EUROPEAN COMMISSION

Brussels, 08.02.2018
C(2018)724 final

Subject: State Aid SA.46891 (2017/N) –Poland
Restructuring of the Polish mining companies

Sir,

1. PROCEDURE

(1) By Decision of 18 November 2016 (the "initial Decision"), the Commission approved State aid to SRK[1] 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[2] (the "Council Decision").

(2) On 6 October 2017, the Polish authorities notified amendments to the closure plan in accordance with Article 7(3) of the Council Decision.

(3) In response to the Commission's requests for information Poland provided additional information on 20 November 2017, 22 November 2017, 29 November 2017, 12 December 2017 and 18 January 2018.

(4) By letter dated 12 December 2017, Poland agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of

[1] Commission Decision C(2016) 7510 final in case SA.41161
[2] OJ L 336, 21.12.2010, p. 24–29

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Regulation 1/1958[3] and to have the present decision adopted and notified in English.

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

2.1. The initial Decision

(5) 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[4] 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[5]

(6) The mining units have been or will be transferred to Spółka Restrukturyzacji Kopalń S.A. ("SRK"), which carries out mine closures and manages the assets of mines that have been closed.

(7) The closure plan approved by the initial Decision formally covers the period 2015 – 2018; however, it also contains relevant information about aid to cover exceptional costs granted by the Polish authorities during the periods 2011 – 2015 and 2015 – 2018. This means that the aid to cover exceptional costs granted by the Polish authorities during the period 2011 – 2015 and 2015 – 2018 is considered to be an integral part of the approved closure plan ("Closure Plan").

(8) The initial Decision approved aid under Articles 3 and 4 of the Council Decision totalling PLN 7 957 847 000 to cover both the production losses and the exceptional costs, under the Closure Plan for the period 2015 – 2018. The total amount of aid for production losses was estimated to amount to PLN 371.2 million during the period 2015 – 2017 and the total amount of aid for exceptional costs to be granted in the period 2015 – 2018 was PLN 7 586 million.

2.2. The amendments to the Closure Plan

(9) Poland has notified an amended Closure Plan which foresees the following changes:

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

[4] The aid will be granted to cover exceptional costs related to the closure of Centrum; Rozbark V; Makoszowy; Brzeszcze-Wschód; Mysłowice; Boże Dary; Kazimierz-Juliusz; Anna; Śląsk; Jas-Mos; Krupiński; Rydułtowy I; Sośnica and Pokój I.

[5] 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.

- modification of the deadlines to transfer to SRK three mining units indicated in the initial Decision: Ruch Rydultowy I, Ruch Slask and KWK Sosnica (see below Section 2.2.1.);

- transfer to SRK and liquidation of three new mining units: Wieczorek I, Wieczorek II and Piekary I (see below Section 2.2.2.);

- addition of costs related to the closure of mining units: Rymer, Polska-Wirek, Ruch Wirek, Zabrze, Czeczott and Wawel (see below Section 2.2.3.);

- addition of an exemption from the obligation to obtain concessions for the extraction of methane;

- prolongation of the duration of the measure until 2023; and

- update of the budget of the measure.

(10) 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. Modification of the deadlines to transfer mining units to SRK

(11) The Polish authorities explained that the following mining units will be transferred to SRK in accordance with the updated schedule indicated below in Table 1.

Table 1: List of coal mining units which are to be transferred to SRK

No.	**Transferring company**	**Coal production unit**	Deadline for the transfer to SRK set out in the initial Decision	**Updated deadline for the transfer to SRK**
1.	PGG	Ruch Śląsk (KWK Wujek)	Q2 2017	Q1 2018
2.	PGG	Ruch Rydułtowy I (KWK ROW)	Q3 2017	Q4 2018
3.	PGG	KWK Sośnica	Q4 2017	Q4 2018

Source: Polish authorities

(12) The Polish authorities confirmed that the remaining mining units, which were listed in the initial Decision, were transferred to SRK in compliance with the schedule outlined in the initial Decision and that they ceased coal production on the date of the transfer to SRK.

(13) The Polish authorities committed that with regard to the mining units listed in Table 1 coal production will cease on the date of the transfer to SRK.

