate procedure and rules will be established by the Fund for the verification of this principle, taking into account the European Commission's Notice Technical guidance on the application of the "do no significant harm" principle under the Regulation establishing Recovery and Resilience Facility (2021/C 58/01), in particular to confirm sustainability, the list of exclusions and the requirement to comply with relevant EU and national environmental legislation. The Fund may apply, alternatively or explicitly, the Delegated Regulations of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework to facilitate sustainable investment, amending Regulation (EU) 2019/2088, or act on the basis of another method adopted by the Fund to verify the aforementioned principle, taking into account the Technical Guidance on Sustainability Checks for the InvestEU Fund (point [52.], sub-point 9 of the Investment Strategy, page 18-19).
 - **sustainability proofing,**

According to the Investment Policy (point 4.g *Organization, decision making process and investment monitoring of the Fund*, page 12) sustainability proofing will be ensured for financing and investment operations in all segments within which the Fund operates.

The Fund's investments will ensure the application of the Commission's technical guidance on verifying the sustainability of projects for the InvestEU Fund (2021/C 280/01). Investments below certain thresholds are exempted from sustainability verification (section 1.3 of the EC Technical Guidelines). Only the environmental and climate dimension should be taken into account (point [40.] of the Investment Strategy, page 15). In addition, the Investment Strategy envisages (point [42.], page 16) that, when investing, the Fund shall take into account an assessment of the merits of making an investment that fits within the Strategy and an assessment of the level of risk of such an investment, covering, inter alia, such matters as may be relevant to the assessment of the investment under consideration, including with respect to risks to sustainable development.

Furthermore, prior to investing in a portfolio company, the Fund will establish separate procedures and rules to confirm sustainability (point [52.], sub-point 9 of the Investment Strategy, page 18-19).

- **an exclusion list,**

Section 8 *Investment type criterion*, point [33.] of the Investment Strategy lists the activities in which the Fund does not invest (pages 13-14). This includes 1) fossil fuel activities, including their downstream use; 2) activities under the EU Emissions Trading Scheme (ETS) leading to projected greenhouse gas emissions equal to or above the relevant reference levels; 3) activities related to waste landfills, incinerators and mechanical-biological treatment plants; 4) activities where the long-term disposal of waste may cause harm to the environment.

In accordance with the footnote 4 of the Investment Strategy “*Where the activity supported achieves projected greenhouse gas emissions that are not significantly lower than the relevant benchmarks an explanation of the reasons why this is not possible shall be provided. Benchmarks established for free allocation for activities falling within the scope of the EU Emissions Trading System, as set out in the Commission Implementing Regulation (EU) 2021/447.*”

Furthermore, prior to investing in a portfolio company, the Fund will establish separate procedures and rules to confirm the list of exclusions (point [52.], sub-point 9 of the Investment Strategy, pages 18-19).

Furthermore, in line with the description of the measure, in order to ensure that the measure complies with the ‘Do no significant harm’ Technical Guidance (2021/C 58/01), the selection criteria of the financial instrument shall exclude the following list of activities: (i) activities related to fossil fuels, including downstream use³⁰; (ii) activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks³¹; (iii) activities related to waste landfills, incinerators³² and mechanical biological treatment plants³³; and (iv) activities where the long-term disposal of waste may cause harm to the environment. As indicated above this condition is fulfilled by including Section 8 *Investment type criterion*, point [33.] of the Investment Strategy (pages 13-14).

- **and the requirement of compliance with the relevant EU and national environmental legislation.**

The Investment Policy requires compliance with relevant EU and national environmental legislation (point 4d *Requirements for portfolio companies*, page 10).

The Investment Strategy establishes compliance with relevant EU and national environmental legislation and guidelines as one of the criteria for making investments by the Fund (point [10.], page 7). It is described in detail in points [39.] and [40.], page 15. Furthermore, prior to investing in a portfolio company, the Fund will establish separate procedure and rules to confirm the requirement to comply with relevant EU and national environmental legislation (point [52.], sub-point 9 of the Investment Strategy, pages 18-19).

- **In particular compliance of supported investments with Articles 6(3) and 12 of the Habitats Directive, and Article 5 of the Birds Directive shall be ensured and, where necessary, an Environmental Impact Assessment (EIA) or screening shall be carried out, in accordance with the EIA Directive.**

According to the Investment Policy, compliance of supported investments with Articles 6(3) and 12 of the Habitats Directive, and Article 5 of the Birds Directive shall be ensured and, where necessary, an Environmental Impact Assessment (EIA) or screening shall be carried out, in accordance with the EIA Directive (point 4.d I *Requirements for portfolio companies*, page 10).

The Investment Strategy states that the Fund's investments require confirmation of the Investment's compliance with relevant EU and national environmental legislation. In particular, it will be ensured

that the financed investments comply with the provisions governing environmental impact assessments and Natura 2000 sites, including Articles 6(3) and 12 of the Habitats Directive and Article 5 of the Birds Directive and, where necessary, verification of the obligation to carry out an environmental impact assessment will be required and, if found, an environmental impact assessment (EIA) will also be carried out in accordance with Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (section 11 *Criterion of compliance with relevant EU and national environmental legislation*, point [39.], page 15).

The Fund shall provide financial instruments (equity or debt) support for investment projects related to research and innovation processes, technology transfer and cooperation between enterprises focusing on the low carbon economy, resilience and adaptation to climate change, with focus on low and zero-emission innovative solutions in the field of sustainable mobility and zero-emission/low-emission energy sources (excluding Compressed Natural Gas and Liquefied Natural Gas), primarily implemented by SMEs and mid-caps.

The Fund:

- will be offering equity and debt support following its adopted Investment Strategy (point 4.e *Financial instruments of the Fund* of the Investment Policy, page 10; preamble and point [6] of the Investment Strategy, page 6);
- will invest in initiatives aiming at the development of manufacturing assets providing low-emission solutions to the European economy. The Fund's scope of activity may embrace research and innovation processes, technology transfer and cooperation between enterprises focusing on the low carbon economy (point 4.b *Investment description of the Fund* of the Investment Policy, page 8; preamble, points [27.2] and [30.] of the Investment Strategy, pages 9 and 10-11), resilience and adaptation to climate change (preamble, points [27.2] and [30.] of the Investment Strategy, pages 11 and 11-12); industrial installations focused on zero-emission solutions in the field of sustainable mobility (point 4.b *Investment description of the Fund* of the Investment Policy, page 8; preamble, points [27.1] and [30.] of the Investment Strategy, pages 10 and 11-12); industrial installations for the production of end-products in the field of zero-emission/low-emission energy sources (point 4.b *Investment description of the Fund* of the Investment Policy, page 8; preamble, points [27.2] and [30.] of the Investment Strategy, pages 11 and 11-12); Compressed Natural Gas and Liquefied Natural Gas are excluded (point 4.c *Investment targets of the Fund* of the Investment Policy, page 9; point [30.1] of the Investment Strategy, pages 11-12);
- will invest in projects primarily implemented by SMEs and mid-caps (point 4.b *Investment description of The Fund* of the Investment Policy, page 8; points [27.3] and [32.] of the Investment Strategy, pages 11 and 13).

The management of the Fund shall be entrusted to a Fund manager selected via an open tender.

The open tender was announced and published on the website of the NFEPWM on 21 October 2021. The link <https://www.gov.pl/web/nfosigw/przemysl-dla-transformacji>

In the first stage of evaluation 9 entities eligible for the role of Fund manager were identified, as confirmed in the protocols of the meetings of the Application Evaluation Committee on 15 and 16 November 2021.

In the second stage of evaluation, the Fund manager was selected (resolution nr B/3/19/2023). The justification is provided in the evaluation report (document xi in the list of evidence).

The Fund Investment Committee shall be established and be responsible for approving projects of final recipients (investees) as proposed by the Fund manager based on market needs and in an open and market-conform way.

The Investment Committee has been established on 15 November 2022 by resolution nr B/45/35/2022 of the Management Board of the NFEPWM.

The Investment Committee is responsible for delivering an opinion and approving of investment decisions. In accordance with point 4.g *Organization, decision making process and investment monitoring of the Fund* of the Investment Policy, page 12, the investment decision will be subject to the opinion and approval of an investment committee, operating within the fund, consisting of five to ten persons with expertise in the operation of investment funds in appropriate forms and industries. This is also confirmed by point 9 Additional provisions of the Priority Programme, page 6, which states that the granting of a loan or equity investment by the Fund manager will be subject to the approval by the Investment Committee established by NFEPWM. The Fund manager will make recommendations to the Investment Committee on the granting of loans and the making of equity investments.

Investment decisions will be proposed by the Fund manager (point 4.g *Organization, decision making process and investment monitoring of the Fund* of the Investment Policy, page 12) after the preparation or analysis of a business plan for the investment that meets certain conditions.

Investment decisions would be made according to market criteria taking into account prevailing economic, business, legal and organisational factors, the specifics of a given investment and the growth potential of a given enterprise (Investment Policy, point 4.f *Rationale and criteria for the choice of the financial instrument of the Fund*, page 11). In addition, the Investment Strategy envisages (point [42.], page 16) that, when investing, the Fund shall take into account an assessment of the merits of making an investment that fits into the Strategy and an assessment of the level of risk of such investment, covering business and financial, legal, tax, reputational and other elements, including risks to sustainability. These criteria ensure that investments decisions are based on market needs and in an open and market-conform way.

The structure of the Fund shall enable to leverage private funds.

The Investment Policy (point 4.e *Financial instruments of the Fund*, page 11) foresees that the maximum level of leverage, defined by exposure, expressed as a percentage of exposure (calculated in accordance with the commitment method as set out in Article 8 of Regulation No 231/2013) to the value of assets, should not exceed 200% of the value of assets at any time.

Point [7.] of the Investment Strategy (page 6) sets out that, within the Fund's investments, the assumed level of private equity participation (both in the form of equity and debt financing) that the Fund will aim for should be no less than 120% of the Fund's invested resources.

The underlying legal acts shall ensure that any reflow (i.e., interests on the loan, return on equity, or principal repaid, minus associated costs) linked to these instruments shall be used for the same policy goals, including beyond 2026, or to repay the RRF loans.

This is confirmed in Article 38 of the Act of 15 December 2022 on the special protection of certain consumers of gaseous fuels in 2023 due to the gas market situation that was published in the Official Journal (20.12.2022, item 2687). Under this Article, the funds received by the National Fund for Environmental Protection and Water Management in connection with the implementation of investment E.1.1.1 used for the establishment of the Fund and returned to the National Fund (together with the interest and other benefits received thereon, after deduction of related costs) shall be used exclusively for the repayment of the loan granted from the Recovery and Resilience Facility or to support industrial development of zero and low carbon solutions for sustainable mobility and energy.

Furthermore, in line with the description of the measure:

- **The general objective of the investment shall be to contribute to the development of low- and zero-carbon economy by supporting industry for clean mobility and energy sectors.**
- As stated in the preamble to the Investment Strategy (page 5), the objective is to establish and manage a fund that will make investments in the form of equity and debt investments dedicated to the development of an industry in Poland for low and zero carbon solutions for sustainable mobility and energy.
- **Supported products and technologies may notably include research and innovation processes, technology transfer and cooperation between enterprises focusing on the low carbon economy with focus on low and zero-emission innovative solutions in the field of sustainable mobility and zero-emission and low-emission energy sources.**

Point 4.a. *Investment objectives of The Fund* of the Investment Policy (page 7) states that the Fund's scope of activity may embrace for example research and innovation processes, technology transfer and cooperation between enterprises focusing on the low carbon economy with focus on low and zero-emission innovative solutions in the field of sustainable mobility and zero-emission and low-emission energy sources. This is further confirmed in point [18] of the Investment Strategy (page 8).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: E23G	Related Measure: E2.2 Enhance transport safety	
Name of the Milestone: Entry into force of legal acts introducing: priority for pedestrians at crossings, uniform speed in built-up areas minimum distance between vehicles, road safety targets by 2030 (-50 % fatalities in accidents)		
Qualitative Indicator: Provisions in the legal acts indicating the entry into force		Time: Q4 2021
Context:		

The aim of this reform is to increase transport safety, with a focus on the safety of vulnerable transport users. The progress of the reform shall be tracked against the road safety target of a relative decrease of fatalities and seriously injured people in line with EU and Member States' goals on road safety.

Milestone E23G concerns the entry into force of legislative changes promoting road safety, namely: priority of pedestrians on crossings, introducing homogenous speed limit in urban areas (50 km/h) and minimum distance between vehicles on motorways and expressways (half the speed in meters). In addition, an overall goal for road safety shall be established in the National Road Safety Programme aiming for a 50% reduction of fatalities in road accidents by 2030 vs 2019.

Milestone E23G is the only milestone or target of this reform.

The reform has a final expected date for implementation on 31 December 2021.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled.
- ii. **The Act of 25 February 2021 amending the Act - Road Traffic Law**, published in the Official Journal on 15 March 2021, item 463.
- iii. **National Road Safety Programme 2021-2030 as adopted on 30 September 2021 by Resolution No. 2/2021 of the National Road Safety Council.** Link to the website where the Resolution was published: <https://www.krbrd.gov.pl/wp-content/uploads/2022/02/Uchwala-KRBRD-nr-2-2021-z-dnia-30.09.2021-r.-w-spr.-przyjecia-programu-pn.-Narodowy-Program-Bezpieczenstwa-Ruchu-Drogowego-2021-2030.pdf>. Link to the website where the Programme was published: <https://www.krbrd.gov.pl/wp-content/uploads/2021/12/Narodowy-Program-Bezpieczenstwa-Ruchu-Drogowego-2021-2030.pdf>

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

The following legislative changes promoting road safety shall be introduced:

The Act of 25 February 2021 amending the Act - Road Traffic Law (hereinafter referred to as the Act) was published in the Official Journal on 15 March 2021, item 463.

In accordance with the provision of Article 2, the Act entered into force on 1 June 2021. The Act introduced the following legislative changes promoting road safety:

- **priority of pedestrians on crossings**

Article 1 b) of the Act introduces a new provision 1a) in Article 13 of the Road Traffic Law, according to which (i) a pedestrian present on a pedestrian crossing has priority over vehicles and (ii) a pedestrian entering a pedestrian crossing has priority over vehicles, except trams.

- **homogenous speed limit in urban areas (50 km/h)**

Article 4 of the Act modifies Art. 20 (1) of the Road Traffic Law setting the speed limit of vehicles in urban areas. The provision of Road Traffic Law in Art. 20 (1a) which had allowed a higher speed limit of 60 km/h in night hours (23:00-05:00) is now removed. This way, the speed limit in urban areas is

homogenous and set at 50 km/h both during day and night. The only exception which remains, contained in Article 20 (2) of Road Traffic Law, concerns specifically designated residential zones where the maximum speed limit is set at a lower level of 20 km/h (where there is no need to apply the uniform 50 km/h limit, as the 20 km/h is lower).

- **minimum distance between vehicles on motorways and expressways (half the speed in meters).**

Article 3 of The Act introduces a new provision in Art. 19 3a) of the Road Traffic Law, according to which the minimum distance to be kept by a driver of a vehicle on a motorway or expressway from a preceding vehicle is set in meters at a level equal to half of the velocity of the vehicle.

The overall goal for road safety shall be established in the National Road Safety Programme aiming for a 50% reduction of fatalities in road accidents by 2030 vs 2019 in line with an EU commitment. Furthermore, in line with the measure description: progress of the reform shall be tracked against a road safety target on a relative decrease of fatalities and seriously injured people in line with EU and Member States' goals on road safety.

The National Road Safety Programme 2021-2030 (hereinafter referred to as the Programme) was adopted by Resolution No. 2/2021 of the National Road Safety Council on 30 September 2021. The Programme is an annex to the Resolution which entered into force on 30 September 2021 in accordance with Art. 2 of the Resolution. Section 3 of the Programme sets the overall goal for road safety.

The Programme sets a target of no more than 1455 fatalities in road accidents in the year 2030. This represents a reduction by 50% compared to the baseline value of 2019 (2909 fatalities), in line with EU road safety commitments (summarised in the EU Road Safety Policy Framework 2021-2030). The goal is set in section 3, page 23 of the Programme.

In line with requirements laid down in the description of the measure, progress of the reform aimed at enhancing transport safety shall be measured against the road safety target on a relative decrease of fatalities described above.

Furthermore, progress of the reform shall be measured against a road safety target on a relative decrease of seriously injured people, which has been set at no more than 5317 fatalities in the year 2030, corresponding to a 50% reduction compared to the baseline value of 2019 (10633 seriously injured). That goal is set in section 3, page 23 of the Programme.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number F1G	Related measure: F1.1 Reform strengthening the independence and impartiality of courts	
Name of the Milestone: Entry into force of a reform strengthening the independence and impartiality of courts		
Qualitative Indicator: Provision in the legal act indicating the entry into force		Time: Q2 2022
<p>Context:</p> <p>This reform aims to strengthen certain aspects of judicial protection in particular through the reform of the disciplinary regime applicable to judges and contributes to addressing the country specific recommendation for Poland to enhance the investment climate. This reform also supports the functioning of the internal control system of Poland to protect the financial interests of the Union, in accordance with Article 22 of Regulation (EU) 2021/241.</p> <p>The milestone requires Poland to enact a reform regarding specific elements of the disciplinary regime applicable to judges. First – entrusting the jurisdiction for ruling on, in particular, disciplinary and waiver of immunity cases to a chamber of the Supreme Court, other than the Disciplinary Chamber, meeting the requirements ensuing from Article 19 paragraph 1 of the Treaty on European Union (TEU). Second – clarifying and amending the scope of disciplinary liability for judges, specifically that the following actions and elements are not being classified as a disciplinary offence: (i) the content of judicial decisions, (ii) the submission of requests for preliminary rulings to the Court of Justice of the European Union (CJEU) and (iii) the verification of compatibility of judges with the requirements of independence, impartiality and being established by law according to Article 19 TEU (and at the same time, ensuring that the initiation of such verification within the court proceedings is possible for a competent court where a serious doubt arises on that point). Lastly – strengthening the procedural guarantees and powers of parties in disciplinary proceedings concerning judges.</p> <p>To fulfil this milestone, Poland has adopted a law as well as a set of additional measures such as the order of the Minister of Justice of 15 February 2024 on the method of cooperation between the Minister of Justice and disciplinary officers of the Minister of Justice. The Polish legal order has been further affected by rulings of the CJEU. This concerns in particular the judgment of 5 June 2023 in case Commission v Poland (Independence and private life of judges) (C-204/21), declaring certain provisions of the Polish law on disciplinary offences of judges to be in violation of EU law, which obliges all national authorities, and in particular all national courts, to disapply them. Furthermore, the interpretation of the provisions establishing the legal regime governing the disciplinary liability of judges and the initiation of the verification of independence, impartiality and being established by law of judges has further evolved in the practice of application of the law of Polish national courts. All these elements are considered jointly for the assessment of the satisfactory fulfilment of the milestone, taking into account the references of the milestone to Article 19 TEU.</p> <p>In a broader effort to further strengthen the independence and impartiality of the judiciary, beyond the requirements of the milestone under assessment, and as part of broader efforts on the rule of law, Poland has formally committed to respecting the primacy of EU law and to implementing the judgments of the CJEU (see in particular Minister of Justice, public communication of 7 February 2024 on the standards regarding the right to a fair trial). Poland presented to the General Affairs Council on 20 February 2024 a dedicated Action Plan on ‘Rule of Law in Poland’. This Action Plan outlines steps foreseen to resolve issues identified in the Commission’s reasoned proposal in accordance with Article</p>		

7(1) TEU, and in judgments of the CJEU and the European Court of Human Rights (ECtHR). All the measures announced in the Action Plan are to be designed and implemented in full respect of the principle of the rule of law, as enshrined in Article 2 TEU. In this Action Plan, Poland has again recognised the primacy of EU law and underlined the importance of Article 19 TEU as well as of the judgments of the CJEU. Furthermore, Poland has stated in the Action Plan that the disciplinary offences introduced by the Law of 20 December 2019 will not be applied anymore in Poland, so that *“the courts and the judges are not facing any risk of disciplinary liability for applying EU law.”* Such firm and unconditional statement creates legitimate expectations for the Polish judges that they will not be confronted with disciplinary charges for applying EU law and in particular Article 19(1) TEU. Against this background, reforms planned by Poland under this Action Plan build upon and complement the measures taken for the purpose of addressing the milestone requirements. It is also noted that Poland amended the regulation on the Rules of procedure of the ordinary courts. The amendment excludes certain judges from hearing motions for exclusion of a judge if circumstances of their appointment are among the grounds for such motion.

Milestone F1G belongs to sub-component F1 on the Justice system, which also includes a reform aimed at remedying the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases (milestones F2G and F3G). Milestone F2G is also being assessed under this same payment request.

