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SENSITIVE ([*]): *COMP Operations*

Subject: **State Aid SA.107269 (2023/N) – Poland**
TCTF: Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices incurred in 2023

Excellency,

1. PROCEDURE

(1) By electronic notification of 3 August 2023, further to pre-notification contacts, Poland notified aid for additional costs due to exceptionally severe increases in natural gas and electricity prices in Poland incurred in 2023 (the 'measure') under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the 'Temporary Crisis and Transition Framework') ([1]).

(2) Poland exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with

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([1]) Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), ('Temporary Crisis Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

Jego Ekscelencja Zbigniew Rau
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
00 - 580 Warszawa
POLSKA/POLAND

Article 3 of Regulation 1/1958 ([2]) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Poland considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia ('the current crisis') have repercussions on the real economy of the entire internal market.

(4) In particular, the current crisis affects the Polish economy in several ways: (i) a sharp rise in the price of main energy carriers, which affects virtually every economic activity, and raw materials; (ii) disruptions to value chains and the shock to world trade; and (iii) uncertainty leading to lost investment or causing financial stress.

(5) Poland argues that among the most affected are the energy-intensive and trade-intensive industrial undertakings, i.e. undertakings for which natural gas and electricity represent a significant part of their production costs and which have great difficulty in passing the increased energy costs on to their customers in full due to their exposure to international competition.

(6) According to the Polish authorities, in the first quarter of 2023 electricity and natural gas prices remained significantly higher than two years earlier, by 150-200% compared to the first quarter of 2021. This means a significant increase in production costs for industrial companies, which they are only partially able to offset by higher sales prices. Consequently, the measure aims to preserve the continued operation of the beneficiaries, and, at the same time, to preserve the incentives to save energy and gas by offering only a partial reimbursement of the increased cost. Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.

(7) Poland confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area ('EEA') to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(8) The compatibility assessment of the measure is based on Article 107(3), point (b), TFEU, in light of sections 1 and 2.4 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

(9) The measure provides aid on the basis of a scheme in the form of direct grants.

([2]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

(10) Poland confirms that all figures used are gross, that is before any deduction of tax or other charges.

2.2. Legal basis

(11) The legal basis for the measure is comprised of:

(a) The Act of 29 September 2022 on the rules for the implementation of programmes to support entrepreneurs in connection with the situation on the energy market in 2022-2024 (*ustawa z dnia 29 września 2022 r. o zasadach realizacji programów wsparcia przedsiębiorców w związku z sytuacją na rynku energii w latach 2022–2024*, hereinafter referred to as the 'Act').

(b) A resolution of the Council of Ministers, which has been adopted on 8 August 2023, on the basis of the Act of 29 September 2022.

(12) Poland confirms, as stated in Article 9 of the Act, that the aid will only be granted after the Commission approves the measure.

2.3. Administration of the measure

(13) The Ministry of Development and Technology is responsible for administering the measure. The role of the granting authority will be entrusted to the National Fund for Environmental Protection and Water Management.

2.4. Budget and duration of the measure

(14) The estimated budget of the measure is PLN 5 500 000 000 (approx. EUR 1 233 000 000 ([3])).

(15) Aid will be financed from the proceeds from the auctioning of the European Union Allowances (the 'EUA') conducted in accordance with Directive 2003/87/EC ([4]). The Polish authorities have set up a dedicated fund (the Fund for Indirect Emission Costs Compensation) to which 25 % of the proceeds from the auctioning of EUAs are transferred and earmarked to finance the measure.

(16) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 March 2024.

([3]) Exchange rate taken on 03 August 2023 (1 euro = 4.4598 PLN). https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-pln.en.html .

([4]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32). Article 2 of this directive defines an EUA as an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive.

2.5. Beneficiaries

(17) The final beneficiaries ([5]) of the measure are SMEs ([6]) and large enterprises ([7]) that fall into one of two following categories of aid intensity:

(a) Category I: beneficiaries qualifying as 'energy-intensive businesses' that belong to sectors and sub-sectors listed in section B and C of NACE classification ('Mining and quarrying' and 'manufacturing'). The beneficiaries qualify as 'energy intensive businesses' when electricity and gas purchase costs amount to at least 3 % of the production value. The share in production value is calculated based on data from the financial accounting reports for the calendar year 2021.

