



Brussels, 15.4.2019  
C(2019) 2839 final

**Subject: State Aid SA. 52832(2019/N) –Poland  
Amendments to the closure plan in the Polish coal mining in the  
period 2015 - 2023**

Sir,

## **1. PROCEDURE**

- (1) By decision of 18 November 2016 in SA.41161 (2015/N) – State aid to Polish coal mining in the period 2015-2018 (the "initial Decision")<sup>1</sup>, the Commission approved State aid to Spółka Restrukturyzacji Kopalń S.A. ("SRK")<sup>2</sup> on the basis of a closure plan (i) to assist the closure by 31 December 2018 of the coal mining companies remaining in operation in the Polish coal sector by covering current production losses arising from the operation of mining units in the period 2015 - 2018; and (ii) to grant aid to cover exceptional costs arising from the definitive closure of mining units in the period 2015 – 2018 in accordance with Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines<sup>3</sup> (the "Council Decision").
- (2) By decision of 8 February 2018 in SA.46891 (2017/N) – Restructuring of the Polish mining companies (the "amending Decision")<sup>4</sup>, the Commission approved amendments to the initial Decision.
- (3) On 4 January 2019, the Polish authorities notified additional amendments to the closure plan in accordance with Article 7(3) of the Council Decision.

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<sup>1</sup> Commission Decision C(2016) 7510 final in case SA.41161

<sup>2</sup> SRK is a State-owned company, which carries out activities related to mine closures and manage the assets of mines that have been closed. Poland intends to transfer all mines about to be closed to SRK.

<sup>3</sup> OJ L 336, 21.12.2010, p. 24–29

<sup>4</sup> Commission Decision C(2018) 724 final in case SA.46891

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- (4) In response to the Commission's requests for information, Poland provided additional information on 27 February 2019.
- (5) By letter dated 27 February 2019, Poland agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958<sup>5</sup> and to have the present decision adopted and notified in English.

## **2. DETAILED DESCRIPTION OF THE MEASURE/AID, INCLUDING:**

### **2.1. The initial Decision and the amending Decision**

- (6) The Commission approved by the initial Decision State aid for the orderly winding down of mining activities, which involves (i) aid to cover the current production losses of coal production units to be irrevocably liquidated, namely KWK Makoszowy and KWK Kazimierz-Juliusz; (ii) aid to cover certain exceptional costs arising from or having arisen from the closure of coal production units and which are not related to current production losses, which will be granted to coal mines which have been/will be closed between 1 January 2007 and 1 January 2019<sup>6</sup> and (iii) the prolongation of aid to cover exceptional costs in the period 2011-2015 in connection with the closure of mines put into liquidation prior to 1 January 2007, approved by the Commission Decision of 23 November 2011<sup>7</sup>.
- (7) By the amending Decision the Commission approved amendments to the closure plan including the following changes (i) modification of the deadlines to transfer to SRK three mining units indicated in the initial Decision; (ii) transfer to SRK and liquidation of three new mining units; (iii) addition of costs related to the closure of some mining units; (iv) addition of an exemption from the obligation to obtain concessions for the extraction of methane; (v) prolongation of the duration of the payments of aid for exceptional costs until 2023; and (vi) update of the budget of the measure.
- (8) The mining units have been or will be transferred to SRK, which carries out mine closures and manages the assets of mines that have been closed.
- (9) Following the amending Decision, the closure plan covers the period 2015 – 2023; however, for the period 2019-2023 only aid to cover exceptional costs may be granted. The plan also contains relevant information about aid to cover exceptional costs granted by the Polish authorities during the periods 2011 – 2015 and 2015 – 2023. This means that the aid to cover exceptional costs granted by the Polish authorities during the period 2011 – 2015 and 2015 – 2023 is considered to be an integral part of the approved closure plan ("Closure Plan").

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<sup>5</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

<sup>6</sup> The aid will be granted to cover exceptional costs related to the closure of Centrum; Rozbark V; Makoszowy; Brzeszcze-Wschód; Myslowice; Boże Dary; Kazimierz-Juliusz; Anna; Śląsk; Jas-Mos; Krupiński; Rydułtowy I; Sośnica and Pokój I.