The assessment of the milestone for the purposes of payments from the Recovery and Resilience Facility is without prejudice to the assessment by the Commission in any ongoing or future infringement proceedings or any other proceedings on the conformity of the national law with Union law, in particular the rulings of the CJEU.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Copies of the publications in the Official Journal of the Act of 9 June 2022** amending the Act on the Supreme Court and certain other acts (Official Journal of 14 June 2022 – item 1259 – hereinafter ‘the Act of 9 June 2022’);
- ii. **Summary document** duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled;

The authorities also provided:

- iii. **The list of judges** appointed to sit in the Supreme Court Chamber having jurisdiction in all cases relating to judges, as well as an indication for each judge of the date of initial appointment to the Supreme Court and whether they previously sat in the Disciplinary Chamber;
- iv. **The Action plan of 18 February 2024;**
- v. **Order by the Minister of Justice of 15 February 2024** ‘on the method of cooperation between the Minister of Justice and disciplinary commissioners of the Minister of Justice’ and the actual appointment of ad-hoc disciplinary commissioners.

Analysis:

The justification and substantiating evidence provided by the authorities covers all constitutive elements of the milestone.

The milestone requires the 'Entry into force of a reform which shall [...]

The Act of 9 June 2022 was published in the Official Journal of 14 June 2022. Under Article 19 of the Act of 9 June 2022, it entered into force 30 days after its publication, thus on 15 July 2022. Further, the Order by the Minister of Justice 'on the method of cooperation between the Minister of Justice and disciplinary officers of the Minister of Justice' of 15 February 2024 was published in the Official Journal of the Minister of Justice of 16 February 2024. Under paragraph 10 of this Order, it entered into force the day after its publication, thus on 17 February 2024. Other elements of the reform, in particular the firm and unconditional statement contained in the Action Plan and creating legitimate expectations for the Polish judges, are directly addressed in the following when assessing the different parts of the milestone.

- a) **in all cases relating to the judges, including the disciplinary and waiver of judicial immunity, determine the scope of jurisdiction of the Supreme Court Chamber, other than the existing Disciplinary Chamber, meeting the requirements ensuing from Article 19 paragraph 1 of the TEU. This shall ensure that the above-mentioned cases shall be examined by an independent and impartial court established by law, while the discretionary power to designate the disciplinary tribunal with jurisdiction at first instance in cases concerning judges of ordinary courts shall be circumscribed**

Determination of the scope of jurisdiction of the Supreme Court Chamber, other than the existing Disciplinary Chamber in all cases relating to the judges, including the disciplinary and waiver of judicial immunity

Articles 1(1) and 8(1) of the Act of 9 June 2022 abolished the Disciplinary Chamber of the Supreme Court and created the new 'Professional Liability Chamber'.

Article 1(21) of the Act of 9 June 2022 repeals Article 27 of the Law on the Supreme Court on the competences of the Disciplinary Chamber.

Article 1(22) of the Act of 9 June 2022 introduces the new Article 27a of the Law on the Supreme Court, establishing the competences of the Professional Liability Chamber. Under this article, the Professional Liability Chamber is competent to hear the following types of cases relating to judges:

- (i) disciplinary cases concerning Supreme Court judges,
- (ii) disciplinary cases to be heard by the Supreme Court in relation to disciplinary proceedings conducted pursuant to, amongst others, the Law on the organisation of the ordinary courts and the Law on the organisation of the military courts;
- (iii) cases concerning an authorisation for engaging a criminal liability of judges or temporary arrest;
- (iv) cases in the field of labour and social security law concerning Supreme Court judges.

Furthermore, under Article 8(2) of the Act of 9 June 2022, cases within the jurisdiction of the Disciplinary Chamber that have been initiated but not finalised before the entry into force of the Act of 9 June 2022 are taken over by the Professional Liability Chamber.

Under the amendments introduced by the Act of 9 June 2022, the competence over all disciplinary and judicial immunity waiver cases relating to judges, that fell within the jurisdiction of the Disciplinary Chamber, is now conferred upon another Supreme Court Chamber, namely the Professional Liability Chamber. This concerns the vast majority of categories of cases related to judges. By way of exception, Article 1(20) of the Act of 9 June 2022 modifies Article 26(1) of the Law on the Supreme Court to confer upon the Chamber of Extraordinary Control and Public Affairs competence over appeals against resolutions of the National Council of Judiciary in cases defined in specific regulations and cases concerning the retirement of the Supreme Court judges. This category of cases concerning judges, however, falls outside of the scope of the milestone and thus outside of the scope of the current assessment. As per the description of the relevant component under which the milestone under this assessment is included in the Polish plan, the policy objective of this reform is to ‘strengthen *certain* aspects of the independence and impartiality of courts’ (emphasis added). These relevant aspects relate to the disciplinary regime applicable to judges, as specified in the Staff Working Document that provides that ‘dedicated measures aim to strengthen the independence and impartiality of courts, through the reform of the *disciplinary* regime applicable to judges’ (emphasis added) as well as that ‘the plan provides that all disciplinary cases against judges will be adjudicated by an independent and impartial court, thus not the Disciplinary Chamber.’

Jurisdiction of a chamber meeting the requirements ensuing from Article 19 paragraph 1 of the TEU and ensuring that the above-mentioned cases shall be examined by an independent and impartial court established by law

The Professional Liability Chamber replaces the Disciplinary Chamber in all disciplinary and judicial immunity waiver cases concerning judges. The CJEU found that the Disciplinary Chamber that had been in place was not independent and impartial, concluding that Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU in case C-791/19.

In the absence of any ruling of the CJEU on whether the Professional Liability Chamber meets the requirements of Article 19 TEU, it appears appropriate – for the purposes of the present assessment - to ascertain whether any of the factors considered by the CJEU in establishing the lack of independence and impartiality of the Disciplinary Chamber are present for the Professional Liability Chamber.

The Commission finds that none of these factors apply to the Professional Liability Chamber, which was set up in a manner very different from the Disciplinary Chamber.

First, the Professional Liability Chamber was set up by the Act of 9 June 2022, which also includes additional measures aimed at strengthening the independence and impartiality of courts through the reform of the disciplinary regime applicable to judges, as opposed to the Disciplinary Chamber which was established jointly with a new mechanism relating to the retirement of judges, which was itself found to be contrary to the second subparagraph of Article 19(1) TEU.²

² C-791/19, paragraph 90.

Secondly, the Professional Liability Chamber, as described below, is embedded in the structure of the Supreme Court, while the Disciplinary Chamber enjoyed, within the Supreme Court, a particularly high degree of organisational, functional and financial autonomy in comparison with the other chambers of that court³. For instance, Article 1(5) of the Act of 9 June 2022 repeals paragraphs (2) and (4-6) of Article 7 of the Law on the Supreme Court providing for a special financial autonomy of the Disciplinary Chamber, with no equivalent provisions being foreseen for the Professional Liability Chamber.

Thirdly, no special remuneration regime is provided for the Professional Liability Chamber judges, in contrast to the Disciplinary Chamber judges having enjoyed remuneration 40% higher than judges of other chambers⁴. The special remuneration regime foreseen for the Disciplinary Chamber judges was repealed by Article 1(29) of the Act of 9 June 2022, repealing Article 48(7) of the Law on the Supreme Court.

Fourthly, the rules on the appointment of the Professional Liability Chamber judges are explicitly provided for in the relevant legislation, namely in a new Chapter 2a of the Law on the Supreme Court, introduced by Article 1(17) of the Act of 9 June 2022. Under this Chapter 2a, the Professional Liability Chamber is composed of 11 judges, appointed by the President of the Republic of Poland out of 33 judges drawn by lot from all Supreme Court judges⁵. The same procedure applies for both the first as well as all subsequent appointments to this chamber. This appointment mechanism differs considerably from that of the former Disciplinary Chamber, which, when initially established, was made up solely of new judges appointed by the President of Poland, on a proposal from the newly restructured National Council of Judiciary, thereby excluding any (normally permissible) transfers to that chamber of judges already serving within the Supreme Court.⁶

Under Article 22b(1) of the Law on the Supreme Court, introduced by Article 1(17) of the Act of 9 June 2022, judges are appointed to the Professional Liability Chamber for a five-year mandate. Throughout their mandate, judges remain members of and continue to adjudicate in the Supreme Court Chambers to which they were assigned to prior to their appointment to the Professional Liability Chamber. Under Article 22c(1) of the Law on the Supreme Court, introduced by Article 1(17) of the Act of 9 June 2022, the mandate at the Professional Liability Chamber is subject to an early termination if a judge retires, is disciplinary sanctioned in line with the specific provisions or is appointed to one of the functions within the Supreme Court listed in that provision, e.g. as the First President.

Finally, it should be noted that the first selection process took place mid-2022 and was conducted in line with the aforementioned rules. As none of the appointed 11 judges was sitting in the Disciplinary Chamber before, the personal composition of the new chamber is entirely different from the composition of the former Disciplinary Chamber.

³ C-791/19, paragraph 91.

⁴ C-791/19, paragraph 93.

⁵ Under Article 22a(4) of the Law on the Supreme Court, introduced by Article 1(17) of the Act of 9 June 2022, only judges occupying specific functions (e.g. the First President) and judges who, within the previous 5 years, had been disciplinarily sanctioned in line with the dedicated provisions are excluded from the draw by lot to adjudicate in the Professional Liability Chamber.

⁶ C-791/19, paragraph 94. Furthermore, the CJEU analysed the aforementioned restructuring of the National Council of Judiciary, which was found to give rise to legitimate doubts as to the independence of the Council and its role in an appointment process such as that resulting in the appointment of the members of the Disciplinary Chamber – see paragraph 108.

At the same time, four of the current members of the Professional Liability Chamber are affected by factors on the basis of which the CJEU found that certain judges adjudicating in a panel of the Extraordinary Control and Public Affairs Chamber do not meet the requirements of being independent, impartial and established by law (C-718/21). This does not concern the compliance of the Professional Liability Chamber with the Article 19 TEU requirements, but could be considered for certain panels, which would include such judges, adjudicating in the Professional Liability Chamber for individual cases. For such panels adjudicating in individual cases, the compliance with the Article 19 TEU requirements is effectively ensured by the possibility for the competent court, including on request of the parties and participants, to initiate a verification procedure, also with regard to grave shortcomings concerning the appointment of the judges – *see assessment for letter d.*

[...] while the discretionary power to designate the disciplinary tribunal with jurisdiction at first instance in cases concerning judges of ordinary courts shall be circumscribed,

Prior to the amendments introduced by the Act of 9 June 2022, in accordance with Article 110(3) of the Law on the organisation of ordinary courts, the disciplinary tribunal of the area where a judge subject to disciplinary proceedings performed their service was excluded from hearing disciplinary cases at first instance. The disciplinary tribunal with jurisdiction to hear the case was designated by the President of the Disciplinary Chamber of the Supreme Court at the request of the disciplinary officer.

The Act of 9 June 2022 addressed this issue of broad discretionary power. As a result of the amendments of Articles 110(3) and 114(7) of the Law on the organisation of ordinary courts by Articles 4(5) point d) and 4(10) of the Act of 9 June 2022, the territorial jurisdiction to hear the disciplinary cases heard at first instance by disciplinary tribunals of courts of appeal is circumscribed by law and now conferred upon the disciplinary tribunal of the court of appeal of the area where a judge subject to disciplinary proceedings performs their service. If the case concerns an appeal court judge or a regional court judge, another disciplinary tribunal is to be designated, at the request of the disciplinary officer, by the Professional Liability Chamber from among the disciplinary tribunals competent for areas of appeal adjacent to the one of the court, in which the judge subject to the proceedings performs their service.

Therefore, the amendments circumscribe the discretionary power to designate the disciplinary tribunal having jurisdiction in first instance to examine disciplinary cases both:

- in cases concerning judges of district courts, as the competent disciplinary tribunal is determined directly in the law, to be the one of the area where a judge subject to disciplinary proceedings performs their service, instead of a court to be chosen by the President of the Disciplinary Chamber of the Supreme Court among all disciplinary tribunals;
- in cases concerning an appeal court judge or a regional court judge, as the disciplinary tribunal must be determined by the Professional Liability Chamber among those courts competent for areas of appeal adjacent to the one in which the judge concerned performs his or her service (as opposed to the previous system of determination by the Disciplinary Chamber of the Supreme Court where no additional criteria were provided in that respect).

Consequently, the Act of 9 June 2022 circumscribes the discretionary power to designate the disciplinary tribunal with jurisdiction at first instance in cases concerning judges of ordinary courts.

- b) clarify the scope of disciplinary liability of judges, by ensuring that the right of Polish courts to submit requests for preliminary rulings to the CJEU is not restricted. Such request shall not be grounds to initiate disciplinary proceedings against a judge**

The Act of 9 June 2022 adds an explicit exclusion of disciplinary liability of judges for referring a request for a preliminary ruling to the CJEU:

- for Supreme Court judges (Article 72(6) point 2 of the Law on the Supreme Court, as introduced by Article 1(34) point b) of the Act of 9 June 2022),
- for judges of military courts (Article 37(4) point 2 of the Law on the organisation of military courts, as introduced by Article 2(2) point b) of the Act of 9 June 2022),
- for judges of ordinary courts (Article 107(3) point 2 of Law on the organisation of ordinary courts, as introduced by Article 4(4) point b) of the Act of 9 June 2022), and
- for judges of administrative courts (Article 48(6) point 2 of the Law on the organisation of administrative courts, as introduced by Article 5(3) of the Act of 9 June 2022).

The changes introduced by the Act of 9 June 2022 therefore ensure that the right of Polish courts to submit requests for preliminary rulings to the CJEU is not restricted and does not constitute grounds to initiate disciplinary proceedings against judges making such requests.

- c) while the judges may still be held liable for professional misconduct, including obvious and gross violations of the law, determine that the content of judicial decisions is not classified as a disciplinary offence,**

The scope of the milestone requirement is to eliminate the disciplinary liability for the content of judicial decisions. Whether judges may still be held liable for professional misconduct, including obvious and gross violations of the law, remains, as the wording of the milestone ('while the judges may still be held liable') indicates, within the discretion of the Polish authorities and is outside of the scope of the current assessment. In any case, also after the entry into force of the Act of 9 June 2022, judges may still be held liable for professional misconduct.

The Act of 9 June 2022 provides that the fact that a judicial decision is affected by an error of interpretation or application of the Union or national law or an error in establishing the facts or assessing the evidence cannot constitute a ground for disciplinary liability. This is set out in the new Article 72(6) point 1 of the Law on the Supreme Court, as amended by Article 1 (34) point b) of the Act of 9 June 2022, new Article 37(4) point 1 of the Law on the organisation of military courts as amended by Article 2 (2) point b) of the Act of 9 June 2022, new Article 107(3) point 1 of the Law on the organisation of ordinary courts, as amended by Article 4(4) point b) of the Act of 9 June 2022, new Article 48(6) point 1 of the Law on the organisation of administrative courts, as amended by Article 5(3) of the Act of 9 June 2022.

The Act of 9 June 2022 explicitly refers to the relevant elements which constitute the content of judicial decisions, namely the establishment of facts, the assessment of evidence and the interpretation or application of the law. Therefore, the Act of 9 June 2022 effectively determines that the content of judicial decisions is not classified as a disciplinary offence.

A further measure complementing the legislative act to meet the policy objective of this milestone requirement, namely the exclusion of disciplinary liability for the content of judicial decisions, is the Order by the Minister of Justice of 15 February 2024 'on the method of cooperation between the Minister of Justice and disciplinary officers of the Minister of Justice'. The legal basis for the use of the ad-hoc disciplinary commissioners is Article 112b of the Law on the Organisation of the Ordinary Courts (Official Journal of Laws of 2023, item 217). The Order establishes a framework on the use of ad-hoc

disciplinary commissioners, providing that such ad-hoc disciplinary commissioners will be appointed in disciplinary cases concerning the content of judicial decisions (Sec. 2(2) of the Order). The appointment of an ad-hoc commissioner by the Minister of Justice excludes any other commissioner from dealing with a given case. As ad-hoc commissioners can discontinue unjustified disciplinary proceedings, this will act as an additional safeguard that no judge is held liable for the content of their decisions. Therefore, that Order also evidences that, in addition to the adoption of the Act of June 2022, Poland has taken the necessary steps to ensure that a broad interpretation, by the ordinary disciplinary commissioners appointed by the former Minister of Justice, of disciplinary offences as introduced by the Law of 20 December 2019 which were found by the CJEU as contrary to EU law (in judgments C-791/19 and C-204/21) will not, in practice, lead to disciplinary liability of judges. The Order and the actual appointment of ad-hoc commissioners by the Minister of Justice also demonstrates, in practice, compliance by the Polish Government with its assurance to respect and implement EU case law and to respect the primacy of EU law.

Finally, following the CJEU judgements in cases C-791/19 and C-204/21, Polish courts are under an obligation to disapply certain provisions providing specific grounds for disciplinary liability for judges, namely Article 72(1) points 1 to 3 of the Law on the Supreme Court and Article 107(1) points 1 to 3 of the Law on the organisation of ordinary courts. This is also explicitly mentioned by the Polish authorities in the Action Plan of 18 February 2024 on 'Rule of Law in Poland', presented at the General Affairs Council on 20 February 2024. In the Action Plan, the Polish authorities note that *"Given the principle of primacy of EU law those provisions [set out above] are no longer applicable by the courts and the judges are not facing any risk of disciplinary liability for applying EU law. Consequently, there are no legal obstacles for judges to ensure the right to independent, impartial court established by law as set forth in CJEU case-law. It also includes examination of the status of other judges."* Such firm and unconditional statement creates legitimate expectations for the Polish judges that they will not be confronted with disciplinary charges for applying EU law and in particular Article 19(1) TEU

In addition to this legal obligation stemming from the CJEU judgments and those legitimate expectations of Polish judges, Poland has confirmed the primacy of EU law, compliance with CJEU judgments and announced its intention to present further reforms which together will build upon and complement the measures taken for the purpose of addressing the milestone requirements. Against this background, the obligation to disapply these provisions stemming from the CJEU judgments and those legitimate expectations of Polish judges further ensure that judges are not held liable for the content of judicial decisions.

- d) ensure that initiation of the verification, within the court proceedings, whether a judge meets the requirements of being independent, impartial and 'being established by law', according to Article 19 of the TEU is possible for a competent court where a serious doubt arises on that point and that such verification is not classified as a disciplinary offence,**

Article 1(24) of the Act of 9 June 2022 introduced Article 29 paragraphs 5-25 to the Law on the Supreme Court which establishes a verification procedure for Supreme Court judges. An equivalent verification procedure is provided for proceedings before ordinary, military and administrative courts (see Article 42a paragraphs 3 to 14 of the Law on the organisation of ordinary courts, as amended by Article 4(1) of the Act of 9 June 2022; Article 23a, paragraphs 4-15 of the Law on the organisation of military courts amended by Article 2(1) of the Act of 9 June 2022; and Article 5a of the Law on the organisation of administrative courts, as amended by Article 5(2) of the Act of 9 June 2022).

The Act of 9 June 2022 explicitly states that it is permissible to examine the independence and impartiality of a judge, taking into account circumstances surrounding their appointment and the post-appointment conduct if, in the circumstances of the case, this may lead to a breach of the standard of independence or impartiality affecting the outcome of the case, taking into account the circumstances surrounding the rightsholder and the nature of the case⁷ (Article 29(5) of the Law on the Supreme Court; Article 42a(3) of the Law on the organisation of ordinary courts, Article 23a(4) of the Law on the organisation of military courts ; Article 5a(1) of the Law on the organisation of administrative courts).

The Act of 9 June 2022 makes it possible to exclude judges as not being independent and impartial based on severe shortcomings in the appointment procedure. While a literal reading of the relevant provisions indicated above in the second paragraph indicates that the aforementioned elements – taking into account the circumstances surrounding the appointment of a judge, the consideration of a judge’s post-appointment conduct and of a potential impact on the outcome of the case – must be fulfilled cumulatively, a broader interpretation in light of constitutional principles, EU and international law, including Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention on Human Rights (ECHR), is possible and has been used recently by a Polish Supreme Court panel that recently found that *‘when examining whether a Supreme Court judge meets the requirements of independence and impartiality pursuant to Article 29(5) of the Supreme Court Act, it is sufficient – without further consideration of the other conditions set out in that provision, i.e. the proceedings of a judge after his or her appointment and the examination of the circumstances of the specific case – to establish that the procedure for appointing a judge to the post of judge was so deficient that the judge thus appointed did not meet the requirement of independence and impartiality (as also ruled by the Supreme Court in its order of 27 February 2023, II KB 10/22)’* (Supreme Court, decision of 19 October 2023, Ref. I ZB 52/22). In this regard, it is noted that the separate provision in Article 29(4) of the Law on the Supreme Court⁸ was not applied and did not prevent the Supreme Court judges from excluding a judge by only considering significant defects in their appointment. The Act of 9 June 2022 has therefore been used for verifying whether a judge meets the requirements of independence, impartiality and being established by law, corresponding to those stemming from Article 19(1) TEU.