2.2.2. *Transfer to SRK and liquidation of new mining units*

(14) The Polish authorities informed the Commission that Wieczorek I, a mining unit owned by PGG, was transferred to SRK on 31 March 2017 and that it ceased coal production on that date.

(15) The Polish authorities also informed the Commission that Wieczorek II, a mining unit owned by PGG, will be transferred to SRK in Q1 2018; and Piekary I, a mining unit owned by Weglokoks Kraj, will be transferred to SRK in Q4 2018. The Polish authorities committed that with regard to these mining units coal production will cease on the date of the transfer to SRK.

2.2.3. *Addition of costs related to the closure of mining units*

(16) The Polish authorities informed the Commission that costs having arisen from the closure of the following mining units: Rymer, Polska-Wirek, Ruch Wirek, Zabrze, Czeczott and Wawel will be covered under the present measure. Poland confirmed that the mining units were irrevocably closed and ceased production, as indicated below in Table 2.

Table 2: List of coal mining units and the closure dates

No	Mining unit	Date of closure
1.	Rymer	October 1999
2.	Polska - Wirek	March 2000
3.	Ruch Wirek	August 2009
4.	Zabrze	September 1998
5.	Czeczott	July 2005
6.	Wawel	June 2000

Source: Polish authorities

(17) Poland clarified that the aid will be granted only to cover exceptional costs stemming from the closure of the mining units listed in Table 2 and that the cost items correspond to the cost categories listed in the Annex to the Council Decision. Poland intends to cover costs related to, in particular, compensatory benefits for workers, mining damage, additional underground safety work resulting from the closure of coal production units and costs of surface re-cultivation.

(18) The Polish authorities explained that the above-mentioned costs are incurred in a long-term perspective since, for example, compensatory benefits for workers are paid out until they expire and mining damages require establishing the scope of damages and a remedy procedure. Poland also pointed out that, for example, mining damages often materialize also throughout many years after the cease of production. Furthermore, since the assets of closed mining units are usually difficult to dispose the costs are also spread over a long period.

(19) The Polish authorities informed the Commission that the amount of costs related to compensatory benefits was estimated on the basis of amounts established in court rulings or settlements awarding pensions to entitled workers. As regard mining damages, the costs were established on the basis of settlements, court rulings and existing claims for damages. The costs of additional underground safety work resulting from the closure of coal production units were estimated on the basis of expenditures in the previous years. It was also assumed that the assets will be disposed slowly. Finally, the Polish authorities explained that the costs of re-cultivation were estimated on the basis of actual costs of similar works.

2.2.4. Update of the budget of the measure

(20) Following the amendments, the total updated budget of the aid measures in years 2015 – 2023 amounts to PLN 12 991 968.8 thousand. This amount includes both aid granted under Article 3 (closure aid) and under Article 4 (aid to cover exceptional costs) of the Council Decision.

(21) As regards the granting of closure aid the Polish authorities provided, pursuant to Article 3(1)(c) of the Council Decision, the verified amounts on the basis of the actual costs and revenues of the mining units subject to the closure (see Table 2). The verified amounts are lower than the estimated amounts approved in the initial Decision. The Polish authorities confirmed that the closure aid was only granted until the end of 2016 and that the KWK Makoszowy closed on 31 December 2016. Poland reiterated that no other changes in this regard are foreseen.

Table 2: Amount of State aid awarded under Article 3 of the Council Decision (closure aid) (PLN thousand):

Granted aid to cover current production losses of an undertaking (PLN thousand)				
Description	**1st production year**	**2nd production year**	**3rd production year**	**Total**
	10.2014-09.2015	**10.2015-09.2016**	**10.2016-09.2017**	
KWK Kazimierz Juliusz	120 183.60	0.00	0.00	120 183.60
KWK Makoszowy	39 525.50	156 422.60	4 195.00	200 143.10
Total	**159 709.10**	**156 422.60**	**4 195.00**	**320 326.70**

Source: Polish authorities

(22) As regards, the granting of aid to cover exceptional costs, the Polish authorities explained that due to the exceptional costs being granted until 2023 the aid to cover them had to be increased. The budget of the Closure Plan in this regard has been amended. The total amount of aid for exceptional costs to be granted in the period 2015 - 2023 is PLN 12 671 642.1 thousand (see table 3).