<sup>7</sup> The aid will be granted to cover exceptional costs related to the closure of Dębieńsko; Jaworzno; Siersza; Bytom II; Brzeziny; Gliwice; Barbara Chorzów; Katowice; Kleofas; Morcinek; Wałbrzyskie KWK; Nowa Ruda; 1 Maja; Jan Kanty; Sosnowiec; Saturn; Porąbka-Klimontów; Jowisz; Powstańców Śląskich; Jadwiga; Niwka Modrzejów; Siemianowice Rozalia; Polska Prezydent; Paryż; Grodziec; Andaluzja; Julian; Bobrek Miechowice; Centrum – Szombierki; Rozbark and Pstrowski.

- (10) Furthermore, following the amending Decision, the total updated budget of the aid measures in years 2015 – 2023 amounts to approximately PLN 12 991 million. This amount includes both aid granted under Article 3 (closure aid) and under Article 4 (aid to cover exceptional costs) of the Council Decision.

## **2.2. The amendments to the Closure Plan**

- (11) Poland has notified an amended Closure Plan which provides for the following changes:
- Transfer to SRK and liquidation by the end of 2018 of a new mining unit, KWK Mysłowice-Wesoła I (part of KWK Mysłowice-Wesoła);
  - Decision not to proceed with the transfer to SRK of KWK Sośnica;
  - Update of the budget of the measure; and
  - Changes in the body which grants exemptions from environmental charges and increase of aid.
- (12) The Polish authorities have confirmed that these amendments to the Closure Plan relate only to aid to cover exceptional costs and that no additional closure aid will be granted.

### *2.2.1. Transfer to SRK and liquidation of a new mining unit*

- (13) The Polish authorities informed the Commission that KWK Mysłowice-Wesoła I, a mining unit owned by Polska Grupa Górnicza S.A. (“PGG”), was transferred to SRK on 2 December 2018 and that it ceased coal production on that date. No aid will be paid out until the adoption of the decision in the present case.

### *2.2.2. Decision not to proceed with the transfer to SRK of KWK Sośnica*

- (14) The Polish authorities informed the Commission that they decided not to proceed with the transfer to SRK of KWK Sośnica, a mining unit which – according to the Closure Plan - was scheduled for the fourth quarter of 2018. Replacing KWK Sośnica with KWK Mysłowice-Wesoła I will not lead to increase of the budget of the measure.
- (15) Poland explained that in spite of KWK Sośnica’s previously identified problems, a raft of corrective measures has been taken since 2016 yielding a significant improvement in the basic parameters of the mining unit. Furthermore, the market situation, in particular growing demand for thermal coal (KWK Sośnica’s core product) have also improved and this trend which projected to be lasting.
- (16) The Polish authorities state that since the fourth quarter of 2016, KWK Sośnica has recorded good financial results by improving the technical and production parameters, in particular by raising productivity, boosting production of coal for sale, increasing average extraction per face, improving the quality of coal for sale, boosting coarse assortments as a proportion of coal production, reducing the workforce and lowering unit costs of production.
- (17) Poland submits that the decision to continue the mining activity of KWK Sośnica after 2018 and not to transfer it to SRK is justified by its economic and financial

performance to date and the prospects for its continuation in future. In particular, Poland explained that the mining unit has the large extractable coal resources (101 million tonnes approx.); the scope for producing coal with very good quality parameters (the forecasted average calorific value of extracted coal should be greater than 23 GJ/t in 2019, remaining at around 23.4 GJ/tonne over the reference period). Also, KWK Sośnica has a useful link with external rail and road infrastructure; scope for processing coal into the full range of grade specifications; scope for extending the licence after 2020 with a change in the maximum extraction depth from 1 100 m to 1 300 m and scope for future operations on three faces instead of two. Finally, Poland stressed the mining unit's importance in terms of collateralisation of PGG's contracts.

- (18) Poland confirmed that KWK Sośnica was not granted any aid under Article 3 (closure aid) nor under Article 4 (aid to cover exceptional costs) of the Council Decision.