In addition, it should be noted that, after the entry into force of the Act of 9 June 2022, other legal grounds continued to be used within court proceedings for excluding judges, for which it was found that they were not independent, impartial and established by law, thereby achieving the objective of the milestone. This practice of Polish courts complements the provisions introduced by the Act of 9 June 2022. In particular, Polish courts can base verification procedures also on recusal provisions to

⁷ The Council Implementing Decision requires that it be ensured that the initiation of the verification is possible within court proceedings. The verification procedure as established by the June 2022 Law may be initiated regarding any judge of the court hearing a case, but there are very limited exceptions for time-sensitive cases (Article 42(a) para. 4 of the Law on the organisation of ordinary courts; Article 23(a)(5) of the Law on the organisation of military courts). This constitutes a minimal substantive deviation from the requirement of the Council Implementing Decision, and only a minor sub-category of cases concerning non-major matters which are heard within expedited proceedings, where a decision must be taken within one month, which would be incompatible with a time-consuming verification procedure. As of this, this minimal deviation does not change the nature of the measure, and it does not affect the progress towards achieving the reform that the milestone represents.

⁸ Article 29(4) of the Law on the Supreme Court: “The circumstances surrounding the appointment of a Supreme Court judge shall not constitute an exclusive ground for challenging a decision adopted with the participation of that judge or for calling into question their independence and impartiality.”

review the independence of the judges in the same instance (*see* Article 49 of the Civil Procedure Code and Article 41 of the Criminal Procedure Code)⁹, including by applying general principles of law such as *nemo iudex in causa sua*.¹⁰ In appeal proceedings, courts can also rely on provisions which require to review whether the composition of the court rendering a judgment in the lower instance was not proper or was contrary to the law (*see* Article 439(1)(2) of the Criminal Procedure Code and Article 379(4) of the Civil Procedure Code, respectively)¹¹. A judicial decision rendered by a composition which does not meet the requirements of Article 19(1) TEU constitutes an absolute ground of appeal.¹² The verification procedures established by the Act of 9 June 2022 are therefore embedded in – and interpreted in view of – general legal principles, the broader legal context of other Polish laws, of EU law, including case law, and Polish courts complement the verification procedure in the Act of 9 June 2022 by such general principles. In this regard, various courts, while called by the party to the proceedings to initiate the verification of the independence of a judge pursuant to the Act of 9 June 2022, continued that verification by relying on other legal grounds for excluding judges which did not meet the requirements of being independent, impartial and established by law.

Furthermore, it is also noted that the information submitted by the Polish authorities indicate that verification procedures may also be initiated *ex officio*.¹³

The verification procedure introduced by the Act of 9 June 2022 therefore provides a legal basis to exclude judges who are not independent, impartial and established by law, and is further complemented by Polish courts using the above-mentioned provisions on additional recusal and grounds for appeal. Given this, the measures ensure that the initiation of the verification is possible, in line with the wording of the milestone.

At the same time, the Act of 9 June 2022 introduced an explicit exclusion of disciplinary liability for the examination of compliance with the requirements of independence or impartiality on the basis of the procedure introduced by that Act (Article 72(6)(3) of the Law on the Supreme Court, as introduced by Article 1(34) point b of the Act of 9 June 2022, Article 107(3)(3) of the Law on the organisation of the ordinary courts, as introduced by Article 4(4) point b of the Act of 9 June 2022, and Article 48(6)3 of the Law on the organisation of the administrative courts, as introduced by Article 5(3) of the Act of 9 June 2022, new Article 37(4)(3) of the Law on the organisation of military courts, as introduced by Article 2(2) point b of the Act of 9 June 2022).

By explicitly excluding disciplinary liability for the verification procedure introduced by the Act of 9 June 2022, the Act further ensures that the verification of compliance of a judge with Article 19(1) TEU requirements is possible. The exclusion from disciplinary liability is also ensured when the verification

⁹ *see* Supreme Court, decision of 31 January 2024, case III KK 406/23; Supreme Court, decision of 21 December 2023, case IV KK 396/23; Supreme Court, decision of 26 July 2023, case IV KB 5/23; Supreme Court, decision of 28 June 2023, case V KB 9/22; Supreme Court, decision of 16 January 2024, case I USK 138/23

¹⁰ e.g., Supreme Court, decision of 21 December 2023, case IV KK 396/23; Supreme Court, decision of 28 June 2023, case V KB 9/22.

¹¹ Supreme Court, decision of 21 February 2024, case II KK 627/23; Supreme Court, decision of 17 January 2024, case II KK 614/22.

¹² Supreme Court, decision of 21 February 2024, case II KK 627/23.

¹³ Supreme Court, decision of 16 January 2024, case I USK 138/23; Supreme Court, decision of 26 July 2022, case III KK 404/21, acknowledging the resolution of the Supreme Court of 2 June 2022, I KZP 2/22.

procedures are applied in an erroneous manner (*see*, on the exclusion of disciplinary liability for the content of judicial decisions above under F1G letter c).

Furthermore, following the CJEU judgements in C-791/19 and C-204/21, Polish courts are under an obligation to disapply certain provisions providing- specific grounds for disciplinary liability for judges, namely Article 72(1) points 1 to 3 of the Law on the Supreme Court and Article 107(1) points 1 to 3 of the Law on the organisation of ordinary courts. This is also explicitly mentioned in the Action Plan on 'Rule of Law in Poland', presented at the General Affairs Council on 20 February 2024. In the Action Plan, the Polish authorities note that *"Given the principle of primacy of EU law those provisions [set out above] are no longer applicable by the courts and the judges are not facing any risk of disciplinary liability for applying EU law. Consequently, there are no legal obstacles for judges to ensure the right to independent, impartial court established by law as set forth in CJEU case-law. It also includes examination of the status of other judges."* Such firm and unconditional statement creates legitimate expectations for the Polish judges that they will not be confronted with disciplinary charges for applying EU law and in particular Article 19(1) TEU. In addition to this legal obligation stemming from the CJEU judgments and those legitimate expectations of Polish judges, Poland has confirmed the primacy of EU law, compliance with CJEU judgments and announced its intention to present further reforms which together will build upon and complement the measures taken for the purpose of addressing the milestone requirements. Against this background, the obligation to disapply these provisions stemming from the CJEU judgments and those legitimate expectations of Polish judges further ensure that judges are not held liable for verifying whether judges meet the Article 19 TEU requirements of being independent, impartial and established by law.

Lastly, a further measure complementing the Act of 9 June 2022 and safeguarding that the policy objective of this milestone element is met – which is the exclusion from disciplinary liability for verifying whether a judge meets the requirements of independence, impartiality and being established by law - is the Order of the Minister of Justice of 15 February 2024 establishing a framework for the use of ad-hoc disciplinary commissioners. The legal framework establishes that ad-hoc disciplinary commissioners shall be appointed in cases where proceedings are initiated to hold judges liable for initiating verification procedures (Sec. 2(3) of the Order). As ad-hoc commissioners can discontinue unjustified disciplinary proceedings, this will help to ensure that no judge is held liable for the initiation of verification of the Article 19 TEU requirements. This additional measure therefore helps to ensure that the verification of Article 19(1) TEU requirements is possible and that the judges do not risk disciplinary liability for conducting such a verification. The Order and the actual appointment of ad-hoc commissioners by the Minister of Justice also demonstrates, in practice, compliance by the Polish Government with its assurance to respect and implement EU case law and to respect the primacy of EU law.

In order to ensure continuous compliance with the milestone and its obligations under the Financing Agreement and the Loan Agreement, as attested to through the summary document justifying how the milestone was satisfactorily fulfilled, Poland has committed to monitor the effective application of the procedures for verification of Article 19 TEU requirements, including ex officio, and, if necessary, take corrective measures to ensure that this right is maintained. The Commission will monitor the follow-up actions to meet that commitment.

e) strengthen procedural guarantees and powers of parties in disciplinary proceedings concerning judges, through

(i) assuring that the disciplinary cases against judges of the ordinary courts are examined within a reasonable time,

Article 4(12) of the Act of 9 June 2022 amends Article 115(1) of the Law on the organisation of ordinary courts to add a time limit of 30 days following a motion for a disciplinary procedure for the disciplinary tribunal to hear the case. This helps to ensure that the disciplinary cases against judges of the ordinary courts are examined within a reasonable time. This is a notable change, compared with the legal situation before the entry into force of the Act of 9 June 2022 where no such time limit existed. In addition, the Act of 9 June 2022 has amended Article 115(2) of the Law on the organisation of ordinary courts by shortening the 14 days' time-limit for the submission of evidence to seven days, which also helps ensuring that disciplinary cases are examined within a reasonable time.

As for appeal proceedings in disciplinary cases, the examination within reasonable time has already been provided for, with Article 121(2) of the Law on the organisation of ordinary courts stating that '[t]he appeal shall be examined within two months of the date of its receipt by the disciplinary tribunal of second instance.' Given this, the Act of 9 June 2022, by addressing gaps, "assures" that all disciplinary cases against judges of the ordinary courts are examined within a reasonable time, in line with the wording of the milestone.

Furthermore, Article 4(7) of the Act of 9 June 2022 repealed the second sentence of Article 112b(5) of the Law on the organisation of ordinary courts. This repeal ensures that proceedings cannot be re-opened and thereby prolonged excessively. Prior to the repeal of its second sentence, Article 112b(5) of the Law on the organisation of ordinary courts read as follows:

'The function of the Disciplinary Officer of the Minister of Justice shall expire as soon as a ruling refusing to initiate disciplinary proceedings or discontinuing disciplinary proceedings or a ruling closing disciplinary proceedings becomes final. The expiry of the function of the Disciplinary Officer of the Minister of Justice shall not preclude a Disciplinary Officer of the Minister of Justice being re-appointed by the Minister of Justice in the same case.'

It followed from the second sentence of Article 112b(5) of the Law on the organisation of ordinary courts that, even if disciplinary proceedings were closed by a final ruling (Article 112b(5) first sentence), the proceedings could be re-opened by re-appointing a Disciplinary officer. The examination of disciplinary cases against judges of ordinary courts within a reasonable time was therefore not guaranteed. The deletion of the second sentence of that provision removes this possibility and thus ensures that cases are examined and permanently closed within a reasonable time.

ii) making more precise regulations on territorial jurisdiction of the courts examining the disciplinary cases to ensure that the relevant court can be directly determined in accordance with the legislative act; and

Prior to the amendment introduced by the Act of 9 June 2022, in accordance with Article 110(3) of the Law on the organisation of ordinary courts, the disciplinary tribunal of the area in which a judge subject to disciplinary proceedings performs their service was not permitted to hear in first instance the disciplinary cases referred to in Article 110(1) point 1, sub-paragraph (a) of that Act. The disciplinary tribunal with jurisdiction to hear the case was designated by the President of the Disciplinary Chamber of the Supreme Court at the request of the Disciplinary Officer. The President of the Disciplinary

Chamber had discretionary powers in this regard, while no specific criteria in applicable legislation existed to guide the designation.

As a result of the amendment of Articles 110(3) and 114(7) of the Act of 27 July 2001 on the organisation of ordinary courts by Articles 4(5) point d) and 4(10) of the Act of 9 June 2022, the disciplinary tribunal of the area in which a judge subject to disciplinary proceedings performs their service has territorial jurisdiction to hear disciplinary cases in first instance. This is the disciplinary tribunal of the court of appeal of the respective region where the judge is performing their service. Particularly grave cases as defined in Article 110(1) point 1, sub-paragraph (b) will be heard directly by the Supreme Court.

Then, in accordance with Article 110(3) of the Law on the organisation of ordinary courts as amended by Article 4(5)(d) of the Act of 9 June 2022, if the case concerns an appeal court judge or a regional court judge, another disciplinary tribunal is to be designated, at the request of the disciplinary officer, by the Supreme Court (the Professional Liability Chamber) from among the disciplinary tribunals competent for areas of appeal adjacent to the one in which the judge subject to the proceedings performs their service. Thus, the regulations on the territorial jurisdiction are made more precise, with the scope of discretion, compared with the legal situation before the entry into force of the Act of 9 June 2022 where no such criteria have been laid down, significantly reduced.

As for appeal proceedings in disciplinary cases, Article 110(1) point 2 on the Law on the organisation of ordinary courts, modified by Article 4(5) of the Act of 9 June 2022 establishes the jurisdiction of the Professional Liability Chamber, thereby excluding any territorial jurisdiction issues.

iii) ensuring that the appointment of a defence counsel in disciplinary proceedings concerning a judge is done within a reasonable timeframe, as well as providing time for substantive preparation of the defence counsel to perform their functions in the given proceedings. Simultaneously, the court shall suspend the course of proceedings in case of a duly justified absence of the accused judge or his or her defence counsel.

Article 4 paragraphs (9) and (13) of the Act of 9 June 2022 repealed Article 113a and Article 115a(3) of the Law on the organisation of ordinary courts.

The former Article 113a of the Law on the organisation of ordinary courts, read in conjunction with Article 113(2) and (3) of that Law, implied that, where an accused judge could not take part in proceedings before a disciplinary tribunal on health grounds and where that tribunal or its President appointed, at the request of that judge or of its own motion, a duty defence counsel to take up that judge's defence, actions relating to that appointment and taking up of the defence did not have a suspensory effect on the conduct of the proceedings. Article 113a of the Law on the organisation of ordinary courts therefore allowed for the possibility that procedural or substantive issues which are relevant for the outcome of the case may be decided before that counsel is appointed or able to formulate the defence. Article 113a of the Law on the organisation of ordinary courts therefore prevented that an *ex officio* defence counsel in disciplinary proceedings concerning a judge would have been provided with sufficient time for substantive preparation to perform their functions in the given proceedings.

The repeal of Article 113a of the Law on the organisation of ordinary courts removes this obstacle. By removing the exception that existed under Article 113a of the Law on the organisation of ordinary courts, the rights of accused persons, including the right to defence protected also through the

appointment of a defence counsel, are again fully protected by relevant provisions of criminal procedure law in that respect. In particular, Article 113(2) and (3) of the Law on the organisation of ordinary courts provide that when a defendant is not able to take part in proceedings before a disciplinary court due to their illness, the president of the disciplinary court or the disciplinary court appoints, at a reasoned request of the defendant and – in certain circumstances – without such a request, a duty defence counsel from among attorneys or legal counsels. The aim of this provision is to ensure the right of the defendant to defence, including the right to use the help of defence counsel. In the Polish legal order, the right to defence is enshrined in, among other, Article 6 of the Code of Criminal Proceedings, which – by virtue of Article 128 of the Law on the organisation of ordinary courts – is applicable to disciplinary proceedings concerning ordinary court judges. As such, the appointment of a duty defence counsel should be done in a way that ensures that the right to defence is given effect. This implies, among other, that the appointment of a duty defence counsel in disciplinary proceedings concerning a judge should be done within a reasonable timeframe. The law now makes it possible.

Similarly, Article 127a(2) of the Code of Criminal Proceedings, which – by virtue of Article 128 of the Law on the organisation of ordinary courts – is applicable to disciplinary proceedings concerning ordinary court judges, provides that when a defence counsel or a duty defence counsel is appointed, deadlines for taking actions by the appointed counsel starts to be counted only from the date when the appointment is handed to the counsel. This makes it possible to say that, as the law stands now, time is provided for substantive preparation of a defence counsel to perform their duties in the given disciplinary proceedings concerning a judge.

As of this, it is ensured that the appointment of a defence counsel in disciplinary proceedings concerning a judge is done within a reasonable timeframe and time is provided for substantive preparation of the defence counsel to perform their functions in the given proceedings.

The Act of 9 June 2022 also ensures that the disciplinary tribunal shall suspend the course of proceedings in case of a duly justified absence of the accused judge or their defence counsel. Before the entry into force of the Act of 9 June 2022, Article 115a(3) of the Law on the organisation of ordinary courts stated that a disciplinary tribunal was to conduct disciplinary proceedings despite the justified absence of the accused judge or their defence counsel, unless this ran counter to the interest of the disciplinary proceedings.

Following the repeal of Article 115a(3) of the Act on the organisation of ordinary courts by the Act of 9 June 2022, only the unjustified failure to appear on the part of the notified accused, or his defence counsel, shall not prevent the examination of the case, pursuant to Article 115a(1) of the Act on the organisation of ordinary courts. It follows that, *a contrario*, a justified absence of the defendant (that is, the accused judge) or their defence counsel obliges the disciplinary tribunal to suspend the course of proceedings. Therefore, by repealing Article 115a(3) of the Act on the organisation of ordinary courts, the Act of 9 June 2022 ensures the suspension of the course of proceedings in case of a duly justified absence of the accused judge or his or her defence counsel.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: F2G	Related Measure: F1.2 Reform to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases
Name of the Milestone: Entry into force of a reform to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases	
Qualitative Indicator: Provision in the legal act indicating the entry into force	Time: Q2 2022
<p>Context:</p> <p>The measure aims to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases.</p> <p>Milestone F2G requires ensuring that these judges have access to review proceedings of their cases and that the cases already decided by the Disciplinary Chamber be reviewed by a court that meets the requirements of Article 19(1) of the Treaty on European Union (TEU), in accordance with the rules to be adopted on the basis of Milestone F1G, under Measure F1.1 ‘Reform strengthening the independence and impartiality of courts’. Under Milestone F2G, the first hearing of the court to adjudicate those cases needs to take place within three months from receipt of the motion of the judge asking for a review, and the cases shall be adjudicated within twelve months from receipt of such motion. Finally, the milestone requires that the cases pending before the Disciplinary Chamber be referred for further consideration to the court and in accordance with amended rules for disciplinary and judicial immunity proceedings.</p> <p>Milestone F2G is the first step of the implementation of the Reform F1.2 ‘Reform to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court in disciplinary cases and judicial immunity cases’, and it will be followed by Milestone F3G, related to the adjudication of all review cases launched in accordance with milestone F2G, except in duly justified exceptional circumstances.</p> <p>The reform has the final expected date for implementation by the end of the second quarter of 2022.</p>	
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ul style="list-style-type: none"> i. Copy of the Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts (Journal of Laws of 2022, item 1259) and a link to the Act: https://www.dziennikustaw.gov.pl/DU/2022/1259; ii. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. 	
Analysis:	

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone.

The milestone requires an ‘entry into force of a reform which shall ensure that judges affected by decisions of the Disciplinary Chamber of the Supreme Court have access to review proceedings of their cases.’

The Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts (the ‘Act of 9 June 2022’)¹⁴ entered into force 30 days after its publication in the Official Journal on 14 June 2022 (item 1259), as provided for in Article 19 of that Act, that is on 15 July 2022.

Article 18 of the Act of 9 June 2022 introduces review proceedings for judges affected by decisions of the Disciplinary Chamber of the Supreme Court. Specifically, under this provision, judges who have been subject to a decision of the Disciplinary Chamber in disciplinary or judicial immunity waiver cases have a right to file a motion for a review of such decisions.

In accordance with ordinary legislative techniques for granting rights to review, the right to file a motion is time limited. For example, pursuant to Article 407(1) of the Code of Civil Procedure, the time to file a motion for a review of civil proceedings is limited to three months. Likewise, pursuant to Article 277 of the Act of 30 August 2002 – Law on the Proceedings before Administrative Courts, the time to file a motion for review of proceedings before an administrative court is limited to three months. Similarly, pursuant to Article 540b(1) of the Code of Criminal procedure, the time to file a motion for review of criminal proceedings in certain circumstances is limited to one month. The Act of 9 June 2022 follows this legislative technique. Pursuant to its Article 18(1), motions for review concerning decisions of the Disciplinary Chamber must be filed within 6 months of the entry into force of the Act of 9 June 2022. This is considered a reasonable and proportionate timeframe in order to ensure that such judges have access to review proceedings of their cases and that their situation is clarified within a reasonable timeframe.

Under Article 18(1) of the Act of 9 June 2022, the scope of the review covers final disciplinary judgments, as well as final resolutions allowing for an immunity waiver issued by the Disciplinary Chamber.

As for non-final decisions in disciplinary cases and non-final resolutions allowing for an immunity waiver issued by the Disciplinary Chamber, they are subject to appeal under the general regime governing these categories of cases. A motion for appeal can be filed to the Professional Liability Chamber, for:

- a) disciplinary cases concerning:
 - i) ordinary court judges, under Article 110(1) point 2 of the Law on the organisation of ordinary courts, amended by Article 4(5) letter a of the Act of 9 June 2022), and
 - ii) Supreme Court judges, under Article 73(1) point 2 on the Law on the Supreme Court, as amended by Article 1(35) of the Act of 9 June 2022);
- b) immunity waiver cases concerning:

¹⁴ This Act amended the following acts: the Military Courts Organisation Act of 21 August 1997, the Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, the Ordinary Courts Organisation Act of 27 July 2001, the Administrative Courts Organisation Act of 25 July 2002 and the Prosecution Service Act of 28 January 2016.