Table 3: Amount of State aid awarded under Article 4 of the Council Decision – aid to cover exceptional costs in 2015-2023 (PLN thousand)

Year	Amount of aid to cover exceptional costs
2015	492 247.9
2016	1 021 651.5
2017	1 978 243.1
2018	2 258 507.0
2019	2 119 562.6
2020	1 698 464.2
2021	1 302 718.0
2022	1 024 606.8
2023	775 641.3
Total	12 671 642.1

Source: Polish authorities

(23) The above amounts of aid for exceptional costs include aid granted in connection with the liquidation of the mines closed before 1 January 2007 and aid granted in connection with liquidation of the mines which closed after 1 January 2007 and before 1 January 2019, as indicated in Table 4 and Table 5.

Table 4: Amount of State aid awarded under Article 4 of the Council Decision for mines closed before 1 January 2007 (PLN thousand)

	PFRON (National Fund for Rehabilitation of Disabled Persons)	*NFOŚiGW (National Fund for Environmental Protection and Water Management)*		*Employee claims*	*Repair of mining damage*	*Liquidation and post liquidation activities*	*Total*
		Exemptions from charges	*Tasks related to environmental protection*				
2016	*1 158,33*	*2 311,8*	*0,0*	*168 522,53*	*10 171,47*	*221 100,36*	*403 264,49*
2017	*1 227,9*	*2 405,8*	*46 525,2*	*190 166,50*	*8 100,80*	*244 301,58*	*492 727,78*
2018	*1 227,9*	*8 836,5*	*50 371,6*	*192 309,46*	*10 910,63*	*261 789,03*	*525 445,12*
2019	*1 394,93*	*8 836,5*	*78 281,8*	*194 421,69*	*30 476,29*	*271 439,42*	*584 850,64*
2020	*1 469,62*	*8 726,31*	*20 061,8*	*196 480,25*	*6 640,95*	*243 612,22*	*476 991,15*

2021	*1 481,7*	*8 359,01*	*20 795,77*	*198 566,21*	*5 400,95*	*237 973,21*	*472 576,85*
2022	*1 495,0*	*8 101,9*	*0,00*	*200 652,52*	*5 300,95*	*237 682,22*	*453 232,60*
2023	*1 508,42*	*8 101,9*	*0,00*	*202 739,36*	*5 288,95*	*224 834,22*	*442 472,85*
Total:	*10 963,80*	*55 679,74*	*216 036,17*	*1 543 858,52*	*82 290,99*	*1 942 732,26*	*3 851 561,47*

Source: Polish authorities

Table 5: Amount of State aid awarded under Article 4 of the Council Decision for mines closed after 1 January 2007 and before 1 January 2019 (PLN thousand)

	Employee claims	*Repair of mining damage*	*Liquidation and post liquidation activities*	*Tasks related to environmental protection, exemptions from charges and taxes*	*Total*
2015	*110 217,3*	*1 036,9*	*142 124,9*	*238 868.8*	*492 247,9*
2016	*301 300,8*	*3 658,6*	*284 483,1*	*28 944.4*	*618 386,8*
2017	*528 222,9*	*75 155,7*	*776 683,1*	*105 423.69*	*1 485 515,4*
2018	*443 688,8*	*110 436,4*	*823 098,2*	*355 838.5*	*1 733 061,9*
2019	*416 911,5*	*172 739,8*	*893 371,8*	*51 688.9*	*1 534 711,9*
2020	*308 862,0*	*73 906,1*	*741 144,0*	*97 560.9*	*1 221 473,0*
2021	*161 240,4*	*58 823,6*	*551 779,6*	*58 297.5*	*830 141,1*
2022	*100 317,8*	*45 455,0*	*344 319,7*	*71 281.7*	*571 374,2*
2023	*28 009,8*	*29 800,0*	*267 416,5*	*7 942.1*	*333 168,4*
Total:	*2 408 771,3*	*571 012,1*	*4 824 420,9*	*1 025 876.4*	*8 820 080,6*

Source: Polish authorities

(24) The Polish authorities explained that both for the mining units that were put into liquidation before 1 January 2007 and those liquidated after 1 January 2007, the amount of aid for exceptional costs in the budget of the aid program for 2016 has been updated, as based on its actual execution. The difference between the execution and the amounts set in the measure budget included in the initial Decision are due, in particular, to lower than expected costs of performing damage remediation work; the need for clarifying the initial estimates made at the stage of transferring units to SRK; and lower charges due to National Fund for Environmental Protection and Water Management ("NFOŚiGW") in 2016 resulting from the reduced salinity and improved water quality.