(b) Category II: beneficiaries qualifying as 'energy intensive businesses' (understood as above in point (a)), and that belong to the sectors and subsectors listed in Annex I of the Temporary Crisis and Transition Framework.

(18) Poland explains that a beneficiary will be considered as active in a sector or subsector if its activity in that sector (or cumulatively in multiple required sectors) generated more than 50 % of its revenue ([8]) in the last closed financial year.

(19) Poland estimates that there will be more than 1 000 beneficiaries eligible for the measure.

(20) Poland confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.

(21) Poland confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners

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([5]) Poland explains that for the purpose of this scheme, a beneficiary should be understood as a legal entity.

([6]) As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

([7]) As defined in Article 2, point 24, of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

([8]) Poland explains that the notion of revenue (przychód) is equivalent to the notion of turnover used in footnote 101 of the Temporary Crisis and Transition Framework. The Polish Accounting Act of September 29, 1994 (Dz.U. 1994 nr 121 poz. 591) legally defines revenue (przychód) as the likely occurrence of economic benefits in the reporting period, with a reliably determined value, in the form of an increase in the value of assets or a decrease in the value of liabilities, which will lead to an increase in equity or a decrease in its deficiency in a manner other than through contributions from shareholders or owners. From an accounting perspective, revenue (przychód) includes proceeds from the sales of all goods and services of the company and is therefore equivalent to the term 'turnover' (obrót) used in the Temporary Crisis and Transition Framework.

and will be in full compliance with the anti-circumvention rules of the applicable regulations([9]). In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

(22) The measure is open to sectors outlined in recital (17). It applies to the whole territory of Poland.

2.7. Basic elements of the measure

(23) The measure provides aid for additional costs due to exceptionally severe increases in natural gas and electricity prices. The aim of the measure is to mitigate the impact of the electricity and natural gas prices, which remain significantly higher than in mid-2021, on energy-intensive and trade intensive undertakings. The purpose of the measure is to allow those undertakings to maintain liquidity, jobs and production, to help them stabilise their operations and to give them time to adjust to the new reality. At the same time, the programme is time-limited, so that it does not become a permanent source of revenue for the companies.

(24) The measure only applies to undertakings in specific sectors, either undertakings active in any industrial production sector included in sections B and C of the NACE (Category I beneficiaries) or active in the sectors or subsectors listed in Annex I of the Temporary Crisis and Transition Framework (Category II beneficiaries). Furthermore, the measure only covers energy-intensive businesses. According to Poland, such a limitation in terms of sectors is justified because energy-intensive and trade intensive industrial undertakings are among the most affected by the current crisis. Given that energy-intensive industrial companies are often very significant employers in the local labour market, this would put many thousands of jobs at risk. On the other hand, such a limitation is still designed broadly since a beneficiary will be considered as active in a sector if its activity in that sector (or cumulatively in multiple sectors) generated more than 50 % of its revenue in the last closed financial year. That way, the measure does not lead to an artificial limitation of the potential beneficiaries.

(25) The amount of aid is based on the eligible costs incurred by the applicant for the purchase of gas and/or electricity in the eligible period.

(26) For Category I beneficiaries, the measure covers two separate eligible periods:

(a) First eligible period: from 1 January 2023 to 30 June 2023.

(b) Second eligible period: from 1 July 2023 to 31 December 2023.

(27) Poland explains that the two different eligible periods for Category I beneficiaries stem from the need to pay out the first part of the aid (for the first period) as soon as possible.

([9]) For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

(28) Category II beneficiaries will be granted aid based on their eligible costs incurred in the period from 1 January 2023 to 31 December 2023; there is only one eligible period for this category.

(29) The respective budget for each category of beneficiaries is:

(a) Category I beneficiaries: PLN 3 000 000 000 (approx. EUR 673 000 000),

(b) Category II beneficiaries: PLN 2 500 000 000 (approx. EUR 561 000 000).

(30) If the total amount of Category II aid granted for the eligible period (last payment in December 2023) is lower than the budget for Category II aid, the amount of funds left budgeted for Category II aid will be reallocated to the Category I budget for the second eligible period (last payment in March 2023).