- i) ordinary court judges, under Article 110(2a) of the Law on the organisation of ordinary courts, as amended by Article 4(5) letter b of the Act of 9 June 2022), and
- ii) Supreme Court judges, under Article 55(4) read in conjunction with Article 73(1) point 2 on the Law on the Supreme Court, as amended by Article 1(35) of the Act of 9 June 2022.

Such cases already decided by the Disciplinary Chamber shall be reviewed by a court that meets the requirements of Article 19 paragraph 1 of the TEU, in accordance with the rules to be adopted on the basis of Milestone F1G above.

Article 18(2) and (7) of Act of 9 June 2022, has conferred the competence to hear the aforementioned review cases upon a newly established chamber of the Supreme Court: the Professional Liability Chamber.

The analysis of the fulfilment of the constitutive element of the milestone related to the Professional Liability Chamber, as the court competent for review cases and whether it meets the requirements of Article 19(1) TEU is included in the Preliminary Assessment on Milestone F1G.

The review cases are to be assessed by the Professional Liability Chamber in accordance with the rules on the disciplinary regime for ordinary court judges and Supreme Court judges, provided for in, respectively, the Law on the organisation of the ordinary courts and the Law on the Supreme Court, as amended by the Act of 9 June 2022 and assessed in the Preliminary Assessment for Milestone F1G.

The legislative act shall set out that the first hearing of the court to adjudicate those cases shall take place within three months from receipt of the motion of the judge asking for a review, and that the cases shall be adjudicated within twelve months from receipt of such motion.

The Act of 9 June 2022 has established the relevant deadlines applicable to the review proceedings. Under Article 18(3) of the Act of 9 June 2022, the first hearing of the court in review cases shall take place no later than within three months from the receipt of the judge's motion for a review. Under Article 18(6) of the Act of 9 June 2022, these cases shall be concluded by the court within 12 months from the receipt of the judge's motion for a review.

The cases which are currently still pending before the Disciplinary Chamber shall be referred for further consideration to the court and in accordance with the rules determined within the above-mentioned proceedings.

Under Article 8(2) of the Act of 9 June 2022, cases initiated before the Disciplinary Chamber that had not been concluded before the entry into force of the Act of 9 June 2022 were transferred to the Professional Liability Chamber upon the entry into force of that law.

This is, for certain cases, further specified by Article 9 of the Act of 9 June 2022, in accordance with which in disciplinary cases falling within the jurisdiction of the Disciplinary Chamber before the date of the entry into force of this Act, the Professional Liability Chamber shall, at its own motion, at the first hearing in a case, examine the suspension of a judge against whom disciplinary proceedings have been initiated or against whom a resolution authorising criminal prosecution has been issued by the Disciplinary Chamber.

As in the case of the review proceedings, the transferred cases are to be assessed by the Professional Liability Chamber in accordance with the rules on the disciplinary regime for ordinary court judges and Supreme Court judges, provided for in, respectively, the Law on the organisation of the ordinary courts and the Law on the Supreme Court, as amended by the Act of 9 June 2022 and assessed in the Preliminary Assessment for Milestone F1G.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: F5G	Related Measure: F3.1. Improving the conditions for the implementation of the RRP	
Name of the Milestone: Entry into force of a legal act that creates a monitoring committee and tasks it with the supervision of the effective implementation of the RRP		
Qualitative Indicator: Provision in the legal act indicating the entry into force		Time: Q1 2022
<p>Context:</p> <p>The objective of the reform is to ensure proper consultation of social partners and stakeholders in the implementation of the Recovery and Resilience Plan (RRP).</p> <p>Milestone F5G concerns creating a Monitoring Committee, which shall be tasked to monitor the effective implementation of the RRP, consisting of stakeholders and social partners affected by the implementation of the RRP, including representatives of bodies representing the civil society and promoting fundamental rights and non-discrimination.</p> <p>Milestone F5G is the first step of the implementation of the reform on improving the conditions for the implementation of the RRP, and it will be followed by milestones F6G and F7G (also under this payment request) as well as F8G, which are related to the adoption of guidance establishing the rules for involvement of stakeholders and social partners in the implementation of the recovery and resilience plan (F6G), putting in place a repository system in line with Article 22(2)(d) of the RRF Regulation (F7G) and, finally, to the workload analysis to be carried out for the institutions involved in the implementation of the RRP (F8G).</p> <p>The reform has a final expected date for implementation on 30 June 2024.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled, with appropriate links to the underlying evidence; ii. Copy of the Act of 28 April 2022 on the principles of implementation of tasks financed from European funds in the financial perspective 2021-2027, published in the Official Journal on 20 May 2022, item 1079. A link to the website of the publication of the act: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220001079. 		

- iii. **Copy of the Order of the Minister of Development Funds and Regional Policy of 4 August 2022 on the establishment of the Monitoring Committee for the development plan**, published in the Official Journal of the Ministry of Development Funds and Regional Policy on 5 August 2022, item 19. A link to the website of the publication of the order: <https://dziennikurzedowy.mfipr.gov.pl/media/110075/Dz19.pdf>
- iv. **Copy of the Order amending the Order of the Minister of Development Funds and Regional Policy on the establishment of the Monitoring Committee for the development plan**, published in the Official Journal of the Ministry of Development Funds and Regional Policy on 16 November 2022, item 27. A link to the website of the publication of the Order: <https://dziennikurzedowy.mfipr.gov.pl/media/112290/Dz27.pdf>

The authorities also provided:

- v. **Report from the public consultations** of the draft Act of 28 April 2022 on the principles of implementation of tasks financed from European funds in the financial perspective 2021-2027, with 11 annexes with comments submitted during the consultation procedure.
- vi. **A list of nominated members of the Monitoring Committee** dated on 15 February 2024 and published on the website of the Ministry of Development Funds and Regional Development: [Komitet Monitorujący - Krajowy Plan Odbudowy - Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl)
- vii. **Annexes 1-8 - 24 letters** of Minister of Development Funds and Regional Policy from 26 May 2022 and from 18 November 2022 with invitation to indicate representatives to the Monitoring Committee.
- viii. **Copy of the Resolution No. 1 of the Monitoring Committee** for the development plan of 17 May 2023 on the adoption of the Rules of Procedure of the Monitoring Committee.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Following a public consultation, entry into force of a legal act which shall:

With regard to the public consultations - these took place from 9 September 2021 to 27 October 2021 (page 3 of the Report – evidence (v)). The draft law was sent for consultations to key stakeholders, which are enumerated on page 4 of the Report and include 16 Marshals of the Voivodships, representatives of trade unions, entrepreneurs and employers. In addition, the draft act was posted on the website of the Public Information Bulletin of the Government Legislation Centre under the section ‘Legislation’ – ‘Government Legislative Process’ (link to the website where the draft law is available for consultation and opinion: <https://legislacja.gov.pl/projekt/12351155>).

On 7 October 2021, a public hearing on the draft law was held, which is described on page 11 of the Report, and which can be followed under the link to the website of the public hearing on the draft law: [Ustawa wdrożeniowa - wysłuchanie 7.10.2021, 10:00 \[PJM\] \(youtube.com\)](https://www.youtube.com/watch?v=...).

Article 108 of the Act of 28 April 2022 on the principles of implementation of tasks financed from European funds in the financial perspective 2021-2027 (the “Act of 28 April 2022”) amended the Act of 6 December 2006 on the principles of development policy (the “Act of 6 December 2006”). The Act of 28 April 2022 was published in the Official Journal (*Dziennik Ustaw Rzeczypospolitej Polskiej*) on 20 May 2022, item 1079 and it entered into force on 4 June 2022 in accordance with the Article 146 of the Act.

- **create a Monitoring Committee [...]**

The Monitoring Committee is created on the basis of Article 14lk of the Act of 6 December 2006 as introduced by Article 108 of the Act of 28 April 2022. The Committee is set up by the minister in charge of regional development (paragraph 2 of Article 14lk of the Act of 6 December 2006).

Additionally, the Order, issued on the basis of paragraph 2 of Article 14lk of the Act of 6 December 2006 as introduced by Article 108 of the Act of 22 April 2022, of the Minister of Development Funds and Regional Policy on the establishment of the Monitoring Committee for the development plan was signed on 4 August 2022. The Order entered into force on the day following its publication, in accordance with its paragraph 3 point 5, and is published in the Official Journal of the Minister of Development Funds and Regional Policy. A new Order amending the Order of 4 August 2022 was signed on 16 November 2022 and entered into force the same day, as of the date of publication in the Official Journal of the Minister of Development Funds and Regional Policy, in accordance with its paragraph 2. The Order of 4 August 2022 established the exact number of representatives of all groups of stakeholders and the order of 16 November 2022 confirmed the finalisation of the selection procedure described below and increased the number of representatives of organizations promoting fundamental rights and non-discrimination and the institutions responsible for implementation of reforms and investments under the RRP.

- **[...] which shall be tasked to monitor the effective implementation of the RRP**

Article 14lk paragraph 11 of the Act of 6 December 2006 as introduced by Article 108 of the Act of 22 April 2022 describes the tasks of the Monitoring Committee that focus on monitoring the effective implementation of the RRP. The tasks include among others:

- reviewing implementation of the development plan (that is, recovery and resilience plan) and individual reforms and investments from the perspective of progress in achieving indicators and milestones (Article 14lk paragraph 11, point 1),
- analysing situations that affect the implementation of the development plan, and identifying issues that require additional analysis or evaluation (Article 14lk paragraph 11, point 3),
- analysing the manner of implementation of investments under the development plan, including analysis of the territorial impact of the interventions implemented with the funds of the development plan in terms of the needs and potentials of individual areas (Article 14lk paragraph 11, point 4),
- analysing the rules of project selection, the principles of the equal access to information and equal treatment of entities, referred to in Article 14lza paragraph 1 and 2 of the Act, that is entities applying for support (Article 14lk paragraph 11, point 5),
- analysing communication and information activities of the development plan and, if problems with their effectiveness are identified, issuing recommendations on their improvement (Article 14lk paragraph 11, point 6).

- **[...] consisting of stakeholders and social partners affected by the implementation of the RRP, including representatives of bodies representing the civil society and promoting fundamental rights and non-discrimination.**

As described in Article 14lk paragraph 3, points 1-10 of the Act of 6 December 2006 as introduced by Article 108 of the Act of 22 April 2022, the Monitoring Committee is composed of:

1. on the governmental side (Article 14lk paragraph 3, points 1-4:

- representatives of the minister for regional policy,
- representatives of the minister for the economy,
- representatives of the minister for public finance,
- institutions responsible for the implementation of reforms and investments.

2. Nationwide organizations of local government units (Article 14lk paragraph 3, point 6);

3. trade union organizations and employers' organizations representative within the meaning of the Act of 24 July 2015 on the Social Dialogue Council and other institutions of social dialogue – social and economic partners (Article 14lk paragraph 3, point 7);

4. non-governmental organizations within the meaning of the Act of 24 April 2003 on Public Benefit and Volunteer Work (Journal of Laws of 2020, item 1057, as amended), indicated by the Public Benefit Activity Council and indicated by the Council for Dialogue with the Young Generation (Article 14lk paragraph 3, point 8);

5. organizations promoting fundamental rights and non-discrimination (Article 14lk paragraph 3, point 9);

6. scientific community, recommended by the Central Council of Science and Higher Education (Article 14lk paragraph 3, point 10).

Representatives of non-governmental organisations constitute at least half of the Committee's composition (Article 14lk paragraph 5). The exact number of representatives is specified in the Order of the Minister of Development Funds and Regional Policy on the establishment of the Monitoring Committee of 16 November 2022 (Article 14lk paragraph 3).

The process of designation and replacement of representatives to the Monitoring Committee is described in Article 14lk paragraph 6-10 of the Act of 6 December 2006 as introduced by Article 108 of the Act of 22 April 2022. As evidenced by the list of nominated members of the Monitoring Committee, all members of the Monitoring Committee were nominated by the Minister of Development Funds and Regional Policy on 14 December 2022. The nominations followed the selection procedure described below under points 1-6: each of the groups that is represented in the Committee include members affected by the implementation of the RRP, in particular:

I. Governmental side

19 representatives of the ministries involved in the coordination and implementation of the RRP (i.e. responsible for implementation of reforms and investments under the RRP) are represented in the RRP Monitoring Committee. The invitation letters were sent to all representatives of the governmental side by the Minister of Development Funds and Regional Policy on 26 May 2022 (Annexes 1-3.11) requesting a nomination of their representatives.

II. Nationwide organizations of local government units forming the local government side of the Joint Central Government and Local Government Commission

All nationwide organisations of local government units, represented in the Joint Central Government and Local Government Commission are represented in the Monitoring Committee. The invitation letters were sent to the Joint Government and Local Government Commission by Minister of Development Funds and Regional Policy on 26 May 2022 requesting a nomination of their representatives (Annex 4).

III. Trade union organisations and employers' organizations, representative within the meaning of the Act of 24 July 2015 on the Social Dialogue Council and other social dialogue institutions

All trade union organizations and employers' organizations from the Council for Social Dialogue are represented in the Monitoring Committee. The invitation to indicate representatives of the trade union organizations and employers' organizations was sent by a letter of Minister of Development Funds and Regional Policy from 26 May 2022 addressed to the Social Dialogue Council (Annex 5).

IV. Non-governmental organisations within the meaning of the Act of 24 April 2003 on public benefit activities and volunteer work (Journal of Laws of 2020, item 1057, as amended)), indicated by the Public Benefit Activity Council and indicated by the Council for Dialogue with the Young Generation

Two organisations indicated by the Public Benefit Activity Council and three organisations indicated by the Council for Dialogue with the Young Generation are represented in the Monitoring Committee.

The abovementioned organisations were chosen through a two-stage selection procedure. Firstly, they had to meet the criteria described in a letter of invitation from the Minister of Development Funds and Regional Policy from 26 May 2022 asking to indicate their representatives (Annex 6a and 6b). The Minister defined the type of non-governmental organisations to be represented in the Committee, considering the scope of the RRP, to ensure that the organisations are active in all areas of the plan's implementation. In addition, the organisations had to be active in the area they represent for a minimum 5 years. They were requested to document this activity on the basis of relevant publicly available documents, e.g. reports and statements on their activities. The rules laid down by the Ministry were intended to ensure the representativeness, impartiality and relevant experience of the NGOs included in the composition of the Monitoring Committee. Secondly, they had to be chosen in the voting procedure organised by both the Public Benefit Activity Council and by the Council for Dialogue with the Young Generation.

V. Organisations promoting fundamental rights and non-discrimination;

The organisations promoting fundamental rights and non-discrimination were chosen by the Ministry of Development Funds and Regional Policy according to the selection criteria agreed also during the public consultation procedure. The final version of the selection criteria referred to the organisations and to the candidates, requiring from them fulfilment of the following elements (among others):

(1) Organizations should:

- have been active in the area they represent for a minimum of 5 years - they must be able to document this activity on the basis of relevant, publicly available documents, e.g. reports and reports on their activities;
- demonstrate the ability to obtain and provide feedback (opinions, positions, recommendations) to NGOs and citizens on issues that are the subject of the work of the Monitoring Committee.
- active participate in the process of programming and consultation of the recovery and resilience plan (preferential criterion).

(2) Requirements for candidates:

- candidates must have the support of at least five NGOs or the support of at least one association of associations;
- candidates must document at least 5 years of activity in the area of fundamental rights and non-discrimination (e.g. experience in statutory bodies, holding leadership, expert or coordination positions in NGOs);

- candidate should actively participate in programming and consultation process of the recovery and resilience plan (preferential criterion).

The criteria were described in the letters of invitation from Minister of Development Funds and Regional Policy of 26 May 2022 asking to indicate their representatives (Annex 7a-7c). A link to the website of the publication of the information on the recruitment and the final version of the selection criteria: <https://www.gov.pl/web/planobudowy/komitet-monitorujacy>.

VI. Representatives of the scientific community, recommended by the Central Council of Science and Higher Education.

The invitation to indicate representatives of the scientific community was sent by a letter of the Minister of Development Funds and Regional Policy on 26 May 2022 addressed to the Central Council of Science and Higher Education (Annex 8). The Central Council of Science and Higher Education is an institution representing the higher education and science community.

- **Make it a legal requirement to consult the Monitoring Committee during the implementation of the RRP.**

A legal requirement to consult the Monitoring Committee during the implementation of the RRP is based on the list of its tasks which are introduced by Article 141k paragraph 11 of the Act. Among others, mandatory consultation of the Committee on the implementation of the RRP is ensured by the following ways:

- conducting an overview of the implementation of the development plan and of individual reforms and investments from the point of view of progress towards the achievement of indicators and milestones (Article 141k paragraph 11, point 1);
- issuing recommendations to the institutions responsible for the implementation of the reforms or institutions responsible for the implementation of the investments with regard, in particular, to improving the effectiveness of these reforms or investments in achieving their milestones or targets, including recommendations for corrective actions (Article 141k paragraph 11, point 2);
- giving an opinion on proposals to amend the development plan (Article 141k paragraph 11, point 7);
- giving an opinion on reports on the implementation of the development plan (Article 141k paragraph 11, point 8).

According to Article 141k paragraph 13 of the Act of 6 December 2006 as introduced by Article 108 of the Act of 22 April 2022, the Committee shall act on the basis of its rules of procedure. According to the rules of procedures adopted by the Committee on 17 May 2023, the meetings of the Committee shall take place at least twice per year (Chapter 13, paragraph 3 point 1).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: F6G

Related Measure: F3.1. Improving the conditions for the implementation of the RRP

Name of the Milestone: Adoption of the Guidance by the Minister in charge of regional development establishing the rules for involvement of stakeholders and social partners in the implementation of the RRP	
Qualitative Indicator: Publication of the Guidance on the website of the Ministry of Development Funds and Regional Policy	Time: Q2 2022
Context:	
<p>The objective of the reform is to ensure the proper consultation of social partners and stakeholders in the implementation of the Recovery and Resilience Plan.</p> <p>Milestone F6G concerns the adoption of the Guidance establishing the rules for involvement of stakeholders and social partners in programming, implementation, monitoring and evaluation of the RRP.</p> <p>Milestone F6G is the second step of the implementation of the reform. It follows the completion of milestone F5G, related to the establishment of a monitoring committee, and it will be followed by milestone F7G, related to putting in place the repository system for monitoring the implementation of the Recovery and Resilience Facility, as well as milestone F8G, related to the workload analysis to be carried out for the institutions involved in the implementation of Recovery and Resilience Plan.</p> <p>The reform has a final expected date for implementation on 30 June 2024.</p>	
Evidence provided:	
<p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ul style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled. ii. Guidance on the partnership principle of a development plan co-financed by the Recovery and Resilience Facility issued by the Minister for Funds and Regional Policy on 8 September 2022 and published on 9 September 2022 on the website of the Ministry of Funds and Regional Policy: https://www.gov.pl/attachment/671d4241-1747-48d4-9a29-64331fb5d735. i. Report, issued by the Ministry for Funds and Regional Policy, from the public consultations on the draft guidelines for the national recovery plan including a table with all comments received in Annex 1. It was published on 19 October 2022 following the consultation on the website of the Ministry of Funds and Regional Policy: https://www.funduszeuropejskie.gov.pl/media/111751/raport_konsultacje_wytycznych.pdf together with the Annex: https://www.funduszeuropejskie.gov.pl/media/111754/uwagi_partnerstwo.pdf 	
Analysis:	
<p>The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular,</p> <p>Adoption of the Guidance, following a public consultation, [...]</p> <p>The Guidance on the partnership principle in the framework of a development plan co-financed by funds from the Recovery and Resilience Facility (further referred to as 'Guidance') was approved on 8 September 2022 by the Minister for Funds and Regional Policy and published on 9 September 2022</p>	

on the website of the Ministry of Funds and Regional Policy: <https://www.gov.pl/attachment/671d4241-1747-48d4-9a29-64331fb5d735>.

A public consultation on the draft guidelines took place from 13 June to 11 July 2022 as evidenced in the Report from public consultations on the draft guidelines for the national recovery plan (Chapter 2 of the report) accompanied by the list of all comments submitted. The report was published on 19 October 2022, on the website of the Ministry of Funds and Regional Policy: https://www.funduszeuropejskie.gov.pl/media/111751/raport_konsultacje_wytycznych.pdf.

The report describes the process of public consultation, including the participants of the consultation process, the comments received on the document and the way in which they were dealt with. The annex to the report provides a reply to all submitted comments and was published together with the report on the website of the Ministry of Funds and Regional Policy: https://www.funduszeuropejskie.gov.pl/media/111754/uwagi_partnerstwo.pdf.

[...] to ensure effective involvement of stakeholders and social partners in programming, implementation, monitoring and evaluation of the RRP.