### *2.2.3. Update of the budget of the measure*

- (19) The Polish authorities informed the Commission that budget of the scheme has not changed and is still approximately PLN 12 991 million. Pursuant to the notified amendment, the aid budget will be updated within the framework of the present amendments to the scheme and on the basis of detailed liquidation plans of individual mining units.
- (20) Changes in unitary scheme implementation costs reflect the following circumstances:
- (a) the planned transfer to SRK of a new mining unit, KWK Mysłowice-Wesoła I and the decision not to transfer KWK Sośnica to SRK;
  - (b) clarification of initial estimates of the costs of safety net, liquidation and post liquidation activities concerning units already transferred to SRK;
  - (c) an increase in the grant from the National Fund for Environmental Protection and Water Management for tasks concerning environmental protection and fine-tuning of estimates of costs incurred by way of environmental protection payments and penalties;
  - (d) fine-tuning of cost estimates for exemptions from fees payable to PFRON (the State Fund for Rehabilitation of Persons with Disabilities) based on the number of employees; and
  - (e) index-linking of compensatory benefits in 2019 at the rate envisaged by ZUS (the Social Security Office) for index-linking benefits and pensions, i.e. 3.26 %; in subsequent years demand for compensatory benefits remained at 2019 levels.
- (21) The amounts of aid to cover exceptional costs in 2017 have been updated in the aid scheme budget to reflect actual implementation for mines closed before 1 January 2007 and mines closed after 1 January 2007 alike.

**Table 1: Aid awarded to cover exceptional costs in connection with mine closures before 1 January 2007 (PLN thousand)**

	<i>State Fund for Rehabilitation of Disabled Persons</i>	<i>Exemptions from environmental charges</i>	<i>Environmental protection duties</i>	<i>Employee claims</i>	<i>Repair of mining damage</i>	<i>Closure and post-closure activities</i>	<i>Total</i>
<b>2016</b>	<b>1 158.3</b>	<b>2 311.8</b>	<b>0.0</b>	<b>168 522.5</b>	<b>10 171.5</b>	<b>221 100.4</b>	<b>403 264.5</b>
<b>2017</b>	<b>1 272.5</b>	<b>2 122.0</b>	<b>0.0</b>	<b>156 860.7</b>	<b>2 043.6</b>	<b>208 215.9</b>	<b>370 514.7</b>
<b>2018</b>	<b>1 550.1</b>	<b>10 064.0</b>	<b>0.0</b>	<b>180 721.5</b>	<b>9 380.1</b>	<b>220 749.2</b>	<b>422 464.9</b>
<b>2019</b>	<b>1 727.8</b>	<b>9 901.3</b>	<b>35 170.0</b>	<b>197 741.5</b>	<b>30 510.0</b>	<b>281 998.9</b>	<b>557 049.5</b>
<b>2020</b>	<b>1 727.8</b>	<b>9 857.8</b>	<b>76 607.7</b>	<b>199 741.5</b>	<b>10 673.6</b>	<b>257 894.1</b>	<b>556 502.5</b>
<b>2021</b>	<b>1 727.8</b>	<b>9 857.8</b>	<b>61 467.1</b>	<b>201 741.5</b>	<b>8 133.6</b>	<b>269 245.2</b>	<b>552 173.0</b>
<b>2022</b>	<b>1 727.8</b>	<b>8 881.6</b>	<b>47 791.4</b>	<b>203 741.5</b>	<b>5 828.6</b>	<b>228 662.5</b>	<b>496 633.3</b>
<b>2023</b>	<b>1 727.8</b>	<b>8 619.3</b>	<b>20 000.0</b>	<b>205 741.5</b>	<b>5 316.6</b>	<b>251 553.8</b>	<b>492 959.0</b>
<b>Total:</b>	<b>12 619.9</b>	<b>61 615.6</b>	<b>241 036.2</b>	<b>1 514 812.2</b>	<b>82 057.6</b>	<b>1 939 420.0</b>	<b>3 851 561.5</b>

Source: Polish authorities

**Table 2: Aid awarded to cover exceptional costs in connection with mine closures after 1 January 2007 and before 1 January 2019 (PLN thousand)**

<i>Year</i>	<i>State Fund for Rehabilitation of Disabled Persons</i>	<i>Exemptions from environmental charges</i>	<i>Environmental protection duties</i>	<i>Employee claims</i>	<i>Repair of mining damage</i>	<i>Closure and post-closure activities</i>	<i>CIT</i>	<i>Civil-law transactions tax</i>	<i>Payments from profit</i>	<i>Methane concession</i>	<i>Total</i>
<b>2015</b>	<b>2 846.6</b>	<b>1 006.8</b>	<b>0.0</b>	<b>110 217.3</b>	<b>1 036.9</b>	<b>142 124.9</b>	<b>212 632.8</b>	<b>22 382.6</b>	<b>0.0</b>	<b>0.0</b>	<b>492 247.9</b>
<b>2016</b>	<b>2 018.9</b>	<b>504.8</b>	<b>0.0</b>	<b>301 300.8</b>	<b>3 658.6</b>	<b>284 483.1</b>	<b>23 904.4</b>	<b>2 516.3</b>	<b>0.0</b>	<b>0.0</b>	<b>618 386.8</b>
<b>2017</b>	<b>1 926.9</b>	<b>339.6</b>	<b>0.0</b>	<b>437 446.9</b>	<b>20 380.1</b>	<b>489 593.0</b>	<b>40 379.3</b>	<b>4 250.5</b>	<b>0.0</b>	<b>650.0</b>	<b>994 966.2</b>
<b>2018</b>	<b>2 226.8</b>	<b>5 325.8</b>	<b>11 880.7</b>	<b>379 200.1</b>	<b>58 497.2</b>	<b>751 623.2</b>	<b>124 179.4</b>	<b>13 068.5</b>	<b>1 000.0</b>	<b>2 640.0</b>	<b>1 349 641.8</b>
<b>2019</b>	<b>2 739.5</b>	<b>6 855.9</b>	<b>57 180.2</b>	<b>254 057.5</b>	<b>178 256.6</b>	<b>1 146 116.5</b>	<b>0.0</b>	<b>0.0</b>	<b>1 000.0</b>	<b>0.0</b>	<b>1 646 206.2</b>
<b>2020</b>	<b>2 354.7</b>	<b>6 855.9</b>	<b>112 670.0</b>	<b>139 609.0</b>	<b>150 777.4</b>	<b>1 059 588.3</b>	<b>0.0</b>	<b>0.0</b>	<b>1 000.0</b>	<b>0.0</b>	<b>1 472 855.3</b>
<b>2021</b>	<b>1 943.9</b>	<b>7 138.7</b>	<b>120 897.7</b>	<b>93 212.3</b>	<b>65 154.8</b>	<b>808 624.6</b>	<b>0.0</b>	<b>0.0</b>	<b>1 000.0</b>	<b>0.0</b>	<b>1 097 972.0</b>
<b>2022</b>	<b>1 388.2</b>	<b>7 421.6</b>	<b>50 167.5</b>	<b>78 464.3</b>	<b>70 179.9</b>	<b>491 014.0</b>	<b>0.0</b>	<b>0.0</b>	<b>1 000.0</b>	<b>0.0</b>	<b>699 635.5</b>
<b>2023</b>	<b>799.6</b>	<b>7 421.6</b>	<b>24 701.5</b>	<b>27 176.3</b>	<b>48 940.0</b>	<b>338 128.8</b>	<b>0.0</b>	<b>0.0</b>	<b>1 000.0</b>	<b>0.0</b>	<b>448 168.8</b>
<b>Total</b>	<b>18 245.4</b>	<b>42 870.7</b>	<b>377 497.6</b>	<b>1 820 684.4</b>	<b>596 881.5</b>	<b>5 511 297.4</b>	<b>401 095.9</b>	<b>42 217.8</b>	<b>6 000.0</b>	<b>3 290.0</b>	<b>8 820 080.6</b>