(31) The maximum aid per undertaking and the aid intensity per beneficiary depend on the categorisation referred to in recital (17) as shown in Table 1.

Table 1: Maximum aid and aid intensity

	Category I beneficiaries	Category II beneficiaries
Overall aid (EUR/undertaking)	4 million	40 million
Aid intensity (%)	50	80

Source: Polish authorities.

(32) Poland explains that due to limited available funds, it was decided to apply stricter conditions for Category I beneficiaries than those set out in point 72(f) of the Temporary Crisis and Transition Framework by limiting it to certain sectors. Furthermore, the maximum aid amount for Category II beneficiaries is lower than the maximum amount authorised under point 73(c) of that Framework (i.e., EUR 150 million per undertaking per Member State at any point in time). Poland states that those limitations in any event respect the objective and non-discriminatory criteria provided for in the Temporary Crisis and Transition Framework.

(33) To determine the limit of the amount of aid, the average exchange rate between the euro and the zloty announced by the National Bank of Poland on the day of signing the aid agreement will be applied.

(34) Where one undertaking is composed of several beneficiaries, each belonging to either category I or II, the overall aid for all Category I beneficiaries will not exceed EUR 4 million per undertaking and the overall aid for all Category II beneficiaries will not exceed EUR 40 million per undertaking, less the amount granted to Category I beneficiaries. For each category of beneficiaries, if one of the above limits is exceeded within a single undertaking, the amount of aid granted to each beneficiary of this category will be proportionally reduced.

(35) In addition, Poland explains that the maximum aid for Category II beneficiaries cumulated with other State aid will not exceed EUR 100 million per undertaking at any given point in time.

(36) Poland submits that the aid for all categories of beneficiaries complies with the maximum aid intensity and maximum aid amount under the Temporary Crisis and Transition Framework.

(37) In order to be eligible for the maximum aid amount and aid intensity described in Table 1, Category II beneficiaries' EBITDA ([10]) in the eligible period (i.e. calendar year 2023) including the overall aid, may not exceed 70 % of its EBITDA in the reference period from 1 January 2021 until 31 December 2021. In cases where the EBITDA was negative in 2021, the aid may not lead to an increase of EBITDA in the eligible period above 0. In addition, Category II beneficiaries' EBITDA excluding the aid should either have decreased by at least 40 % between the reference period and the eligible period or be negative in the eligible period.

(38) Moreover, Category II beneficiaries must present to the granting authority, no later than 31 March 2024, a plan of investment in energy efficiency, prepared or approved by the energy auditor. The sum of investment included in the plan must account for at least 30 % of the amount of aid granted.

(39) The eligible costs are calculated based on the increase in natural gas and electricity costs linked to the current crisis. The eligible costs are the product of the number of units of natural gas and/or electricity procured by the beneficiary as final consumer from external suppliers (in this respect, a licensed electricity or gas provider that is part of the same undertaking as the beneficiary is understood as an external supplier) during the eligible period (i.e. calendar year 2023 for Category II beneficiaries, and one of the eligible periods describe in recital (26) for Category I beneficiaries) and the increase in the price that the beneficiary pays per unit consumed (measured in PLN/MWh).

(40) Poland submits that the eligible costs are calculated based on the current consumption of electricity and natural gas and are not based on historical consumption.

(41) Poland specifies that since SMEs have been entitled to purchase electricity at a fixed maximum price as from 1 December 2022 ([11]), SMEs can only calculate their eligible costs based on the increase in natural gas costs.

(42) For all beneficiaries, the increase in price is calculated as the difference between the average unit price paid by the beneficiary in a given month in the eligible period and 150 % of the average unit price paid by the beneficiary in the reference period from 1 January 2021 until 31 December 2021.

(43) Poland will thus calculate aid amount in line with point 72(e) of the TCTF:

$$\text{Eligible costs} = (\boldsymbol{p_t^{ee}} - \mathbf{1{,}5} * \boldsymbol{p_{ref}^{ee}}) * \boldsymbol{q_t^{ee}} + (\boldsymbol{p_t^{g}} - \mathbf{1{,}5} * \boldsymbol{p_{ref}^{g}}) * \boldsymbol{q_t^{g}}$$ ([12])

([10]) EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

([11]) Act of 27 October 2022 on Emergency Measures to Restrict Electricity Prices and Support Certain Consumers in 2023.