Chapter 2 of the Guidance presents stakeholders and social partners according to 5 categories – social partners, economic partners, representatives of civil society, organisations of territorial self-government and the scientific community. Their engagement is further elaborated under the various stages of implementation of the recovery and resilience plan:

- Programming and reprogramming (Chapter 4.1);
- Implementation (Chapters 4.2.1 - reforms and 4.2.2 - investments);
- Monitoring (Chapter 4.3);
- Evaluation (Chapter 4.4).

For each of the chapters, the expected effects of involving stakeholders and partners are indicated, including the benefits, the existing legal conditions and the applicable and recommended forms of involvement of partners.

In addition, Chapter 3 of the Guidance (Forms of involvement of partners and stakeholders) elaborates on available forms of effective involvement to be used by institutions involved in the implementation of the RRP. Finally, Chapter 3 sets out seven principles of consultation with partners that should be applied – good faith, universality, transparency, responsiveness, coordination, predictability and respect for the general interest.

The Guidance shall harmonise the measures to be taken by the institutions responsible for the implementation of reforms and investments under the RRP.

As stated in Chapter 1.2, the Guidance should be implemented by the different institutions responsible for the RRP in Poland: the coordinating body of the RRP, institutions responsible for reforms, institutions responsible for investments and supporting bodies. As presented above, Chapters 3 and 4 of the Guidance present a harmonised catalogue of forms to be used by those institutions to ensure an efficient engagement of partners and stakeholders.

The Guidance shall include mechanisms for the monitoring and evaluation of the involvement of stakeholders and social partners.

Chapter 5 of the Guidance includes the mechanisms for monitoring and evaluating the involvement of stakeholders and partners. In particular, it specifies that the implementation of the partnership

principle that is the involvement of stakeholders and social partners in the implementation of the RRP will be subject to systematic monitoring and evaluation by the Partnership Development Subcommittee operating since 2020 as part of the Partnership Agreement Committee which is the main body supporting the minister responsible for regional development in the process of implementing and coordinating the programmes included in the Partnership Agreement for 2021-2027. The legal basis for the functioning of the Partnership Agreement Committee is Article 14I of the Act of 6 December 2006 on the principles of development policy.

The tasks of the Partnership Development Subcommittee are regulated in Regulation No. 4 of the Chairman of the Committee on the Partnership Agreement 2014-2020 of 26 August 2020 on the establishment of a Subcommittee on Partnership Development, which is available on the website of the Ministry of Funds and Regional Policy: https://www.funduszeuropejskie.gov.pl/media/97423/Zarzadzenie_ws_powolania_Podkomitetu.pd.

As follows from Chapter 5 of the Guidance, the Subcommittee is an institution that should perform an advisory function towards all entities whose task is to implement the partnership principle in the context of the RRP – the coordinating body of the recovery and resilience plan, institutions responsible for reforms, institutions responsible for investments and supporting bodies. The entities may use the experience and the work of the Subcommittee in their work. .

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: F7G	Related Measure: F3.1. Improving the conditions for the implementation of the RRP	
Name of the Milestone: Ensuring an effective audit and control in the framework of the RRF implementation protecting the financial interests of the Union		
Qualitative Indicator: Audit report confirming the repository system functionalities	Time: Q2 2022	
<p>Context:</p> <p>The objective of this measure is to enhance the effectiveness and transparency of RRP reforms and investments by developing information systems, administration, and audit. The measure aims to ensure the functioning of the management and control system. This shall include inter alia the setting up of the necessary administrative capacities and the creation of an IT repository system.</p> <p>Milestone F7G requires the establishment of an operational repository system for recording and storing all relevant data related to the implementation: the achievement of milestones and targets, data required by Article 22(2)(d)(i) to (iii) of the RRF Regulation. The access to the system shall be granted to all relevant national and European bodies for the purpose of audit and control.</p> <p>Milestone F7G is the third step of the implementation of the reform. It follows the completion of milestone F5G, related to the establishment of a monitoring committee and milestone F6G, related to the adoption of guidance establishing the rules for involvement of stakeholders and social partners in the implementation of the Recovery and Resilience Plan, and it is followed by milestone</p>		

F8G, related to the workload analysis to be carried out for the institutions involved in the implementation of Recovery and Resilience Plan.

The reform has a final expected date for implementation on 30 June 2024.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Audit report** (ref. no. DAS10.9011.1.2022.6.GDYG) confirming the requirements imposed on the repository system supporting the implementation of the RRP, dated July 2022.
- ii. **Audit reports**¹⁵ confirming the existence of procedures for the use of Arachne by the national institutions during controls to prevent, detect and correct conflicts of interest, fraud, corruption and double funding carried out in October-November 2022.
- iii. **The audit authority's procedures** for the use of Arachne as part of system audits and audits of cases to prevent, detect and correct conflicts of interest, fraud, corruption and double funding, ref.no. DAS9.9011.42.2022.2.HVJQ, dated 25 November 2022, e-signed by the Director of the Department for audit of Public Funds at the Ministry of Finance.

As further evidence, the Polish authorities provided:

- iv. **Acceptance protocols** regarding the repository system modules¹⁶.
- v. **Extract** (dated 26 January 2024) from the repository system with the data on final recipients, contractors and subcontractors including the data on beneficial owners
- vi. **XML file** dedicated for a direct data upload from the CST2021 to the Arachne System, dated 23 January 2024
- vii. **E-mail communication** on granting the access to the repository system, dated 24 January 2024 and 07 February 2024.

Analysis:

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone.

¹⁵ Ministry of Funds and Regional Policy DAS9.9011.28.2022.3.CDPC, Ministry of National Defence DAS9.9011.29.2022.6.CDPC, Ministry of Health DAS9.9011.21.2022.4.GEAL, Ministry of Family and Social Policy DAS9.9011.27.2022.5.GVIZ, Ministry of Climate and the Environment DAS9.9011.26.2022.5.GEAL, Ministry of Agriculture and Rural Development DAS9.9011.32.2022.4.CDPC, Office of the Prime Minister DAS9.9011.35.2022.4.GVIZ, Ministry of Infrastructure DAS9.9011.23.2022.4.GVIZ, Ministry of Development and Technology DAS9.9011.37.2022.5.AGQD, Ministry of Culture and National Heritage DAS9.9011.31.2022.5.GEAL, Ministry of Finance DAS9.9011.20.2022.7.CDPC, Ministry of Interior and Administration DAS9.9011.24.2022.4.HVJQ, Ministry of Education and Science, Ministry of State Assets DAS9.9011.30.2022.5.HVJQ, Ministry of State Assets DAS9.9011.25.2022.5.GVIZ, ARIMR, DAS9.9011.45.2022.5.GVIZ, PARP, DAS9.9011.28.2022.3.CDPC, PARP DAS9.9011.22.2022.4.CDPC, CUPT DAS9.9011.33.2022.5.GVIZ, COPE DAS9.9011.24.2022.10.HVJQ, NFOSiGW DAS9.9011.34.2022.5.GEAL

¹⁶ Protocol BK/ZUR/1/2020, dated 13 August 2020, protocol eKontrola/ZUA/1/2020 dated 02 March 2021, protocol ADM/ZUR/1/2020 dated 05 July 2021, protocol SKANER/ZUR/1/2020 dated 06 May 2020 protocol SR2021/ZUR/2/2020 dated 18 December 2020, protocol WOD2021/ZUR/1/2021 dated 06 December 2021.

A repository system for monitoring the implementation of the RRF shall be in place and operational.

The audit report dated 5 July 2022 and signed by the Head of National Revenue Administration, the national Audit body, confirmed the establishment of the repository system, which meets all requirements for the operation of this ICT system for the implementation of the RRF. CST2021 is the system used for the implementation of the ESI Funds in Poland in the 2021-2027 programming period and serves to support the implementation of reforms and investments under the RRF. The scope of the audit covered all functionalities that are part of the CST2021 system that are used for the implementation of the RRP, namely: Administracja (administration), including eSZOP, WOD2021 (selection of projects to be co-financed); SL2021 (clearing of projects); eKontrola-Cross-checks (used for project audits); identity management system (single sign-on solution); SR2021 application (reporting tool); and the SKANER tool (Application for Verification of Entities and Persons).

The system shall include, as a minimum, the following functionalities:

(a) collection of data and monitoring of the achievement of milestones and targets;

The evidence provided by the Polish authorities in the audit report demonstrates that the collection of data of the achievements of the milestones and targets is performed in the repository system. In terms of monitoring the implementation of the reforms and investments, the national bodies are responsible for the proper reporting of the progress of the reforms or investments, respectively, including the achievement of milestones and targets.

The basis for monitoring and reporting is the data entered into the CST2021 system via the reporting forms. It allows information on the progress of reforms and investments to be updated. CST2021 provides the possibility to collect data and make it available in the form of reports presenting aggregated data. The Coordinating Body provided the report templates for all national bodies dealing with the RRP implementation. The possibility to generate reports is available at all levels of RRP management and implementation (Coordinating Body, institutions responsible for reforms and investments, supporting bodies) on the basis of the rights granted to use the ICT system.

(b) collection, storage and ensuring access to the data required by Article 22(2)(d)(i) to (iii) of the RRF Regulation.

The CST2021 provides for the collection of the following categories of data required by the RRF Regulation: i) the name of the final recipient of funds, ii) name of the contractor and sub-contractor, iii) first names, last names and dates of birth of beneficial owners of the recipient of funds or contractor as defined in point 6 of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council.

However, following the system audit on milestones and targets carried out by the DG ECFIN auditors in December 2023, some observations related to the completeness of data were identified with repercussions on completeness of data in Arachne and its usage for audit and control purposes. Following technical exchanges these weaknesses were satisfactorily addressed, confirming the functionality and operability of the repository system CST2021 with minor observations related to the incomplete data on the milestone B8G and B10G.

The access to this data shall be granted to all relevant national and European bodies for the purpose of audit and control.

CST2021 provides the possibility to collect data and make it available in the form of reports presenting aggregated data. The reports' generation is available at all levels of RRP management and implementation (Coordinating Body, Audit body, institutions responsible for reforms and investments, supporting bodies) on the basis of the rights granted to use the ICT system. The access to the collected data is available to all relevant national and European bodies for the purpose of audit and control, both in the form of reports generated by the above-mentioned institutions of the implementing system and directly – after being granted the appropriate access rights to the CST2021 system. The DG ECFIN auditors also received access in order to perform data checks.

The data coming from this repository system shall feed into the Arachne system on a quarterly basis.

The Polish authorities prepared a technical process of the data upload from the CST2021 System into the Arachne with the use of an XML file, which template was provided by the Commission's services responsible for the risk scoring tool Arachne. The data export process is composed of the following steps: 1) generation of a csv file from the CST2021 reporting module, 2) converting a csv file into an XML file using the xml tool (the coordinating body's own tool), 3) transmission of the XML file to the European Commission staff member responsible for importing the data into ARACHNE, 4) import of data into ARACHNE by an authorised employee of the European Commission.

First data upload was initiated in April 2023 and followed by subsequent 8 uploads. Until December 2023, 78'370 projects and 7 contracts were uploaded. On 26th January 2024 the respective amounts increased to 116'913 projects and 207 contracts uploaded to Arachne.

The Arachne system shall be used during audits and controls to prevent and detect and correct conflict of interest, fraud, corruption and double funding.

Data from Arachne tool is used by the national bodies responsible for reforms and investments, which was confirmed in the audit reports prepared by the national Audit body for all 20 national bodies responsible for the implementation of the RRP. The audit confirmed the adoption of the adequate procedures on using the Arachne system during controls by the national bodies within the RRP in order to prevent, detect and correct conflicts of interest, fraud, corruption and double financing. The audit carried out in October 2022 revealed 76 observations, however the follow-up check performed in October 2023 confirmed that all recommendations were satisfactorily implemented.

In order to ensure continuous compliance with the milestone and its obligations under the Financing Agreement, as attested through the summary document justifying how the milestone was satisfactorily fulfilled, Poland has committed to upload in the repository system the missing data on the milestones B8G and B10G, by end of 31.07.2024.

Commission Preliminary Assessment: Satisfactorily fulfilled

Loan support

Number: B1L	Related Measure: B1.2 Facilitating the implementation of the energy saving obligation for energy companies
Name of the Milestone: Entry into force of the implementing regulation to the Energy Efficiency Act	
Qualitative Indicator: Provision in the implementing regulation to the Energy Efficiency Act indicating its entry into force	Time: Q2 2022
Context: <p>The objective of this reform is to simplify and broaden the Energy Efficiency Obligation scheme.</p> <p>Milestone B1L requires the entry into force of the implementing regulation to the Energy Efficiency Act. In particular, an energy savings reference value for projects improving energy efficiency shall be established and a methodology for calculating energy savings for projects in the transport sector shall be set out.</p> <p>Milestone B1L is the only milestone of this reform. The reform has a final expected date for implementation on 30 June 2022.</p>	
Evidence provided: <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none">i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.ii. Copy of Regulation of the Minister of Climate and Environment of 22 of November 2021 on reference values for final energy savings for energy efficiency improvement projects and on the method of calculating those values (<i>Rozporządzenie Ministra Klimatu i Środowiska z dnia 22 listopada 2021 r. w sprawie wartości referencyjnych oszczędności energii finalnej dla przedsięwzięć służących poprawie efektywności energetycznej oraz w sprawie sposobu obliczania tych wartości</i>)” as published in Journal of Laws of 2021, item 2172.iii. Copy of Regulation of the Minister of Climate and Environment of 12 of April 2022 amending the Regulation on the detailed scope and method of preparing an energy efficiency audit and methods for calculating energy savings (<i>Rozporządzenie Ministra Klimatu i Środowiska z dnia 12 kwietnia 2022 r. zmieniające rozporządzenie w sprawie szczegółowego zakresu i sposobu sporządzania audytu efektywności energetycznej oraz metod obliczania oszczędności energii</i>)” as published in Journal of Laws of 2022, item 956. <p>The authorities also provided:</p> <ol style="list-style-type: none">iv. Copy of the Act of 20 April 2021 amending the act on energy efficiency and certain other acts (<i>Ustawa z dnia 20 kwietnia 2021 r. o zmianie ustawy o efektywności energetycznej oraz niektórych innych ustaw</i>)” as published in Journal of Laws of 2021, item 868.	

Analysis:

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone. In particular:

Entry into force of the implementing regulation to the Energy Efficiency Act

The Regulation of the Minister of Climate and Environment of 22 of November 2021 on reference values for final energy savings for energy efficiency improvement projects and on the method of calculating those values (the “November Regulation”) was published in the Official Journal on 29 November 2021, item 2172 and entered into force 14 days after its publication, that is on 14 December 2021, as per paragraph 4 of the Regulation.

The Regulation of the Minister of Climate and Environment of 12 of April 2022 amending the Regulation on the detailed scope and method of preparing an energy efficiency audit and methods for calculating energy savings (the “April Regulation”) was published in the Official Journal on 5 May 2022, item 956 and entered into force 14 days after its publication, that is on 20 May 2022, as per paragraph 3 of the Regulation.

which shall establish an energy savings reference value for projects improving energy efficiency. Furthermore, in line with the description of the measure, **the reform shall be implemented by creating a standard set of reference values for different types of energy-saving measures.**

Annexes No. 1 and No. 2 to the November Regulation specify the reference values of final energy savings for projects aimed at improving energy efficiency.

In particular, Annex No. 1 specifies the type of standard individual heat generator installed, ranges of the years of construction of the building in which a generator is housed, and the respective reference value of final energy savings expressed in tonnes of oil equivalent per year. Annex No. 2 specifies the final energy saving factors for each type of project replacing a heat generator in a residential building, expressed in tonnes of oil equivalent per m² area of heated residential building, as well as a correction factor which depends on the climate zone of a given building’s location.

and set out a methodology for calculating energy savings for projects in the transport sector.

Paragraph 1(1) letter b) of the April Regulation specifies the methodology for circulating energy savings for projects implemented in the transport sector.

The elements of these calculations differ based on the kind of energy efficiency improvement project being undertaken. Methodologies are introduced for the replacement of road transport vehicles, upgrades of road and rail transport vehicles and reduction of losses in storage and transport of liquid fuels.

Furthermore, in line with the description of the measure, **such measures shall no longer need to be audited which shall facilitate the participation in the scheme of smaller entities.** This is achieved by Annexes 1 and 2 of the November Regulation, which introduce a simplified way of confirming energy savings by setting reference values (either in the form of a table with these values or a simplified formula) for final energy savings. An audit is therefore not required.

Furthermore, in line with the description of the measure, **another element of the reform shall be the inclusion in the Energy Efficiency Obligation scheme of fuel companies placing liquid fuels used for transport on the market. These companies shall implement energy efficiency improvement projects, cancel an appropriate number of white certificates, or pay a substitute fee under certain conditions.** In accordance with Article 1(7b) of the Act amending the act on energy efficiency and

certain other acts, fuel operators placing liquid fuels used for transport on the market are included in the catalogue of entities obliged to fulfill the obligation to achieve energy savings under the Energy Efficiency Obligation Scheme. In addition, these entities are obliged, by virtue of their inclusion in the catalogue in question, to implement energy efficiency improvements project, cancel an appropriate number of white certificates, or pay a substitute fee under certain conditions (Articles 10 and 11 of the Energy Efficiency Act).

ComFmission Preliminary Assessment: Satisfactorily fulfilled

Number: B10L	Related Measure: B2.4 Legal framework for the development of energy storage facilities	
Name of the Milestone: Entry into force of amendments of the Act on energy law with regards to energy storage		
Qualitative Indicator: Provisions in the amendments of the Act on energy law with regards to energy storage		Time: Q2 2021
<p>Context:</p> <p>The measure aims to remove legal barriers to the development of energy storage technology and to create a stable legal environment for storage activities.</p> <p>Milestone B10L requires that the amendments facilitate the development of electricity storage. In particular, the amendments introduce a number of elements: exemption from tariff obligations, elimination of double grid charges, partial exemption from charges for connecting storage to the grid, exemption from the obligation to provide certificates of origin and from certain charges related to stored electricity. The proposed tariff framework for storage is non-discriminatory and cost reflective.</p> <p>Milestone B10L is the only milestone of this reform. The reform has a final expected date for implementation on 30 June 2021.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of Act of 20 May 2021 amending the Energy Law Act and certain other acts (<i>Ustawa z 20 maja 2021 o zmianie ustawy prawo energetyczne oraz niektórych innych ustaw</i>), published in the Official Journal of 2021, item 1093 (Dziennik Ustaw 2021 poz. 1093). 		
<p>Analysis:</p> <p>The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone. In particular:</p> <p>Entry into force of amendments of the Act on energy law with regards to energy storage</p> <p>The Act of 20 May 2021 amending the Act on Energy Law and certain other acts (hereinafter referred to as “the amending Act”) was published in the Official Journal on 18 June 2021, item 1093, and in</p>		

accordance with Article 37 entered into force 14 days after the publication, that is on 3 July 2021, with the exception of certain provisions which are not relevant for this milestone.

The amendments shall facilitate the development of electricity storage including, in particular (...)

- **an exemption from tariff obligation**

Article 1(46a) of the amending Act introduced changes to Article 45(1) of the Act on Energy Law. The amended provisions exempt the economic activities related to energy storage from the tariff obligation.

- **no double network charges**

According to Article 1(46c) of the amending Act that introduces changes to Article 45(9-13) of the Act on Energy Law, the energy storage facility is not subject to double network charges.

- **partial exemption from fees for connecting the storage to the grid**

Based on Article 1(12c) of the amending Act, the fee for the connection of an electricity storage facility shall be based on half of the actual expenditure incurred for the connection.

- **exemption from the obligations to present certificates of origin**

Based on Article 7(8a) of the amending Act that adds a new point 6a) to Article 45 of the Renewable Energy Act, the stored electricity taken from the grid is not taken into account for assessing the eligibility to receive certificates of origin or guarantees of origin.

- **and from certain fees with regards to stored electricity**

Article 8(7) letter e) of the amending Act introduced changes to Article 69 (6) of the Act on Capacity Market, on the basis of which electricity used for electricity storage has been exempted from the capacity fee.

Article 10(10) of the amending Act introduced changes to Article 62 (3) of the Act on the promotion of electricity from high-efficiency cogeneration, on the basis of which electricity used for electricity storage has been exempted from the cogeneration fee.

- **The proposed tariffs framework for storage shall be non-discriminatory and cost-reflective.**

Article 1(12) letter c) of the amending Act added a new point 6) to Article 7(8) of the Act on Energy Law. On this basis, the fee for the connection of an electricity storage facility shall be based on one half of the actual expenditure incurred for the connection.

The tariff rules for energy storage have also been amended (Article 1(46) letter c) of the amending Act). In settlements for the provision of electricity transmission or distribution services in respect of charges for electricity taken from the grid by an electricity storage facility, the subject of the settlement is exclusively the difference between the electricity taken from the grid by the electricity storage facility and the electricity injected into the grid by this storage facility in a given settlement period (the balance principle). This has eliminated the discriminatory double charging for distribution and transmission of energy taken and injected.