*Source: Polish authorities*

- (22) Poland also explained that the budget was updated because less use was made of exemptions from payments and penalties to the National Fund for Environmental Protection and Water Management, a State-owned entity responsible for financing environmental protection and water management projects in Poland. This is because environmental charges fell as a result of the reduction in the quantity of saline water discharged and improvements in the quality of wastewater (reduction in chloride and sulphate content).
- (23) Furthermore, in the case of environmental protection work, disparities between the amounts indicated in the plan and implementation costs reflected the fact that no contracts were concluded with the National Fund for Environmental Protection and Water Management to fund environmental protection activities owing to the lack of implementing regulations governing this matter. In the light of the above, the implementation of individual tasks has been postponed.
- (24) Poland clarified that, as regards employee claims, the plan for 2017 provided for a higher number of employees benefiting from mining leave. Some of the employees transferred to SRK did not take leave immediately but were involved in the mine closure process.
- (25) Moreover, owing to the fact that not all judicial proceedings had been concluded, the costs of implementing mining repair work were lower than anticipated:
- (26) Finally, in the case of work performed during the process of mine closures and post-closure activities, the discrepancy between the plan and implementation in 2017 was due inter alia to: the need to refrain from implementing some work in view of the time consuming tender procedures, the necessary changes to the main drainage design for mines, the lower than anticipated outlay on energy and maintenance services at the facilities and implementation of safety work and, in some cases, the fact that tender procedures for individual tasks were resolved more favourably than expected.

*2.2.4. Changes in the body which grants exemptions from environmental charges and increase of aid*

- (27) The Polish authorities informed the Commission that pursuant to amendments to the Coal Mining Industry Act, which entered into force on 1 January 2018, SRK has been exempted from water service charges payable to a newly created State-owned company, Państwowe Gospodarstwo Wodnego Wody Polskie (the “PGW Wody Polskie”). Poland explained that SRK was also exempt from these fees before, but only from the portion owed to the National Fund for Environmental Protection and Water Management (please see recitals 101 - 103 of the initial Decision and recital 25 of the amending Decision). Following the amendment SRK is exempt of 90% of revenues from sewage charges which are payable to the National Fund for Environmental Protection and Water Management and of additional 10 %, which are payable to PGW Wody Polskie.
- (28) Poland also explained that as result of the currently ongoing legislative process concerning the Polish Geological Agency Act a new a state body with executive agency status, the Polish Geological Agency will be created and it will act under the supervision of the Minister for the Environment. Pursuant to the planned

amendment, the revenues will be payable to the National Fund for Environmental Protection and Water Management, PGW Wody Polskie and the Polish Geological Agency as follows: 80%, 10% and 10% respectively. Therefore, the Polish Geological Agency, which will receive a portion of these charges, is being set up, but this will not affect the scope of SRK's exemption.

- (29) Poland submits that since the Polish Geological Agency and PGW Wody Polskie are State-owned bodies, the justification for SRK's exemption is similar to that which applied previously to the National Fund for Environmental Protection and Water Management. Therefore, the exemption will simplify settlements between public bodies and will reduce unnecessary flows of funds. If SRK had to pay these charges, an increase in the costs of mining unit closures would result, which would nevertheless have to be covered by the grant received by SRK from the State budget. The introduction of these exemptions eliminates unnecessary cash flows between SRK and public bodies. Following the introduction of these instruments, the part of the grant, which would be needed to cover SRK's compulsory payments to these State bodies, will not have to be paid out of the State budget.

### **3. ASSESSMENT OF THE MEASURE/AID, INCLUDING:**

#### **3.1. Existence of aid**

- (30) The Commission already concluded in its initial Decision and the amending decision that the measures foreseen in the notified Closure Plan involve State aid within the meaning of Article 107(1) TFEU. The Commission notes that as regards the following notified amendments: (i) transferring to SRK and liquidating by the end of 2018 KWK Myslowice-Wesoła I; (ii) updating the budget of the measure; and (iii) increasing the amount of exemptions from environmental charges, they constitute **new aid under** the Closure Plan, as they favour SRK by covering certain exceptional costs arising from the closure of certain mining units and by relieving SRK of a part of the production, social, environmental and safety costs which it would normally have to bear itself for the activity of these mining units.
- (31) Furthermore, the Commission takes note that some of the notified amendments such as the decision not to proceed with the transfer to SRK of KWK Sośnica; and changes in the body which grants exemptions from environmental charges do not amount to State aid. Nonetheless, pursuant to Article 7 (3) of the Council Decision Member States must notify to the Commission any changes to the closure plan.