([12]) In this formula, t is the eligible period (i.e., January-June 2023 or July-December 2023 for Category I beneficiaries and January-December 2023 for Category II beneficiaries); p_t^{ee} and p_t^{g} is the average net

(44) As required under the Temporary Crisis and Transition Framework the quantity of natural gas and electricity used to calculate the eligible costs (hence the sum of all q_t^{ee} and p_t^{g}) will not exceed 70 % of the beneficiary's consumption for the same period in 2021.

(45) Category I beneficiaries will receive the aid as a refund for both eligible periods, after the eligible costs have been incurred. The call for applications for each eligible period (i.e. from 1 January 2023 to 30 June 2023 or from 1 July 2023 to 31 December 2023) will end no earlier than 45 days after the end of the corresponding eligible period. Both calls for applications will be based on actual data. The payment of the aid for Category I beneficiaries will be granted no later than 31 December 2023 for the first eligible period, and no later than 31 March 2024 for the second eligible period.

(46) The application for Category I beneficiaries should include:

(a) a report containing data on the costs incurred for the purchase of electricity and natural gas and presenting the assumptions made, evidence used as well as calculations regarding the energy-intensive and activity in B or C NACE sectors;

(b) a list of accounting documents confirming that the costs included in the application and in the report mentioned above were incurred in the eligible period applied for; and

(c) a report of an independent auditor on the performance of the attestation service referred to in Article 2(5) of the Act of 11 May 2017 on statutory auditors, audit form and public supervision.

(47) Category II beneficiaries will receive aid in the form of an advance payment for the entire eligible period (from 1 January 2023 to 31 December 2023). The call for applications for the entire eligible period will be conducted at the same time as the call for application for Category I beneficiaries for the first eligible period and will be based on estimated data. The payment of the aid for Category II beneficiaries will be granted no later than 31 December 2023.

(48) Aid for Category II beneficiaries granted for the eligible period shall be settled by June 2024, based on a verification of the calculation of eligible costs as well as a verification that the EBITDA condition described in recital (37) is fulfilled. As part of the settlement, the applicant shall submit to the granting body no later than 31 March 2024:

(a) a settlement form incorporating data on the actual costs incurred for the purchase of electricity or natural gas and the reported EBITDA in the eligible period and in the reference period (i.e. calendar year 2021);

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price per unit of, respectively, electricity or natural gas, consumed by the beneficiary in the t period (in PLN/MWh); p_{ref}^{ee} and p_{ref}^{g} is the average net price per unit of, respectively, electricity or natural gas, consumed by the beneficiary in the reference period (in PLN/MWh) (i.e. from 1 January 2021 to 31 December 2021); q_t^{ee} and q_t^{g} is the quantity of, respectively, electricity or natural gas procured from external suppliers and consumed by the beneficiary as a final consumer during the t period (in MWh).

(b) a list of accounting documents confirming the costs incurred in the eligible period;

(c) a beneficiary's report presenting evidence of meeting the conditions and criteria for granting the aid; and

(d) a report of an independent auditor on the performance of the attestation service referred to in Article 2(5) of the Act of 11 May 2017 on statutory auditors, audit firms and public supervision.

(49) Failure to submit a settlement of the aid by the defined deadlines shall result in the decision of not granting the aid or in deeming the aid granted undue and repayable, with interest from the date of transfer of the aid to the beneficiary's account.

(50) If the granting authority finds that the aid has been granted unduly or in an amount higher than due, the beneficiary will be required to repay the funds collected unduly or in an amount higher than due, together with interest calculated using the interest rate applicable for the purposes of recovery of aid determined in accordance with Chapter V of the Commission Regulation (EC) No 794/2004 ([13]). The repayment must be made no later than 30 June 2024.

(51) Should the granting authority suspect that the beneficiary submitted false information in the settlement (which may result in a finding that the aid was granted in an amount higher than due, or that the beneficiary did not meet the conditions for receiving the aid), the beneficiary shall be subject to an inspection.

2.8. Compliance with relevant provisions of Union law

(52) Poland confirms that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law.