Furthermore, in line with the description of the measure, the reform shall make the obligation to obtain a concession/entry in the register dependant on the total installed capacity of the storage facility, irrespective of its energy capacity.

As provided by article 1(45) of the amending Act electricity storage facilities with a total installed electricity storage capacity greater than 50 kW shall be entered in the register.

Commission Preliminary Assessment: Satisfactory fulfilled

Number: B21L	Related Measure: B3.3 Support for the sustainable management of water resources in agriculture and rural areas	
Name of the Milestone: Entry into force of amendments to national legislation needed to improve the conditions for resilient water management in agriculture and rural areas		
Qualitative Indicator: Provision in the amendments indicating the entry into force		Time: Q2 2022
Context: The measure aims to facilitate investments in projects that support sustainable water management in rural areas and, specifically, water retention in rural areas. Milestone B21L requires amendments to national legislation needed to facilitate the preparation and implementation of investment projects that contribute to water retention and stopping the draining of water from agricultural lands, to protect agricultural land against drought and limit the risk of floods. Milestone B21L is the only milestone of this reform. The reform has a final expected date for implementation on 30 June 2022.		
Evidence provided: In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided: <ol style="list-style-type: none">i. A summary document duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled, drawn up by the Ministry of Agriculture and Rural Development on 17 October 2022.ii. Copy of the Act of 17 December 2021 amending certain acts in connection with the extension of the implementation of the Rural Development Programme 2014–2020 (<i>Ustawa z dnia 17 grudnia 2021 r. o zmianie niektórych ustaw w związku z przedłużeniem realizacji Programu Rozwoju Obszarów Wiejskich na lata 2014–2020</i>), published in the Official Journal of 14 January 2022, item 88. The authorities also provided the following documents: <ol style="list-style-type: none">iii. "Analysis of potential water retention in land reclamation systems and its possible role in mitigating winter low flows of Oder" - a study by Dr. Mateusz Grygoruk, Paweł Osuch and Paweł Trandziuk for Stowarzyszenie Niezależnych Inicjatyw Nasza Natura, published in February 2018.iv. "Position paper on the efficacy of impounding water in melioration systems for the retention of water in Poland (<i>Stanowisko w sprawie skuteczności oddziaływania piętrzenia wody w systemach melioracyjnych na retencję wody w Polsce</i>)" 13 October 2022, drawn up by Prof. Mateusz Grygoruk of the Warsaw University of Life Sciences.		

- v. **A copy of the Act of 10 July 2017 – the Water Law** (Ustawa z dnia 10 lipca 2017 – Prawo Wodne), published in the Official Journal on 20 July 2017, item 1566.
- vi. **“Small retention as an activity mitigating the impacts of flood and drought** (*Mała retencja jako działanie ograniczające skutki suszy i powodzi*)” - a study by the Institute of Melioration and Grasslands (IMUZ), published in August 2006.
- vii. **A copy of the Regulation of the Council of Ministers of 10 September 2019 on undertakings that may significantly impact the environment** (*Rozporządzenie Rady Ministrów z dnia 10 września 2019 r. w sprawie przedsięwzięć mogących znacząco oddziaływać na środowisko*), published in the Official Journal of 26 September 2019, item 1839.
- viii. **A copy of the “DNSH assessment of reforms and investments (project bundles) presented in the RRF** (*Ocena DNSH reform i inwestycji (wiązek projektów) przedstawionych w KPO*)”, drawn up by Atmoterm SA in 2021.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone.

Entry into force of amendments to national legislation [...]

The Act of 17 December 2021 amending certain acts in connection with the extension of the implementation of the Rural Development Programme 2014–2020 (hereinafter, the “amending Act”) was published on 14 January 2022. In line with its Article 12 it entered into force 14 days after publication, on 28 January 2022, with the exception of certain provisions which are not relevant for this milestone.

The reform shall contribute to increasing the resilience of agriculture to drought and flood prevention in agricultural areas; improving water efficiency by properly regulating water relations in agricultural areas and reducing run-off; and increasing water retention.

Furthermore, in line with the description of the measure, **the reform shall consist of amendments to national legislation needed to improve the conditions for resilient water management in agriculture and rural areas; and the amendments shall facilitate the preparation and implementation of investments regarding water retention and stopping its draining from agricultural lands, including in particular investments related to the reconstruction and rebuilding of drainage devices so that they fulfil the function of retention and thus protect agricultural land against drought and limit the risk of floods** and

Art. 6 of the amending Act introduced amendments to several provisions of the Act of 10 July 2017 – the Water Law (hereinafter “the Water Law”), which simplify and facilitate investments in small water retention ponds and water-retaining improvements on existing melioration facilities in agricultural land. Specifically, it amended Art. 394 of the Water Law by including the construction of ponds that are filled only with rainwater, snowmelt or groundwater and that do not exceed a certain size, in the catalogue of works that require a notification, i.e. do not require a permit under the Water Law. Furthermore, it included, under a set of conditions, the retention of water in ditches, inhibition of water run-off from drainage facilities, reconstruction of ditches for the purpose of retaining water and reconstruction of drainage facilities to impede water run-off, into the catalogue of works that do not require either a notification or a permit under Art. 395 of the Water Law. It also introduced a new Art 395a which clarifies the notification requirements that need to be fulfilled before undertaking

reconstruction works on ditches and drainage facilities. Finally, it amended Art. 199(3) of the Water Law by introducing the possibility to finance facilities other than melioration devices, which serve the objectives of improving the productivity of soils and facilitating farming, from European Funds. The simplified permitting rules for such projects, introduced by the amendment, can contribute to more such projects being undertaken as the amendment makes it less administratively burdensome to build small water retention ponds and make improvements to melioration systems.

Facilitating investments in the above-mentioned projects the reform enables farmers to control and slow down the draining of water from agricultural land and to retain it in ponds and melioration ditches, while decreasing the likelihood of flooding in rivers into which such water would otherwise drain. In this way it contributes to increasing the resilience of agriculture to drought and flood prevention in agricultural areas; improving water efficiency by properly regulating water relations in agricultural areas and reducing run-off; and increasing water retention. The expert studies and analyses provided by Poland, specifically the "Analysis of potential water retention in land reclamation systems and its possible role in mitigating winter low flows of Oder" (evidence iii), "Small retention as an activity mitigating the impacts of flood and drought" (evidence vi), demonstrate that the types of small-scale projects covered by the amendment have a significant potential to improve water retention in agricultural land by slowing down drainage and water run-off, while mitigating the impacts of drought and flood and reducing the need for artificial irrigation. Specifically, the study on "Small retention as an activity mitigating the impacts of flood and drought" (evidence vi) explains on pages 18-19 how the projects enabled by the reform can have a positive impact on climate change adaptation by increasing the resilience of agriculture to drought and flooding and how they can contribute to pollution prevention and control by creating conditions for agricultural nutrients to be captured by vegetation in ponds and melioration ditches before reaching rivers and streams. The study "Analysis of potential water retention in land reclamation systems and its possible role in mitigating winter low flows of Oder" (evidence iii) concludes on pages 51-53 that a proper management of melioration ditches in the Oder catchment can contribute to mitigating low flows in the catchment of the Oder and reduce the risk of flood and drought. The "Position paper on the efficacy of impounding water in melioration systems for the retention of water in Poland" (evidence iv) demonstrates on page 1 how such projects can contribute to the sustainable use and protection of water resources by reducing run-off and increasing water retention.

The amendments shall comply with the requirements set out in the technical guidance on the application of 'do no significant harm' (2021/C 58/01),

The "DNSH assessment of reforms and investments (project bundles) presented in the RRF" (evidence ix) states on page 104 that the reform does not have any negative impacts on the six environmental objectives covered by the 'do no significant harm' principle while contributing to the objective of sustainable use and protection of water and marine resources, as shown in the section above.

In particular, it shall ensure compliance with the EU environmental legislation, including the EIA Directive and the Water Framework Directive.

The amendment is outside the scope of the EIA Directive (2011/92/EU) and the Water Framework Directive (2000/60/EC) and does not alter national legislation implementing those Directives and other EU environmental legislation. Projects to be implemented under the new rules will need to comply with all national rules implementing EU environmental legislation.

The amendments shall not lead to any deterioration of the level of compliance with EU environmental legislation with regards to investments that are considered significant or potentially significant pursuant to the Council of Ministers' regulation on projects likely to have a significant impact on the environment and investments in or affecting Natura 2000 areas. Moreover, the amendments shall not alter the currently binding rules on water intake.

The reform did not change the Regulation of the Council of Ministers of 10 September 2019 on undertakings that may significantly impact the environment nor national legislation transposing EU rules on Natura2000 sites. The reform did not introduce changes to the water abstraction rules.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B22L	Related Measure: B3.3.1 Investments in increasing the potential of sustainable water management in rural areas	
Name of the Milestone: Adoption of selection criteria for call for proposals		
Qualitative Indicator: Adoption of the criteria by the Ministry of Agriculture and Rural Development		Time: Q2 2022
<p>Context:</p> <p>Milestone B22L is part of investment B3.3.1, which aims at supporting sustainable investments in rural areas in improving water retention to increase the resilience of agriculture to drought and flood.</p> <p>Milestone B22L concerns the adoption of criteria for the selection of projects to be supported under investment B3.3.1.</p> <p>Milestone B22L is the first step of the implementation of the investment and will be followed by target B23L (under the eighth instalment), related to the implementation of projects improving water retention.</p> <p>The investment has a final expected date for implementation on 31 December 2025.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of the Information on the support scheme under Investment B3.3.1 Investments in increasing the potential of sustainable water management in rural areas in the National Recovery and Resilience Plan (<i>Informacja na temat systemu wsparcia w ramach inwestycji B3.3.1 Inwestycje w zwiększanie potencjału zrównoważonej gospodarki wodnej na obszarach wiejskich Krajowego Planu Odbudowy i Zwiększania Odporności</i>), published by the Ministry of Agriculture and Rural Development in November 2022 and accessible at the following link: https://www.gov.pl/attachment/56643bc2-a78a-4225-90f2-dd85e7308486. iii. Copy of the Criteria for the selection of undertakings under investment B3.3.1 Investments in increasing the potential of sustainable water management in rural areas in the National 		

Recovery and Resilience Plan (*Kryteria wyboru przedsięwzięć w ramach inwestycji B3.3.1 Inwestycje w zwiększanie potencjału zrównoważonej gospodarki wodnej na obszarach wiejskich Krajowego Planu Odbudowy i Zwiększania Odporności*) adopted by the Minister for Agriculture and Rural Development in November 2022 and accessible at the following link: <https://www.gov.pl/attachment/c93773b4-60a4-4552-80f8-21614f6f8b4f>.

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Investments shall be selected through dedicated calls, based on environmental criteria.

In the document *Information on the support scheme under Investment B3.3.1 Investments in increasing the potential of sustainable water management in rural areas* in the section on 'Project selection procedure' on page 2 it is stated that projects are to be selected through separate calls, and details are provided on how and when those calls are to be organized.

The *Criteria for the selection of undertakings under investment B3.3.1. Investments in increasing the potential of sustainable water management in rural areas in the National Recovery and Resilience Plan* (hereinafter called "the Criteria") include a set of environmental criteria related to DNSH compliance (horizontal criterion 8), sustainability (horizontal criterion 9), climate change adaptation (detailed environmental criterion 4), compliance with the definition of small retention (detailed environmental criterion 2), and priority for nature-based and other climate change resilient solutions (bonus criterion 1).

Adoption of the criteria by the Ministry of Agriculture and Rural Development

The document "*Criteria for the selection of undertakings under investment B3.3.1 Investments in increasing the potential of sustainable water management in rural areas in the National Recovery and Resilience Plan*" was adopted by means of a decision of the Ministry of Agriculture and Rural Development of November 2022, signed on behalf of the Minister for Agriculture and Rural Development by Secretary of State Rafał Romanowski and published on the Ministry's website.

The project shall contribute to increasing the resilience of agriculture to drought and flood prevention in agricultural areas; improving water efficiency by properly regulating water relations in agricultural areas and reducing run-off and increasing water retention, provided their need and nature is justified appropriately.

The project selection criteria indicate that support under this measure is to be provided to small water retention projects in rural areas. Specifically, under the detailed environmental criterion 2 (projects meeting the definition of small retention) only three types of projects can be supported: melioration system upgrades, reservoirs, and small impoundments on water courses. Those projects contribute to properly regulating water relations in agricultural areas by allowing farmers to control the level of water stored in melioration systems, retain more water in the landscape and slow down its draining, thus preventing excessive runoff. Under the bonus criterion 2, priority is given to projects in counties (*powiaty*) where agricultural land accounts for more than 50% of the total surface area. Under horizontal criterion 11, it is verified whether the given project will lead to an increase in the area of agricultural or forest land (in hectares) that benefits from improved water retention and improve resilience to flood, forest fires

and other natural disasters. Detailed environmental criterion 4 (climate change adaptation) excludes projects that could lead to degradation of water-retaining organic soils.

Priority shall be given to nature-based or other climate-change resilient solutions.

Bonus criterion 1 awards additional ('premium') points to projects that meet all the mandatory horizontal and environmental criteria mentioned above and additionally involve restoration or maintenance of natural landscape features and ecosystem processes. The scoring system gives a strong preference to such projects, with 30 extra points for projects that rely solely on natural features and ecosystem processes, 5 points for projects that involve both natural and hydrotechnical elements, and zero points for purely hydrotechnical projects.

Only projects that do not lead to a deterioration of the status of surface waters and groundwater and do not prevent the improvement of the ecological status or potential of the affected water bodies shall be supported.

Horizontal criterion 8 (DNSH compliance) excludes projects that could lead to a deterioration of the status of surface waters or groundwater or prevent the improvement of the ecological status or potential of the affected water bodies. Compliance with this requirement will be verified based on an environmental report or environmental decision where applicable, or a water law permit (*pozwolenie wodnoprawne*) or equivalent authorization that involves project review by competent environmental authorities. In the case of impounding devices, detailed environmental criterion 2 (small retention) requires that the possibility of fish migration should be maintained.

Furthermore, in line with the description of the measure **Compliance with the EU environmental legislation, including the EIA Directive (2011/92/EU) and the Water Framework Directive (2000/60/EC) shall be ensured. Projects under this measure shall be subject to environmental impact assessment (EIA) and shall comply with the requirements laid down in the Technical Guidance on DNSH (C(2023) 6454final).**

Under the horizontal criterion 8 (DNSH compliance) on page 5, projects are required to "comply with the requirements laid down in the DNSH Technical Guidance and the EU environmental legislation including the EIA Directive (20014/52/EU), the Water Framework Directive (2000/60/EU), the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC)". Compliance is to be verified based on environmental decisions or other documents required under national legislation implementing the EIA Directive, which applicants are required to submit.

Under horizontal criterion 8 (DNSH compliance), applicants are required to enclose with the application for funding copies of documents demonstrating that environmental impacts of the projects have been assessed. Projects to be supported need to be authorised under national legislation implementing the EIA Directive (2011/92/EU) and the Water Framework Directive (2000/60/EC).

Under horizontal criterion 8 (DNSH compliance), based on those documents submitted by applicants, projects will be screened for compliance with the DNSH guidance before being selected for support.

The assessment of the compliance with the EIA Directive (2011/92/EU) for the purposes of payments from the Recovery and Resilience Facility does not prejudice the assessment by the Commission in any

other proceedings regarding the conformity of the national law with those directives and the Treaty on the Functioning of the European Union.

The measure description required that **all investment projects financed under this component which require an EIA decision shall comply with Directive 2011/92/EU as amended by Directive 2014/52/EU. Specifically, all new projects that require an EIA shall be authorised under the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment, as amended by the Act of 30 March 2021 amending that Act and certain other acts. Provisions of the ‘Guidelines on remedial actions for projects co-financed by EU Funds affected by the infringement 2016/2046’, as communicated to Poland on 23 February 2021 (ref. Ares(2021)1423319), shall be taken into account for the implementation of all investment projects for which an environmental decision or a construction or development permit was requested or issued before the entry into force of the Act of 30 March 2021.**

See above for compliance with Directive 2011/92/EU under legislation currently in force.

All new projects, including projects that require an EIA, proposed after the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessment was amended are to be authorised under that act. The *Guidelines on remedial actions for projects co-financed by EU Funds affected by the infringement 2016/2046* (hereinafter “the Guidelines”) established special ad-hoc procedures for verifying environmental impacts of projects authorised under Polish national legislation on environmental impact assessments before it was amended in March 2021. The Criteria do not include verification of compliance specifically with the Guidelines. Still, the projects to be supported will be screened by the Ministry of Agriculture and Rural Development against a set of sustainability criteria related to DNSH compliance (horizontal criterion 8), sustainable use of resources (horizontal criterion 9), compliance with the definition of ‘small retention’ (detailed environmental criterion 2), climate change adaptation (detailed environmental criterion 3) and nature-based solutions (bonus criterion 1), as well as criteria related to the recipient’s membership in a Local Water Partnership (bonus criterion 3) and public participation in the identification of water management needs (bonus criterion 4). Those criteria offer a reasonable assurance that the types of projects which could get authorized under the national rules before the amendment despite their negative environmental or social impacts will not receive support. Whilst this constitutes a minimal substantive deviation from the requirement of the Council Implementing Decision, the Criteria offer an equivalent level of assurance that environmentally harmful projects and projects which local communities might want to challenge in court will not be supported under this investment. As of this, this minimal deviation does not change the nature of the measure and does not affect the progress towards achieving the investment that the milestone represents. On this basis, it is considered that this constitutive element of the milestone is satisfactorily fulfilled.

Furthermore, in line with the description of the measure **any investment having negative effects on nature shall be excluded from the support.**

Under horizontal criterion 8 (DNSH compliance), applicants are required to enclose with the application for funding copies of environmental decisions, or, in the case of projects for which an environmental impact assessment is not required under Polish national legislation, copies of water permits (*pozwolenie wodnoprawne*) or other documents attesting that the project has been reviewed by the competent environmental authorities, to demonstrate that the project complies with the Technical guidance on DNSH and will not lead to any deterioration of the status or potential of water bodies. The detailed environmental criterion 4 (climate change adaptation) excludes projects which involve repurposing of

rural and forest land, excavation in organic soils or increasing drainage from wetlands and peatlands. As stated in the section establishing the three groups of criteria for project selection on page 3, compliance with the horizontal criteria and detailed environmental criteria is mandatory, i.e. projects which do not meet them are excluded from support.

Furthermore, in line with the description of the measure **Where water is abstracted, a relevant permit must be granted by the relevant authority, ensuring that affected water bodies are in good ecological status and specifying conditions to avoid deterioration thereof, in accordance with the requirements of Directive 2000/60/EC and the technical Guidance on DNSH and evidenced by the latest relevant supporting data.**

If a project to be supported were to involve abstraction of water from water bodies, the horizontal criterion 9 (sustainability) requires that a permit must be granted in line with the legislation in force and enclosed with the application for support. The issuance of the permit under national rules implementing the Water Framework Directive involves the assessment of impacts on affected water bodies to ensure that affected water bodies are in good ecological status and specifying conditions to avoid deterioration thereof in line with Directive 2000/60/EC. Compliance with the DNSH Technical Guidance is required under horizontal criterion 8 (DNSH compliance).

Water abstraction shall be avoided where the concerned water bodies (surface or ground waters) are, or projected (in the context of intensifying climate change) to be, in less than good status or potential. The measures shall also comply with the provisions of Directive 2009/147/EC on the conservation of wild birds (Birds Directive) and Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC (Habitats Directive).

All projects are also required to meet the horizontal criterion 8 (DNSH compliance), which excludes projects that could lead to a deterioration of the status of surface waters or groundwater or prevent the improvement of the ecological status or potential of the affected water bodies or be non-compliant with national nature-protection legislation related to the protection of birds and habitats. Compliance with this requirement will be verified on the basis of an environmental report or environmental decision where applicable, or a water law permit (*pozwolenie wodnoprawne*) or equivalent authorization that involves project review by competent environmental authorities. In the case of impounding devices, detailed environmental criterion 2 (small retention) requires that the possibility of fish migration should be maintained. Detailed environmental criterion 4 (climate change adaptation) excludes projects that could lead to degradation of water-retaining organic soils by excluding projects that involve any draining of wetlands and peatlands.

The assessment of the compliance with the EIA Directive (2011/92/EU) and the Water Framework Directive (2000/60/EC), Directive 2009/147/EC on the conservation of wild birds (Birds Directive) and Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC (Habitats Directive) for the purposes of payments from the Recovery and Resilience Facility does not prejudice the assessment by the Commission in any other proceedings regarding the conformity of the national law with those directives and the Treaty on the Functioning of the European Union.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B25L	Related Measure: B3.4. Enabling framework for green transition investments in urban areas	
Name of the Milestone: Green Urban Transformation Instrument		
Qualitative Indicator: Establishment of the Green Urban Transformation Instrument and adoption of its detailed rules and procedures in consultation with all stakeholders.	Time: Q2 2022	
<p>Context:</p> <p>The objective of the reform is to support the capacity of cities in prioritising, planning, executing, and financing investment projects in the fields of climate mitigation and adaptation in line with the European Green Deal.</p> <p>Milestone B25L concerns the establishment of the Green Urban Transition Instrument to support the green transformation of cities, and the adoption of the Instrument’s procedures.</p> <p>Milestone B25L is the first milestone of measure B3.4 and will be followed by milestone B24L, related to the entry into force of a law on sustainable urban development. Milestone B25L is also relevant to measure B3.4.1, related to the implementation of the investment facility in the green transformation of cities and covering milestones B26L, B27L and B27aL, related to the implementation of the Green Urban Transformation Instrument.</p> <p>The reform has a final expected date of implementation on 31 December 2023.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) has been satisfactorily fulfilled. ii. Decision of 24 November 2022 of the Ministry of Development Funds and Regional Policy on the implementation of investment B3.4.1 under the development plan, hereinafter the “Decision of 24 November 2022” iii. Implementation of investment B3.4.1 by the authority responsible for the implementation of the investment (Annex I to the Decision of 24 November 2022) iv. Timeline for the implementation of the investment on a quarterly basis (Annex II to the Decision of 24 November 2022) v. Investment strategy of 18 November 2022 of the Green Urban Transformation Instrument, issued by the Ministry of Development Funds and Regional Policy (Annex III to the Decision of 24 November 2022) vi. Revised Investment strategy of 26 January 2024 of the Green Urban Transformation Instrument, issued by the Ministry of Development Funds and Regional Policy vii. Performance Control Procedure for the Green Urban Transformation Instrument of 4 November 2022 and revised version adopted on 10 January 2024, issued by the Ministry of Development Funds and Regional Policy 		

- viii. **Procedure for reporting and monitoring on the Green Urban Transformation Instrument of 28 October 2022** and revised version adopted on 12 January 2024, issued by the Ministry of Development Funds and Regional Policy
- ix. **Document ‘*Link do strony internetowej IZTM*’ with the link to the website of the Green Urban Transformation Instrument**

The authorities also provided:

- x. **Horizontal principles for the selection of projects for the National Recovery and Resilience Plan of 29 November 2021, for the selection of projects for the Recovery and Resilience Plan**, issued by the Ministry of Development Funds and Regional Policy
- xi. **Signed authentication** on the signed Decision implementing Investment B3.4.1 of November 24, 2022.

Analysis:

The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the milestone.

Establishment of the Green Urban Transformation Instrument and adoption of its detailed rules and procedures.

The Green Urban Transformation Instrument is established by the Ministry of Development Funds and Regional Policy by means of Ministerial Decision, taken on 24 November 2022 in Warsaw, on the basis of the Act of 6 December 2006 on the principles for the conduct of development policy. According to paragraph 13 of the Decision of the 24 November 2022, the Decision shall apply from the date of its signature, here the 24th of November 2022, until the final date of the implementation of the investments.

The Decision entrusts the role to implement the Green Urban Transformation Instrument to the Department of Public-Private Partnerships of the Ministry of Development Funds and Regional Policy, hereinafter the Ministry of Development Funds, and outlines the management authorities' rights and obligations and covers the financing, monitoring and reporting aspects of the investments. As an annex to the Decision, the Investment Strategy for the fund was also provided with a document detailing the monitoring and control procedures and a document outlining the verification mechanisms for the implementation of the Fund.

The Investment Strategy of the Green Urban Transformation Instrument, hereinafter called the Investment strategy, approved by the Minister of Development Funds and Regional Policy on 18 November 2022, included as Annex III to the Decision of 24 November 2022 and amended on 26 January 2024, provides information regarding (1) the objectives of the Instrument, (2) the investment policy, (3) the functioning of the Instrument, (4) the timetable of the instrument, (5) the indicators of loans agreements and projects to be implemented, (6) the risks of lack of demand, delayed implementation, illiquidity, non-compliance and business risk (7) the monitoring and reporting on the implementation of the facility, (8) the control and supervision of the functions entrusted to BGK and the Instrument

mechanisms, (9) the information and promotion activities on the facility and (10) the update of the strategy.

The Investment Strategy, together with the Performance Control Procedure of 4 November 2022 and the Procedure for reporting and monitoring of 28 October 2022, clarify the rules and procedures for implementing the Green Urban Transition Instrument.

Section 2 'Investment Policy' of the Investment Strategy specifies the investment priorities, the recipients eligible for support, the conditions to select a project including its expected requirements and the principles for awarding funding, the type of financial products, how repaid, reimbursed, and recovered funds will be used, and the exit strategy after the deadline for implementing the instrument has expired.

- Section 2.5 point 7 of the Investment Strategy outlines the interest rates applicable to the loans depending on whether the projects create revenues and cost-savings and the type of stakeholder (local and public authorities, energy communities, government-owned enterprises or private or non-listed stakeholders in the Investment Strategy).
- Section 2.5 point 9 of the Investment Strategy specifies the rules determining the eligibility for loan remission. Remissions shall only be applicable to non-revenue or cost savings projects and up to 5% of the loan capital.

Section 3.1 'Implementation System' of the Investment Strategy stipulates that the resources allocated to the implementation of the Green Urban Transition Instrument will be made available to the Polish National Development Bank (Bank Gospodarstwa Krajowego (BGK)) on the basis of an agreement entrusting the task of implementing the investment to BGK by the Ministry of Development Funds, as the authority responsible for implementing the investment.

According to section 3.1 'Implementation system' of the Investment Strategy, the final recipients of the loans provided by BGK will be identified in open calls until the available funds are exhausted with a minimum of 639 projects among which 60 should be supported in large cities, 439 in medium-sized cities and 140 in small towns.

Section 3.2 of the Investment Strategy defines the tasks of BGK, including reporting obligations, monitoring and risk management requirements. Risk and mitigation actions are further detailed in Section 6 of the Investment Strategy, for example, for palliating the risk of lack of demand the implementing partner is expected to carry out information sessions and promotion activities to inform all the stakeholder as explained in detail in Section 9 of the Investment Strategy, but also to simplify the application for loans and the Instrument's implementation. Targeted actions are identified for the five major risks identified in the Investment Strategy (non-demand, delayed implementation, illiquidity, non-compliance and other business risks).

Section 7 of the Investment Strategy outlines the principles for monitoring and reporting of the facility further detailed in the document 'Procedure for reporting and monitoring on the Green Urban Transformation Instrument', identifying the duties for the authority in charge of implementing the investment (the Ministry of Development Funds), the monitoring obligations entrusted to BGK, the processes for monitoring and reporting outlined in an action plan and the policy for undisbursed funds.

Section 8 of the Investment Strategy describes the general control obligations entrusted to BGK, further detailed in the agreement entrusting the operation tasks to BGK. In addition to Section 8 of the Investment Strategy, the document 'Procedure for verification of implementation' outlines the Ministry

and BGK control duties (e.g. BGK shall establish an internal control system to prevent fraud, double funding and monitor the fulfilment of milestones and indicators).

Section 10 of the Investment Strategy describes the general conditions that allow the update of the Investment Strategy such as a change in the Recovery and Resilience Plan, legal texts or significant market developments.

Establishment of the Green Urban Transformation Instrument [...] in consultation with all stakeholders

Consultations on the instrument's draft investment strategy were held between the 18th of May 2022 and the 27th of May 2022. More than 50 entities were consulted. The nature of the stakeholders varied with a predominance of local governments and industry associations. Out of the 50 entities consulted, 32 entities provided comments. On 9 June 2022, a meeting in the Ministry of Funds with the presence of BGK representatives took place, and the input of the 43 people participating in the meeting was integrated in the published Investment Strategy in November 2022: [Green transformation of cities - National Recovery Plan - Portal Gov.pl \(www.gov.pl\)](https://www.gov.pl/web/gov/plan-odnowy-energetycznej).

Further consultations were held in the context of the revision of the Polish recovery and resilience plan (RRP) between 18 April and 9 May 2023. A conference, organised by the Ministry of Development Funds, took place on 24 April 2023 with the participation of civil society representatives, local governments representatives, social and economic partners and academics where measures B3.4 and B3.4.1 were discussed among other green measures, during a two-hour meeting. A link to the official website of the consultation process has been provided: [Consultations on the revision of the National Recovery Plan - National Recovery Plan - Portal Gov.pl \(www.gov.pl\)](https://www.gov.pl/web/gov/plan-odnowy-energetycznej).

Establishment of the Green Urban Transition Instrument to support (a) the green transformation of cities; and (b) investments in the green digitisation of cities, with adopted procedures.

The scope of support under the Green Urban Transition Instrument is presented in detail in section 2.1 of the Investment Strategy and covers all elements envisaged under the milestone with regard to the green transformation of cities namely, projects in green areas, energy efficiency, renewable energy, energy communities, green infrastructure for vulnerable road users, walking and cycling lines, zero-emission transport infrastructure, air quality and noise, urban biodiversity, water and rainwater management or nature-based solutions among others.

As follows from Section 2.1 'Investment priorities' of the Investment Strategy, investments in the green digitisation of cities have been included too (e.g. IT systems enabling the management of climate adaptation and green areas or the creation of centres for training in the green transition using advanced technologies).

The Green Urban Transition Instrument shall be in line with the DNSH Technical Guidance (2021/C 58/01). In order to ensure that the measure complies with the 'Do no significant harm' Technical Guidance (2021/C 58/01), the eligibility criteria for projects shall exclude the following list of activities: (i) activities related to fossil fuels, including downstream use; (ii) activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks; (iii) activities related to waste landfills, incinerators and mechanical biological treatment plants; and (iv) activities where the long-term disposal of waste may cause harm to the environment. The terms of reference shall additionally require that only activities that comply with relevant EU and national environmental legislation may be selected. Furthermore, in line with

the description of the measure, **the exclusion list shall not apply to projects compliant with the conditions set out in Annex III of the ‘Do no significant harm’ Technical Guidance (2021/C58/01). For ETS activities which do not achieve projected greenhouse gas emissions that are not significantly lower than the relevant benchmarks an explanation of the reasons why this is not possible shall be provided. Benchmarks established for free allocation for activities falling within the scope of the EU Emissions Trading System, as set out in the Commission Implementing Regulation (EU) 2021/447. The exclusion list does not apply to actions in plants exclusively dedicated to treating non-recyclable hazardous waste, and to existing plants, where the actions under this measure are for the purpose of increasing energy efficiency, capturing exhaust gases for storage or use or recovering materials from incineration ashes, provided such actions under this measure do not result in an increase of the plants’ waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level. This exclusion does not apply to actions under this measure in existing mechanical biological treatment plants, where the actions under this measure are for the purpose of increasing energy efficiency or retrofitting to recycling operations of separated waste to compost bio-waste and anaerobic digestion of bio-waste, provided such actions under this measure do not result in an increase of the plants’ waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level.**

As follows from Section 2.3 point 3 of the Investment Strategy, BGK will be responsible for evaluating and funding the projects. The evaluation of projects will include an assessment of their compliance with the Horizontal principles of 29 November 2021 for the selection of projects for the National Recovery and Resilience Plan and, specifically, criterion 9 regarding compliance with the principle of “do no significant harm (DNSH)” as defined by the Recovery and Resilience Facility Regulation (2021/241) and the DNSH Technical Guidance (2021/C 58/01). The Investment Strategy specifies in Section 2.3 point 3 that compliance with the DNSH requirements for the Instrument will be achieved through the use of an exclusion list and adherence to EU and national environmental legislation. As follows from Section 2.3 point 3 of the Investment Strategy, the detailed evaluation principles and elements shall be specified in the rules governing the calls for proposals, and the calls for proposals shall include the exclusion list and the requirement of compliance of projects with EU and national environmental legislation (i.e. the terms of reference of the calls).

Moreover, the list of activities excluded from support from the Green Urban Transformation Instrument is detailed in Section 2.3, point 3 of the Investment Strategy “*(i) activities related to fossil fuels, including downstream use; (ii) activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks; (iii) activities related to waste landfills, incinerators and mechanical biological treatment plants; and (iv) activities where the long-term disposal of waste may cause harm to the environment*”. Exceptions to the applicability of the exclusion list (i.e. Annex III of the DNSH Technical Guidance (2021/C58/01), explanation for ETS activities that are not significantly below the benchmark, exceptions for the funding of actions in incineration plants and mechanical biological treatment plants) are included as footnotes to the exclusion list, in line with the measure description. Section 2.3 point 3 of the Investment Strategy also introduces the requirement for projects to comply with EU and national environmental law.

The Green Urban Transformation Instrument shall ensure that any reflows (i.e. interests on the loan, return on equity, or principal repaid, minus associated costs) linked to this instrument shall be used for the same policy goals, including beyond 2026, or to repay the RRF loan.

In the Investment Strategy, section 2.6 ‘Use of funds repaid, reimbursed and recovered’ prescribes that any reflows (i.e. interest on loans, return on equity or principal repaid, minus associated costs) linked to

the instrument are used to achieve the same policy objectives, including after 2026, or to repay the RRF loan.

Furthermore, in line with the description of the measure the **Green Urban Transition Fund shall be set up by 30 June 2022.**

The Council Implementing Decision required that the fund, shall be set up by 30 June 2022. The Fund was set up by Ministerial Decision on 24 November 2022 of the Ministry for Development Funds. Whilst this constitutes a minimal deviation from the requirement of the Council Implementing Decision, the fund was established by the time of the assessment.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B28L	Related Measure: B3.5 Reform of housing construction for people with low and average incomes taking into account the higher energy efficiency of buildings	
Name of the Milestone: Entry into force of an act amending the Act of 8 December 2006 on financial support for the creation of residential premises for rent, sheltered housing, night shelters, shelters for the homeless, heating plants and temporary premises, and resulting changes in other acts		
Qualitative Indicator: Provision in the act amending the Act of 8 December 2006 on financial support for the creation of residential premises for rent, sheltered housing, night shelters, shelters for the homeless, heating plants and temporary premises, and resulting changes in other acts indicating its entry into force	Time: Q2 2022	
<p>Context:</p> <p>The objective of the reform is to increase the supply of energy-efficient housing for low- and average-income households. That objective shall be achieved by increasing the rate of public co-financing for buildings that meet energy efficiency standards 20% more ambitious than the minimum energy efficiency standard in force in Poland (Nearly-Zero Energy Buildings standard, NZEB).</p> <p>Milestone B28L concerns amendments to the Act of 8 December 2006 on financial support for certain housing undertakings, which should increase the support for investments in construction of buildings with an energy standard 20% higher than the NZEB. Milestone B28L is the only milestone of this reform. The reform has a final expected date for implementation on 30 June 2022.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <p>Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.</p> <p>Copy of the Act of 29 September 2022 amending certain laws supporting the improvement of housing conditions (<i>Ustawa z 29 września 2022 o zmianie niektórych ustaw wspierających poprawę warunków mieszkaniowych</i>), published in the Official Journal of 2022, item 2456.</p>		
<p>Analysis:</p> <p>The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:</p>		

Entry into force of an act amending the Act of 8 December 2006 on financial support for the creation of residential premises for rent, sheltered housing, night shelters, shelters for the homeless, heating plants and temporary premises, and resulting changes in other acts.

The Act of 29 September 2022 amending certain laws supporting the improvement of housing conditions (hereinafter “the amending Act”) was published on 30 November 2022 in the Journal of Laws, item 2456. The act amends in particular:

the Act of 8 December 2006 on financial support for certain housing undertakings (old name: Act on financial support for the creation of residential premises for rent, sheltered housing, night shelters, shelters for the homeless, heating plants and temporary premises, hereinafter “the Housing Act”). According to Article 12 of the amending Act, the Act shall enter into force on the day following the day of publication, that is 1 December 2022, with some exceptions. The provisions in Article 5(20) of the amending Act – which are the relevant provisions for the fulfilment of the milestone - entered into force on 30 December 2022, in accordance with Article 12(2) of the amending Act.

The amendment to the act shall provide for increasing the support for investments in construction of buildings with an energy standard higher by 20% than NZEB.

According to Article 5(20) of the Amending Act, increased financial support is planned to be granted if the value of the annual non-renewable primary energy demand indicator of the building constructed by the project does not exceed 52 kWh/m²/year (NZEB).

NZEB level for residential buildings in Poland is 75 kWh/m²/yr (sources: [Table H1 of the Impact assessment for EPBD recast, SWD\(2021\) 453 final, part 3 of 4, Annex H Zero emission buildings](#), [Table 2, Assessing Nearly Zero Energy Buildings \(NZEBs\) development in Europe, Energy Strategy Reviews 36 \(2021\) 100680](#)).

Thus, a building constructed with increased support and whose NZEB does not exceed 52 kWh/(m²-yr) fulfils the requirement of building with an energy standard higher by 20% than NZEB (52kWh/m²/yr) is approximately 30% better than the applicable standard of 75 kWh/m²/year

Support shall be increased as compared to standard housing from 80% to 95% for buildings for low-income households and from 35% to 60% for households with average incomes.

Article 5 (20) of the amending Act includes provisions on financial support to housing as part of the “development plan” (meaning the Recovery and Resilience Plan) by adding a new Chapter 3a *Providing financial support as part of a development plan*.

Article 22b of that Chapter states that the level of financing provided as part of the development plan cannot exceed:

- 15% of costs in the case of investments involving the construction of a building for low-income households (covered under Art. 3(1) point 1 of the Housing Act);
- 25% of costs in the case of investments involving the construction of a building for average-income households (covered under Art. 5(1) point 1 of the Housing Act).

This additional level of support can be combined with the standard level of support, defined in Article 13(1) points 1 and 3 of the Housing Act. According to these provisions, the amount of financial support for the implementation of the projects may not exceed:

- i) 80 % of the costs of the project – in the cases of investments involving the construction of a building for low-income households (referred to in Article 3(1) point 1 among others).

- ii) 35 % of the costs of the project – where the implementation of the project is linked to the conclusion of the agreement referred to in Article 5(2) point 1 (itself referring to Article 5(1)1 which concerns investments involving the construction of a building for average-income households).

In accordance with Article 22a(10) of the Housing Act, if financial support for a given project is granted as part of a separate call (under the Recovery and Resilience Plan) and from national funds on the basis of Chapter 3 of the Housing Act, then financial support is granted on the basis of a single contract. Therefore, as required by the description of the milestone, the total support available increases to 95% for low-income households and to 60% for average income households, adding the additional level of support and the standard one.

These provisions shall apply to any source of public support.

The Housing Act sets out the rules for providing support to municipalities for their obligation to meet the housing needs of low-income households, as well as for providing financial support to a municipality or an inter-municipal association to cover part of the costs of a project for the construction of rental housing for average-income households.

This support is provided from national resources through the Surcharge Fund established by the Act of 5 December 2002 on interest subsidies for fixed-rate housing loans. According to Article 5(3) point 1b) of this Act, the Fund's resources are used for financial support granted on the basis of the Act of 8 December 2006 on financial support for certain housing undertakings. The Surcharge Fund is financed from a special reserve in the state budget (Article 4(2) point 4d of the Act of 5 December 2002).

It can therefore be concluded that the additional financial support for low- and average income households is applicable to any source of public support.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B33L	Related Measure: B3.6 Improving the conditions for the development of renewable energy sources	
Name of the Milestone: Entry into force of an act amending the Act on investments in onshore wind farms		
Qualitative Indicator: Provision in the act amending the Act on investments in onshore wind farms indicating its entry into force		Time: Q2 2022
Context:		
<p>The objective of this reform is to improve the regulatory environment for distributed and prosumer energy, develop the supply chain for offshore wind energy, implement energy management systems, increase the installed capacity of renewable energy sources and increase the share of energy from renewable energy sources.</p> <p>Milestone B33L requires amending the Act on investments in onshore wind power to facilitate the possibility of onshore wind energy investments in municipalities by giving them more power to determine the location of individual investments and to allow the plant to be located closer to residential buildings than the minimum distance of 10 times the height of the installation.</p> <p>Milestone B33L is the first step of the reform and It is accompanied by B39L (under the same instalment) related to a regulation on the concession fee and targets and it will be followed by</p>		

milestones B32L (under the third instalment) related to amending the Renewable Energy Act ('RES Act'), B34L (under the second instalment) related to a regulation providing a plan of renewables auctions per technology (including for new onshore wind farms) as well as B35L (under the same instalment) to B38L (under the fourth instalment), related to increasing the installed capacity of onshore wind farms and photovoltaic installations.

The reform has a final expected date for implementation on 30 June 2022.

Evidence provided:

In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:

- i. **Summary document** duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled.
- ii. **Copy of the Act of 9 March 2023 amending the Act on investments in wind power plants and certain other acts** as published in Official Journal of 2023, item 553 (*Dziennik Ustaw 2023* poz. 553).

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Entry into force of an amending act

The Act of 9 March 2023 (the 'amending Act'), amending the Act on investments in wind power plants and certain other acts ('the Act'), entered into force on 23 April 2023 (Official Journal 2023, item 553) pursuant to Article 24.

Which shall remove formal barriers to investments in onshore infrastructure. The amendment shall make the distance rule (minimum distance from windmill to residential building - 10 times windmill' height, 10H) more flexible by giving more power to determine minimum distances to municipalities as part of the spatial/zoning procedure and to regional environmental protection offices as part of the procedure for issuing decisions on environmental conditions. The general 10H distance rule shall be maintained, but the possibility of deviations from it shall be enabled and that more power to determine the location of wind farms shall be given to individual municipalities as part of the local planning procedure (zoning/spatial procedure). The local plan shall be able to define a shorter distance of the wind farm from the residential building, taking into account the range of the wind farms' impacts based on the environmental impact forecast made under such a plan.

Under the amending Act, municipalities can modify the minimum distance of turbine locations from residential buildings based on the provisions of the local zoning plan and reduce it, but to no more than 700 meters. The basis for determining the distance of a wind farm from residential buildings will be, among others, the results of the strategic environmental impact assessment (the EIA) carried out under the local zoning plan. In particular:

Article 1(6) of the amending Act introduces a new wording of Article 4(1) of the Act. While the 10H rule is maintained, it provides that the local plan, based on which a wind farm can be located, may specify a different distance between a wind farm and a residential or a mixed-use building, but not less than 700 meters.

Article 1(9) of the Amending Act introduces a new wording of Article 6 of the Act and requires that the determination of the minimum distance between a wind farm and a residential building, as specified in the new wording of the article 4 of the Act, need be specified by the relevant (local)

authorities when delivering their decisions or adopting the local plan and authorities issuing environmental permit decisions.

Article 5 of the Amending Act introduces a new paragraph 8 to Article 48 of the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws 2022, item 1029) which specifies that the preparation of the strategic environmental impact assessment (the EIA) cannot be abandoned for a local development plan that includes a wind farm, if it introduces new or amends existing rules relating to the construction of the wind turbine, including those relating to the distance between the turbine and buildings.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B35L	Related Measure: B3.6 Improving the conditions for the development of renewable energy sources		
Name of the Target: T1 - Installed capacity of onshore wind and photovoltaic installations (in GW)			
Quantitative Indicator:	Baseline: 11,2	Target: 18	Time: Q2 2022
Context: The objective of this investment is to increase the installed capacity of onshore wind farms and photovoltaic installations to contribute to the green transition. Target B35L requires total installed capacity of onshore wind and photovoltaic to reach 18GW. Target B35L is the first step of the implementation of the investment and it will be followed by targets B36L (under second instalment), B37L (under seventh instalment) and B38L (under the fourth instalment), related to the total installed capacity (in GW) of onshore wind and photovoltaic installations. The investment has a final expected date for implementation on 30 September 2023.			
Evidence Provided: In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided: <ol style="list-style-type: none">I. Summary document duly justifying how the target (including all the constitutive elements) was satisfactorily fulfilled.II. A copy of the Publication of the President of the Energy Market Agency - Statistical information about electricity, January 2020.III. A copy of the Publication of the President of the Energy Market Agency - Statistical information about electricity, July 2022.			
Analysis: The justification and substantiating evidence provided by the Polish authorities cover all constitutive elements of the target. Total installed capacity of 18 GW of onshore wind and photovoltaic installations. According to Table 3 "Installed electrical capacity" of the Bulletin of the Energy Market Agency S.A., No. 7 (343) July 2022, published on the website of the Energy Market Agency S.A., in July 2022, a total			

of 18.1 GW of energy was installed in Poland, including 7.521 GW of onshore wind and 10.586 GW of photovoltaic installations. In May 2021 (date of the submission of the original Plan by Poland), a total of 11.48 GW of energy was installed in Poland, including 6.509 GW of onshore wind and 4973 GW of photovoltaic installations. Statistical information is compiled by the Energy Market Agency S.A. within the framework of surveys on fuel and energy balances and electricity and heat, carried out on behalf of the responsible authorities (minister responsible for energy matters President of the Central Statistical Office, President of the Energy Regulatory Office) in accordance with the Public Statistics Act.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: B39L	Related Measure: B3.6 Improving the conditions for the development of renewable energy sources
Name of the Milestone: Entry into force of the implementing regulation following from the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms	
Qualitative Indicator: Provision in the regulation indicating its entry into force	Time: Q2 2022
<p>Context:</p> <p>The reform aims to improve among others the regulatory environment to increase the installed capacity of renewable energy sources and increase the share of energy from renewable energy sources.</p> <p>Milestone B39L requires the entry into force of the regulation of the Council of Ministers on the concession fee for the calculation and collection of a concession fee by the President of the Energy Regulatory Office from energy producers, including those operating offshore wind farms and electricity storage.</p> <p>Milestone B39L is the second step of the implementation of the reform and it follows the completion of milestone B33L related to amending the Act on investments in onshore wind power. It will be followed by milestones B32L (under the third instalment) related to amending the Renewable Energy Act ('RES Act'), B34L (under the second instalment) related to a regulation providing a plan of renewables auctions per technology (including for new onshore wind farms), as well as targets from B35L (under the same instalment) to B38L (under the fourth instalment), related to increasing the installed capacity of onshore wind farms and photovoltaic installations.</p> <p>The milestone has a final expected date for implementation on 30 June 2022.</p>	
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled. ii. Copy of the Regulation of the Council of Ministers of 12 October 2021 on the concession fee as published in the Official Journal of 2021, item 1938). 	
Analysis:	

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

The following implementing regulation shall enter into force: Regulation of the Council of Ministers on the concession fee - [...]

The Regulation on the concession fee ('the Regulation') of the Council of Ministers of 12 October 2021 was published on 26 October 2021 (Journal of Laws 2021, item 1938). Pursuant to section 6, the regulation entered into force seven days after its publication. The regulation was published in the Journal of Laws on 26 October 2021 (Journal of Laws 2021, item 1938) and entered into force on 3 November 2021.

[...] Pursuant to Article 34(2a) of the Energy Law, the obligation to pay the concession fee to the President of the Energy Regulatory Office also extended to energy enterprises performing economic activity in the field of electricity generation in offshore wind farms, referred to in the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms.

Pursuant to section 1, the Regulation details the obligation to pay the concession fee referred to in Article 34(1) of the Energy Law Act of 10 April 1997, including for energy enterprises performing economic activity in the field of electricity generation in offshore wind farms, referred to in the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms (that is, producers of electricity from offshore wind as defined in the Act of 17 December 2020). Section 1 of the Regulation also states that the concession fee may be requested by the President of the Energy Regulatory Office and details the method of its calculation and payment.

The Regulation also stipulates, in section 3.3, that the coefficient referred to in Article 34(2a)(2) of the Energy Law Act of 10 April 1997 is set in Part B of Annex 2 to the Regulation, that is the coefficient of PLN 23 000 (EUR 5 053) for the calculation of the concession fee to be paid by an energy enterprise performing economic activity in the field of electricity generation in offshore wind farms.

In addition, in connection with the amendment of the Energy Law of 15 April 2021, an activity that shall also be covered by the concession fee is the storage of electricity.

Pursuant to section 3 in Annex 2 to the Regulation, the types of activities covered by the obligation to pay a concession fee are listed and this includes electricity generation (including offshore wind) and electricity storage.

Furthermore, in line with the description of the measure, **the reform shall introduce detailed rules for payment of the concession fee to the President of the Energy Regulatory Office**

Section 2 and 3 of the Regulation lays down the information required for the calculation of the concession fee and its calculation. A concession form is set out in Annex 1 to the Regulation to be used by energy companies. In addition, section 4 details the payment details of the concession to the Energy Regulatory Office (for each activity covered by the concession and the deadline of payment).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: C1L	Related Measure: C1.2 Increasing the level of accessibility and use of modern wired and wireless communication for social and economic needs
Name of the Milestone: Amendment of the Regulation of 17 February 2020 on monitoring of electromagnetic field emission in the environment	
Qualitative Indicator: Provision in amendment of the regulation indicating its entry into force	Time: Q1 2022
<p>Context:</p> <p>The objective of the reform is to improve the legislative environment for the development of mobile networks by removing existing barriers to 5G deployment, taking into account the EU Connectivity Toolbox.</p> <p>Milestone C1L concerns amendments to the Regulation of 17 February 2020 on the methodologies for measuring electromagnetic field emissions in the environment.</p> <p>Milestone C1L is the first step in the implementation of this reform, and it is accompanied in this payment request by C2L on the radio communication installations and by milestone C3L (under 4th instalment) on the barriers to the implementation of 5G networks.</p> <p>The reform has a final expected date for implementation on 31 December 2023.</p>	
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled; ii. Copy of the Regulation of the Minister for Climate and Environment of 26 May 2022 amending the Regulation of 17 February 2020 on the means to verify compliance with the limit values electromagnetic fields in the environment, published in the Official Journal of 2022, item 1121. 	
<p>Analysis:</p> <p>The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:</p> <p>Entry into force of the amendment of Regulation of 17 February 2020 on monitoring of electromagnetic field emission in the environment</p> <p>Regulation of the Minister for Climate and Environment of 26 May 2022, amending Regulation of 17 February 2020 on the means to verify compliance with the limit values electromagnetic fields in the environment was published on 26 May 2022 in the Official Journal of 2022 (item 1121). According to Article 2, the amendment entered into force 14 days after its publication, that is on 9 June 2022.</p> <p>The amendment of the Regulation adapts the measurement methodologies to the current state of knowledge in the field of measuring electromagnetic field emissions (Article 1). In particular, it adapts the methods of verification and compliance of the permissible levels of electromagnetic field in the environment, with the aim of securing more precise and objective measurements (Article 1, paragraph 1). The amendment of the Regulation also ensures uniformity of the measurement results, while maintaining a high standard and quality (Article 1, paragraphs 3-4); it allows measurements to be made in more places accessible to the public (Article 1, paragraph 2); it eliminates unnecessary</p>	

clarifications that interfere with the competences of accredited laboratories (Article 1, paragraph 6); and it allows for the earlier implementation of measurement process (Article 1, paragraphs 7, 9, 10 and 11b).

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: C2L	Related Measure: C1.2 Increasing the level of accessibility and use of modern wired and wireless communication for social and economic needs
Name of the Milestone: Amendment of the Regulation of the Council of Ministers of 10 September 2019 on environmental impact assessment	
Qualitative Indicator: Provision in amendment of the regulation indicating its entry into force	Time: Q1 2022
<p>Context:</p> <p>The objective of the reform is to improve the legislative environment for the development of mobile networks by removing existing barriers to 5G deployment, taking into account the EU Connectivity Toolbox.</p> <p>Milestone C2L concerns the entry into force of an amendment to the Regulation of 10 September 2019 on projects that may have a significant impact on the environment which shall exclude radio communication investments from the catalogue of projects requiring an environmental impact assessment.</p> <p>Milestone C2L is the second step in the implementation of this reform and it is accompanied in this payment request by milestone C1L on the monitoring of electromagnetic field emissions and will be followed by milestone C3L (under 4th instalment) on the barriers to the implementation of 5G networks.</p> <p>The reform has a final expected date for implementation on 31 December 2023.</p>	
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled; ii. Copy of the Regulation of the Council of Ministers of 5 May 2022 amending the Regulation of 10 September 2019 on projects likely to have a significant impact on the environment, published in the Official Journal of 2022, item 1071. 	
<p>Analysis:</p> <p>The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:</p> <p>Entry into force of an amendment of the Regulation on projects that may have a significant impact on the environment. The Regulation of the Council of Ministers of 5 May 2022 amending the Regulation of 10 September 2019 on projects likely to have a significant impact on the environment was published on 20 May 2022 in the Journal of Laws of 2022 (item 1071). According to paragraph 5, the amending Regulation entered into force 14 days after its publication, namely on 9 June 2022.</p>	

[The amendment to the Regulation] shall exclude radio communication investments from the catalogue of projects requiring an environmental impact assessment.

The amendment to the Regulation removes the requirement for an environmental impact assessment for radiocommunication, radionavigation and radiolocation installations emitting electromagnetic field and excludes these investments from the catalogue of projects mandatorily requiring an environmental impact assessment and a decision on environmental conditions, by repealing § 2 sec. 1 point 7 and § 3 sec. 1 point 8 of the Regulation of the Council of Ministers of 10 September 2019 on environmental impact assessment. As radiocommunication investments require the use of radiocommunication, radionavigation and radiolocation installations emitting electromagnetic field, the amendment to the Regulation, by excluding these installations from the catalogue of projects mandatorily requiring an environmental impact assessment and a decision on environmental conditions, excludes radiocommunication investments from the catalogue of projects requiring an environmental impact assessment.

As a result, during the investment process aimed at both the construction, reconstruction or extension of these facilities, there will be no unconditional obligation to obtain a decision concerning environmental impact. The modification will reduce the burden on entities which plan to implement investments in this area.

Commission Preliminary Assessment: Satisfactorily fulfilled

Number: D1L	Related Measure: D1.2 Increasing the efficiency, availability and quality of long-term care services of healthcare providers at district level	
Name of the Milestone: Review of the potential for establishing long-term care and geriatric care units/centres in district hospitals in Poland		
Qualitative Indicator: Publication		Time: Q2 2022
<p>Context:</p> <p>The objective of this reform is to help district hospitals in Poland to reprofile into long-term care and geriatric care units or centres.</p> <p>Milestone D1L requires the publication of a review on the potential for establishing long-term care and geriatric care units/centres in district hospitals. The review should provide an analysis of gaps in the availability of long-term care services at district level and identify potential solutions to address them, including by improving access to these services, their quality, and the working conditions of staff.</p> <p>Milestone D1L is the first step of the implementation of the reform and it will be followed by milestone D2L related to the entry into force of a legislative act on the support for establishing long-term care and geriatric care units/centres in district hospitals.</p> <p>The reform has a final expected date for implementation on 30 September 2022.</p>		
<p>Evidence provided:</p> <p>In line with the verification mechanism set out in the Operational Arrangements, the following evidence was provided:</p> <ol style="list-style-type: none"> i. Summary document duly justifying how the milestone (including all the constitutive elements) was satisfactorily fulfilled; 		

- ii. **Copy of the Review “Comprehensive overview of options for establishing long-term care centres and geriatric wards in district hospitals in Poland”** issued by the Ministry of Health and published on the ministerial website on 30 June 2022 under the link <https://www.gov.pl/web/zdrowie/kompleksowy-przegląd-możliwosci-tworzenia-w-szpitalach-powiatowych-osrodkow-opieki-dlugoterminowej-oraz-oddzialow-geriatrycznych-w-polsce>

Analysis:

The justification and substantiating evidence provided by the Polish authorities covers all constitutive elements of the milestone. In particular:

Publication of a review [...] on the potential for establishing long-term care and geriatric care units/centres in district hospitals (including transforming parts of district hospitals)

The Ministry of Health published on 30 June 2022 the report entitled "Comprehensive overview of options for establishing long-term care centres and geriatric wards in district hospitals in Poland" (the 'Review') which was published on the Ministry of Health's website (see evidence provided).

The Review identifies the areas of functioning of health care facilities at a district level that allow the transformation of existing resources into long-term care centres or geriatric wards in district hospitals (Section 2). The report presents the assumptions of the analysis and the organization of the provision of health services in the discussed areas (Section 2.1), before analysing infrastructure potential (Section 2.2) and human resources (Section 2.3). It discusses the demand for long-term and geriatric care services and the demographic and social factors that affect it (Section 3). It performs a comparative analysis of supply and demand (Section 4), as well as an assessment of the possibility of transforming hospital wards into long term-care units (Section 5). Finally, it gives an indication of the directions of actions to be taken in the first stage of the reform (Conclusion).

[...] as a part of the overall strategic analysis of long-term care in Poland foreseen under component A [...]

The requirement that the review be published “as a part of the overall strategic analysis of long-term care in Poland foreseen under component A” is linked to the fulfilment of milestone A69G, whose indicative timeline for completion is 31 December 2023, that is 18 months later than the indicative timeline for completion of milestone D1L. Milestone A69G falls under the fourth instalment, and the fulfilment of the requirement of the review being published “as a part of the overall strategic analysis of long-term care in Poland foreseen under component A” will be assessed in the context of the assessment of that instalment.

The review shall in particular explore the possible ways to:

- **increase the availability of long-term health care services by addressing identified gaps in the provision of long-term care, in particular at a district level;**

The potential for transformation (i.e. adjusting accessibility) in long-term and geriatric care is analysed at the district level. The provision of long-term and geriatric care is analysed at voivodship (regional) and district level, leading to the identification of gaps in infrastructural capacity (Section 2.2, p. 16) and human resources capacity (Section 2.3, p. 22). Section 3 (p. 28) presents the current and projected demand for long-term and geriatric care services. This includes a discussion of statistical data and the results of sectoral studies, which make it possible to identify current and projected demographic and epidemiological processes. Section 4 (p. 41) collates the data to determine the forecasted demand for long-term and geriatric care services and to determine the level

of balance between supply and demand. Section 5 (p. 43) estimates the possibilities and potential for converting hospital wards in each district. In the summary section (p. 63), based on the data and conclusions from the review, possible measures ahead aiming at increasing the availability of long-term care services are outlined (for example, support for district hospitals with a high number of potential beds for transformation or district hospitals with a high share of patients aged 60 or more), which constitute a basis for future criteria in the selection of investments (point 19 of Section 5, p. 67).

- **eliminate inequalities in access to long-term health care services;**

The analysis shows "blank spots" in terms of availability of long-term health care services, i.e. districts in which access to inpatient or home-based long-term care is sub-optimal (Section 2.2.1., p. 12) and regional differences in the occupancy of geriatric beds (Section 2.2.2., p. 19) or in the number of medical staff in relation to the number of inhabitants (Section 2.3., p. 22). Optimisation opportunities are identified with regard to the underutilised potential of district hospitals, the potential that is inefficiently used geographically (indicating provinces and districts) and by subject in terms of the types of wards and beds that can be converted (Section 5, p. 43). Recommendations are made to pay special attention to disadvantaged groups. In the summary section (p. 63) basic priority criteria for the way forward are elaborated addressing present and forecasted territorial disparities as regards the access to the services (point 20, p. 67).

- **improve working conditions for medical staff;**

Section 2 (p. 12) diagnoses the staff potential in long-term and geriatric care, which is used to make inferences regarding staff availability and working conditions. Section 5.2.2 (p. 53) compares the hospital wards' formal requirements for inpatient long-term care, which also include elements relating to staffing, organization, medical equipment and premises conditions. This includes aspects related to the working conditions of medical staff, e.g. equipment to facilitate patient care and a less burdensome working schedule (without the need for 24-hour on-call duties). In the summary section (p. 63) priority actions aimed at improving working conditions for medical staff are listed (point 21, p. 68). They focus on adjusting the converted or newly established wards to the formal requirements for inpatient long-term care as well as to new requirements stemming from the complementary systemic reforms regarding for example medical staff and telemedicine.

- **improve quality of the long-term care.**

Section 5 (p. 43) of the report identifies factors influencing improvements in service quality, i.e. custom-made equipment, appropriate premises conditions, as well as the availability of specialist medical staff. These factors have a direct impact on improving the effectiveness of patient treatment and recovery, as they have a legally defined standard and are applied by professional medical staff. They also contribute to patient comfort and safety. The review identifies a broader potential for quality improvement, including not only long-term care patients but also their families and medical staff. The review explores ways to achieve improved and enhanced care quality by means of introducing all the recommended changes in line with the regulatory action taken in parallel (Act on health care quality and patient safety). Point 22 of the summary section (p.69) provides information on priority measures to be supported under the reform D1.2.

Furthermore, in line with the description of the measure, **reform "Increasing the efficiency, availability and quality of long-term care services of healthcare providers at district level" (reform D1.2) shall also be in line with the Deinstitutionalisation Strategy prepared by the Ministry of**

Health (annex to the “Strategic framework on healthcare system development in Poland 2021-27 - Healthy Future”).

The Review is in line with the document "Deinstitutionalisation strategy: care for the elderly" which is annexed to the report "Healthy Future. Strategic framework for the development of the health care system for the years 2021-2027, with the perspective until 2030". In particular, the rationalisation of the hospital bed base to meet demographic demands is consistent with the deinstitutionalization of long-term care, because institutional care (in hospitals) and desinstitutionalised care (at home) cater to elderly persons with different needs. Both forms of care must be developed in parallel to meet the increasing demand for various types of long-term and geriatric care services, adapted to the health condition of their beneficiaries. According to points 7, 8 and 10 of the summary of the Review (pp. 64-65), an optimisation of the availability of long-term care services is planned to be achieved through measures to adapt the type of care to the degree of incapacity, aligning the supply of services to the demographic surplus and bridging district disparities.

Commission Preliminary Assessment: Satisfactorily fulfilled