#### **3.2. Legality of aid**

- (32) By notifying the amendments to the Closure Plan, as presented in section 2.2 above, before its implementation, the Polish authorities have fulfilled their obligation according to Article 108 (3) TFEU. Furthermore, in line with Article 7(3) of the Council Decision Poland complied with its obligation to notify to the amendments to the Closure Plan.
- (33) In addition, the Polish authorities have confirmed that the aid resulting from the amendments to the Closure Plan will not be paid until an authorising decision by the Commission.

### 3.3. Compatibility of aid

- (34) In the initial Decision and the amending Decision, the Commission concluded that the aid measures foreseen in the Closure Plan were compatible with the internal market on the basis of the Council Decision.
- (35) The Commission notes that the amendments to the Closure Plan, in particular transfer to SRK and liquidation by the end of 2018 of a new mining unit, KWK Mysłowice-Wesoła I (part of KWK Mysłowice-Wesoła) and increase of exemptions from environmental charges do not alter the primary objective of the measure. The primary objective of aid remains the orderly winding down of mining activities of mining production units in the context of the Closure Plan, which provides for the irrevocable closure of the mines by the end of 2018.
- (36) With regard to transfer to SRK and liquidation by the end of 2018 of a new mining unit, KWK Mysłowice-Wesoła I (part of KWK Mysłowice-Wesoła), the Commission notes that the Polish authorities confirmed that KWK Mysłowice-Wesoła I was transferred to SRK and ceased production and that no aid has been paid to the mining unit. As regard the decision not to transfer KWK Sośnica to SRK, the Commission notes that Poland confirmed that no aid has been paid to KWK Sośnica.
- (37) In this context, the Commission notes that the State aid is exclusively meant to enable SRK to cover the costs arising from the closure of the mining units outlined in the initial Decision, the amending Decision and in recitals (13). These costs are not related to their current production.
- (38) With regard to the amounts of aid to cover exceptional costs, as presented in Table 1 and Table 2, the Commission notes that the amounts were updated in order to reflect actual implementation for mines closed before 1 January 2007 and mines closed after 1 January 2007 alike. Therefore, the Commission considers that the Polish authorities complied with the requirement stipulated in Article 4(1) of the Council Decision stipulating that the aid should not exceed the actual costs incurred and that the categories of costs planned to be covered correspond to eligible categories defined in the Annex to the Council Decision, for the purposes of Article 4 of the Council Decision.
- (39) Furthermore, the Commission concluded in the initial Decision and in the amending Decision that the exceptional costs notified by Poland fell within the eligible categories defined in the Annex to the Council Decision, namely paragraphs (a), (e), (f), (g), (h) and (m). The Commission recalls that the types of exceptional costs are not be altered by the amendments to the Closure Plan (see Annexes 1 and 2 to the present decision).
- (40) Finally, as regards the increase of exemptions from environmental charges, the Commission notes that any decrease of budget for closing of coal mines would be ultimately offset by means of direct payments from the State budget to SRK in order to settle these liabilities. Therefore, the Commission considers that the described exemption granted by a newly set-up State entity is in financial terms equivalent to the direct payments to SRK of those cost amounts. In the Commission's view the proposed exemption falls under the eligible costs for category under paragraph (f) of the Annex to the Council Decision as provided therein.



(41) It follows that the amendments to the Closure Plan are compliant with Articles 3 and 4 of the Council Decision. The Commission notes that Annex I and Annex II form an integral part of the present decision.

#### 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendments to the Closure Plan on the grounds that it is compatible with the internal market pursuant to Article 107(3)(e) of the Treaty on the Functioning of the European Union

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Yours faithfully,

For the Commission

Margrethe VESTAGER  
Member of the Commission