2.9. Cumulation

(53) Poland confirms that aid granted under the measure may be cumulated with aid under *de minimis* Regulations ([14]) or the General Block Exemption Regulation ([15]) provided the provisions and cumulation rules of those Regulations are respected.

(54) Poland confirms that aid under the notified measure may be cumulated with aid under a measure approved by the Commission under the COVID-19 Temporary

(13) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union from the date of transfer of the aid to the beneficiary's account.

([14]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

([15]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1.

Framework ([16]) provided the respective cumulation rules of the COVID-19 Temporary Framework and the Temporary Crisis and Transition Framework are respected.

(55) Poland confirms that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework provided the provisions in those specific sections are respected.

(56) Aid under the measure may be cumulated with aid under section 2.1 of the Temporary Crisis and Transition Framework provided the maximum applicable ceilings per undertaking as described in recital (31) are not exceeded.

(57) Poland confirms that aid granted under the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework cannot exceed at any point in time the aid ceilings per undertaking provided by the Temporary Crisis and Transition Framework in section 2.4 for the same eligible period.

2.10. Monitoring and reporting

(58) Poland confirms that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ([17]).

3. ASSESSMENT

3.1. Existence of State aid

(59) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(60) The measure is imputable to the State, since it is administered by the Ministry of Development and Technology and granted by the National Fund for Environmental Protection and Water Management (see recital (13)), and it is based on the national legal basis (see recital (11)). It is financed through State

([16]) Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

([17]) Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) 2022/2472 and Annex III to Commission Regulation (EU) 2022/2473.

resources, since it is financed by public funds under the control of the Member State (see recital (15)).

(61) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (9)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.

(62) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular energy-intensive and trade intensive undertakings affected by the current crisis active in certain sectors and sub-sectors (see recitals (17) and (18)).

(63) The measure is liable to distort competition since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States since those beneficiaries are active in sectors in which intra-Union trade exists.

(64) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. Poland does not contest that conclusion.

3.2. Compatibility

(65) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(66) Pursuant to Article 107(3), point (b), TFEU, the Commission may declare compatible with the internal market aid '*to remedy a serious disturbance in the economy of a Member State*'. By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.

(67) Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Poland. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (b), TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the current crisis.

(68) The measure aims at mitigating the impact of the rapidly rising electricity and natural gas prices at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Poland.

(69) The measure is one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. The importance of the measure to compensate for the severe increase in natural gas and electricity prices is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Polish economy. Furthermore, the measure has been designed to

meet the requirements of a specific category of aid ('Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices') described in section 2.4 of the Temporary Crisis and Transition Framework.

(70) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis and Transition Framework.

(71) In particular, for both Category I and Category II beneficiaries:

(a) The aid takes the form of direct grants (see recital (9)); the nominal value of direct grants does not exceed the applicable aid intensity and aid ceilings laid down in point 72(f) and 73(c) of the Temporary Crisis and Transition Framework (see recital (31)); all figures used are gross, that is, before any deduction of tax or other charges (see recital (10)). The measure therefore complies with point 72(b) of the Temporary Crisis and Transition Framework.

(b) Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (14)). As described in recitals (17) and (18) the sectoral scope of the measure is limited to sectors and sub-sectors listed in section B and C of NACE classification ('Mining and quarrying' and 'manufacturing') as well as sectors and subsectors listed in Annex I of the Temporary Crisis and Transition Framework. They are among the most affected by the current crisis because natural gas and electricity represent a significant part of their production costs and they have great difficulty in passing the increased energy costs on to their customers in full (see recital (5)). Furthermore, a beneficiary will be considered active in one of the sectors covered if its activity in that sector (or cumulatively in multiple required sectors) generated more than 50 % of its revenue in the last closed financial year (see recital (18)). The Commission considers that the measure is designed broadly and does not lead to an artificial limitation of potential beneficiaries. As regard the electricity costs for SMEs (see recital (41)), Poland explained that additional electricity costs should not be taken into account as such enterprises will instead benefit from regulated electricity prices. The measure therefore complies with point 72(d) of the Temporary Crisis and Transition Framework.