2.2.5. *Form of aid and funding*

(25) Most of the forms of aid under the notified measure remain unchanged and their detailed description was presented in the initial Decision. The forms of aid will include:

- subsidies financing environmental protection tasks, employee claims, mining damage compensation, liquidation and post liquidation activities;
- tax benefits or tax exemptions such as a tax exemption from civil law transactions and lowering the CIT tax base;
- exemption from charges and penalties due to NFOŚiGW;
- exemption from payments to the State Fund for the Rehabilitation of the Disabled (PFRON);
- exemption from profit contributions.

(26) In addition to the above-listed forms of aid the Polish authorities intend to grant SRK exemption from the obligation to obtain license for the extraction of methane. The Polish authorities explained that the possibility to grant such an exemption was introduced in 2016 by the amendment to Act of 7 September 2007 on the functioning of the coal mining industry[6].

(27) The Polish authorities explained that demethanization installations are a technical element of the production units taken over by the SRK for liquidation, of which methane has been extracted as an associated mining product within the coal mining licenses held by mining companies. The Polish authorities argue that continuing the demethanization by SRK is essential for the safety of decommissioning and for the protection of the environment against the negative effects of methane emissions such as a greenhouse gas, enabling environmental objectives to be achieved by using the installations taken over with the disposal units.

(28) Poland noted that as the geological and mining law the methane extraction requires a license, SRK would need to obtain a new license if the methane was extracted without coal. Costs related to a new license are estimated at approximately PLN 0.66 million per one mining unit. The Polish consider that the exemption from the obligation to obtain a license is justified as it would allow avoiding unnecessary cash flows between SRK and the Polish state. In the absence of such an exemption, the costs related to obtaining such a licence could be qualified as costs related to the closure of mining units and as such would have to be financed by State subsidies. Therefore, the Polish authorities argue that the exemption would reduce the amount of aid to be granted to SRK to cover costs of liquidation activities.

(29) Furthermore, Poland confirmed that methane extraction by SRK involves only the continuation of these activities by means of existing installations that are installed

[6] Consolidated text, Journal of Laws of 2016, item 704

in the following mining units: Jas-Mos, Krupiński; Ruch Śląsk, Sośnica and Rydułtowy I.

(30) Poland confirmed that proceeds from sales of methane will be used by SRK only to cover costs related to liquidation of mining units and that they will reduce the amount of aid granted to SRK as they are taken into account for the purpose of calculating the amount of aid.

(31) Aid to cover the exceptional costs will be granted in the form of subsidies from the State budget. In addition, the Polish authorities intend to grant subsidies from the resources of NFOŚiGW to finance activities related to environmental protection.

(32) The Polish authorities explained that exceptional costs arising from or having arisen from the closure of coal production units will be financed primarily from a State subsidy.

(33) Poland stated that due to budgetary constraints it decided to shift a part of the aid foreseen for the next years and grant it to SRK by way of an additional on-off recapitalization in 2017. Poland informed the Commission that on 11 December 2017 SRK was recapitalized by increase SKR's share capital through the issue of 1.000.000 of shares. All the shares were subscribed for by the Polish State Treasury. The recapitalization amounted to PLN 300 million and the sum will then be gradually spent over the duration of the measure in order to carry out the tasks related to the closure of mines. The Polish authorities informed the Commission that the Ministry of Energy will verify that the amount of recapitalization is spent in line with the Council Decision. The aid granted will be verified on the basis of a contract between the Ministry of Energy and SRK, which will provide for appropriate control mechanisms, similar to those used in the case of subsidies from the budget.

2.2.6. Prolongation of the duration of the measure until 2023;

(34) The Polish authorities informed the Commission that it is necessary to extend the duration of the payments of aid for exceptional costs until 31 December 2023. The Polish authorities explained the fact that the previous aid measures were adopted in the given time frames was due to the rules related to budget planning and to budgetary constraints at the moment.

(35) Furthermore, as a result of an amendment to Act of 7 September 2007 on the functioning of the coal mining industry that prolonged the period for transferring mining units to SRK until 31 December 2018, the period to pay out social welfare benefits which can be granted during 4 years since the date of transfer to SRK has been prolonged accordingly until 31 December 2022. The Polish authorities also pointed out that costs related to liquidation tasks are specific as they must be continued over a long time horizon.

(36) The Polish authorities noted that the extension of the duration of the measure is necessary in order to ensure a stable legal basis for granting aid related to the closure activities.

(37) In addition, the Polish authorities have confirmed that, except for the notified amendments mentioned above, all other provisions of the measure remain unchanged.

3. ASSESSMENT OF THE MEASURE/AID, INCLUDING:

3.1. Existence of aid

(38) The Commission already concluded in its initial Decision that the measures foreseen in the notified Closure Plan involve State aid within the meaning of Article 107(1) TFEU. This is also the case as regards the amendments of the Closure Plan which is subject to this decision.

3.2. Legality of aid

(39) 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.

(40) In addition, the Polish authorities have confirmed that the aid resulting from the amendments to the Closure Plan will not be granted until an authorising decision by the Commission.

3.3. Compatibility of aid

(41) In the initial Decision, the Commission came to the conclusion that the aid measures foreseen in the Closure Plan were compatible with the internal market on the basis of the Council Decision. The Commission notes that the amendments to the Closure Plan, in particular the increased budget of the aid to cover exceptional costs due to the modification of the deadlines to transfer to SRK three mining units indicated in the initial Decision; transfer to SRK and liquidation of three new mining units; and the addition of costs related to the closure of mining units do not alter the primary objective of the measure which is 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.

(42) With regard to the duration of the payments of aid to cover exceptional costs extended until 31 December 2023 and, consequently, the modification of the total budget of this aid measure, the Commission notes that it is limited to cover costs incurred by the coal mining units that already closed and definitely ceased production or that will close in the near future, as indicated in Table 1 and recital (15) of the present decision. The Commission notes that the prolongation of the payments of the aid to cover exceptional costs is justified by the long-term nature of post-closure activities and the winding down of new mining units. In light of the above, the Commission finds that the prolongation of the aid to cover exceptional costs does not change the assessment of the compatibility of the measure with Article 4 of the Council Decision concluded by the Commission in the initial Decision.

(43) In particular, the Commission notes that the Polish authorities have confirmed that in accordance with Article 4(1) of the Council Decision the aid will 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. The Commission concluded in the initial Decision that the exceptional costs notified by Poland fell within the eligible categories defined in the Annex to the Council Decision, namely paragraphs (f), (c), (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).

(44) The Commission also notes that the Council Decision dos not prescribe how the costs related to the closure of mining units should be financed. Therefore, the Commission considers that the fact that the measure will partially be financed from a one-off recapitalization of SRK by the State remains without any effect on the outcome of the assessment under the current decision. In particular, the Commission notes that the recapitalization involves shifting of aid amounts and it will not lead to a change in the total budget of the Closure Plan.

(45) As regards the addition of an exemption from the obligation to obtain concessions for the extraction of methane, 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 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.

(46) The Commission considers 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, in recitals (14) and (15) and in Table 2. These costs are not related to their current production.

(47) With regard to the amounts of closure aid, as presented in Table 2, the Commission notes that the amounts were corrected and decreased compared to the amounts estimated in the initial decision on the basis of the actual costs and revenues of the two mining units subject to the closure. Therefore, the Commission considers that the Polish authorities complied with the requirement stipulated in Article 3(1)(c) of the Council Decision. Furthermore, the Commission takes note of the fact that KWK Makoszowy closed on 31 December 2016. The reasoning as regards the compatibility of this aid with Article 3 of the Council Decision 2010/278/UE as set out in recitals (118) – (138) of the initial Decision hence remains valid.

(48) 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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For the Commission

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