(c) The eligible costs are calculated in line with point 72(e) of the Temporary Crisis and Transition Framework over the eligible periods as indicated in recital (25) based on the increase in natural gas and electricity costs linked to the current crisis as specified in recitals (39) to (41). These eligible costs are calculated according to the formula (see recital (43)) which provides the same outcome as the formula set out in point 72(e) of the Temporary Crisis and Transition Framework. The formula used by Poland is more detailed to enable the calculation of the eligible costs both based on the increase in natural gas and electricity costs. In addition, the quantity of natural gas and electricity used to calculate the eligible costs does not exceed 70 % of the beneficiary's consumption for the same period in 2021 (recital (44)). The measure therefore complies with point 72(e) of the Temporary Crisis and Transition Framework.

(d) Aid may be cumulated with aid under section 2.1 of the Temporary Crisis and Transition Framework provided the maximum ceilings in points 72 and 73 of that Framework are not exceeded (recital (56)). The measure therefore complies with point 72(g) of the Temporary Crisis and Transition Framework.

(72) In the case of Category I beneficiaries:

(a) Considering that the aid will be granted only after an ex post verification of the supporting documentation of the beneficiary, and that Poland decided not to include the possibility to grant advance payments for Category I beneficiaries in line with point 74 of the Temporary Crisis and Transition Framework, aid may be granted until 31 December 2024 for the first eligible period and until 31 March 2024 for the second eligible period provided the eligible periods as defined in point 72(e) and the requirements in point 74 of the Temporary Crisis and Transition Framework are respected. The measure therefore complies with point 72(a) the Temporary Crisis and Transition Framework.

(b) The overall aid per beneficiary will not exceed 50 % of the eligible costs (see recital (31)) and the overall aid per undertaking will not exceed EUR 4 million at any given point in time (see recital (31)); all figures used must be gross, that is, before any deduction of tax or other charges (see recital (10)). The measure therefore complies with point 72(f) of the Temporary Crisis and Transition Framework.

(73) In the case of Category II beneficiaries:

(a) The aid will be granted as advance payments until 31 December 2023. The measure includes an ex-post mechanism on the basis of actual costs incurred to verify that the advance payments paid for costs incurred do not exceed the aid ceilings laid down in the Temporary Crisis and Transition Framework (see recital (48)). In line with point 74 of the Temporary Crisis and Transition Framework, the measure also includes a claw back mechanism recovering any aid payment exceeding those aid ceilings or in case the EBITDA condition described in recital (37) is not verified within the six months following the end of the eligible period (see recitals (49) and (50)).

(b) The aid will be granted to 'energy-intensive businesses' defined as a legal entity where the purchases of natural gas and electricity amount to at least 3.0 % of the production value or turnover, based on data from the financial accounting reports for the calendar year 2021. In addition, the aid will only be granted to undertakings active in sectors and subsectors listed in Annex I to the Temporary Crisis and Transition Framework. The measure allows increased aid intensities and amounts for energy-intensive businesses active in those sectors and subsectors (recital (32)).

(c) The overall aid per beneficiary will not exceed 80 % of the eligible costs and the overall aid per undertaking will not exceed EUR 40 million at any given point in time (see recital (31) and (34)). In addition, the beneficiaries' EBITDA excluding the aid must either have decreased by at least 40 % between the reference period and the eligible period or be negative in the eligible period (see recital (37)). Therefore, the measure complies with point 73(c) of the Temporary Crisis and Transition Framework.

(d) The beneficiaries' EBITDA in the eligible period, including the overall aid, may not exceed 70 % of their EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0 (see recital (37)). The measure therefore complies with point 73(d) of the Temporary Crisis and Transition Framework.

(74) The Polish authorities confirm that, in accordance with point 95 of the Temporary Crisis and Transition Framework, aid granted under the Temporary Crisis Frameworks and the Temporary Crisis and Transition Framework cannot exceed the aid ceilings provided by the Temporary Crisis and Transition Framework for the same eligible period (see recital (57)).

(75) The Polish authorities confirm that, pursuant to point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (see recital (7)).

(76) The Polish authorities confirm that, pursuant to point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (see recital (20)).

(77) The Polish authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis and Transition Framework will be respected (see recital (58)). The Polish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis and Transition Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations and/or applicable Communications are respected (see section 2.9).

(78) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3), point (b), TFEU, since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. Conclusion

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (b), TFEU.

[The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.]

Yours faithfully,

For the Commission

Didier REYNDERS
Member of the Commission

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION