EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.104932 (2022/N) – Poland
TCF: Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices incurred in 2022

Excellency,

1. PROCEDURE

(1) By electronic notification of 16 December 2022, further to pre-notification contacts, including request for information dated 25 November 2022, to which the Republic of Poland ("Poland") submitted response on 7 December 2022, Poland notified aid for additional costs due to exceptionally severe increases in natural gas and electricity prices in Poland incurred in 2022 (the "measure") under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis Framework") ([1]).

([1]) Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022, p. 1). This Temporary Crisis Framework replaces the 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) ('previous Temporary Crisis Framework). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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

(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 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, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (the "current crisis") so far affects the real economy.

(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 by the current crisis 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.

(6) According to the Polish authorities, on the Polish Power Exchange's Day-Ahead Market, the average price of natural gas in September 2022 was 900 PLN/MWh (approx. 192.15 EUR/MWh ([3])), which is 186 % higher than a year earlier. Electricity price in the same month was 855 PLN/MWh (approx. 182.54 EUR/MWh), which is 83 % more than a year earlier ([4]). This means a significant increase in production costs for industrial companies, which they are only partially able to offset by higher product prices.

(7) Poland argues that the aim of the measure is to mitigate the impact of the rapidly rising electricity and natural gas prices on energy-intensive and trade intensive undertakings, help stabilise their operations and give them time to adjust to the new reality of high energy prices. Consequently, the scheme 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 partial reimbursement of 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.

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

([3]) In the decision, PLN is converted into EUR at the average exchange rate of the National Bank of Poland of 15 December 2022 of PLN 1 = EUR 0.2135, available at: https://www.nbp.pl/home.aspx?navid=archa&c=/ascx/tabarch.ascx&n=a242z221215.

([4]) Data showing increase of electricity and gas prices can be extracted from the monthly reports of Towarowa Giełda Energii S.A. (Polish commodity exchange operator) available at: https://tge.pl/statistic-data.

(8) 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.

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

2.1. The nature and form of aid

(10) The measure provides aid in the form of direct grants for additional costs incurred due to exceptionally severe increases in natural gas and electricity prices under section 2.4 of the Temporary Crisis Framework.

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

2.2. Legal basis

(12) The legal basis for the measure (the 'national legal basis') is comprised of:

(a) the ustawa z dnia 29 września 2022 r. o zasadach realizacji programów wsparcia przedsiębiorców w związku z sytuacją na rynku energii w latach 2022–2024 (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), which has been submitted to the Commission;

(b) the resolution of the Council of Ministers on the adoption of the Government Programme for 2022 entitled 'Aid to energy-intensive industries in relation to sudden increases in natural gas and electricity prices', the draft of which has been submitted to the Commission.

(13) Poland confirms that the aid will be granted only once the authorisation of the Commission is obtained.

2.3. Administration of the measure

(14) 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

(15) The estimated budget of the measure is PLN 5 079 416 000 (approx. EUR 1 084 455 316). If the eligible aid applications exceed the budget, the aid will be paid in an amount reduced in proportion to the share of the amount of the scheme's budget to the total value of eligible aid applications.

(16) 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. ([5]) The Polish authorities set up a dedicated fund (the Fund for Indirect Emission Costs Compensation) to which 25% of proceeds from the auctioning of EUAs are transferred and earmarked to finance the measure.

(17) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure ([6]). Poland intends to grant aid under the measure until no later than 31 January 2023, but will in any case grant it no later than 31 December 2023.

2.5. Beneficiaries

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

(a) Category I: Beneficiaries qualifying as 'energy intensive businesses' that belong to sectors or sub-sectors listed in Annex I of the Temporary Crisis Framework. 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. Alternatively, the beneficiaries may qualify as 'energy intensive businesses', if their electricity and gas purchase costs amount to at least 6 % of the production value in the period between 1 January and 30 June 2022.

(b) Category II: Beneficiaries that in addition to meeting the definition of Category I also show that they have either a reduction in EBITDA ([8]) (excluding aid) of at least 40 % in the period between 1 January and 31 December 2022 compared to the period between 1 January and 31 December 2021, or a negative EBITDA (excluding aid) in the period between 1 January and 31 December 2022. Alternatively, the beneficiary can show the reduction in EBITDA (excluding aid) of at least 40 % in the period between 1 July and 31 December 2022 compared to the period between 1 July and 31 December 2021, or a negative EBITDA (excluding aid) in the period between 1 July and 31 December 2022.

([5]) 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.

([6]) According to Article 9 of 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, no aid shall be granted until the date of the European Commission's decision on the compatibility of the aid provided for in the respective resolution of the Council of Ministers.

([7]) 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).

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

(19) However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.

(20) Poland explains that the Category II beneficiaries have the alternative to show the reduction in EBITDA or negative EBITDA also in the period between 1 July and 31 December 2022, because in this period the price increase has accelerated. Otherwise, the undertakings that had good financial results in the first semester of 2022 could be excluded from the support.

(21) Poland estimates that there will be between 501 and 1 000 beneficiaries under the measure.

(22) Poland confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, 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 EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

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

(24) The measure is open to sectors and subsectors outlined in recital (18). It applies to the whole territory of Poland.

2.7. Basic elements of the measure

(25) 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 rapidly rising electricity and natural gas prices on energy-intensive and trade intensive undertakings, help stabilise their operations and give them time to adjust to the new reality of high energy prices. Thus, the scheme aims to preserve the continued operation of the beneficiaries. At the same time, the measure preserves the incentives to save energy and gas offering only partial reimbursement of increased cost.

(26) As a rule, the maximum eligible period that is covered by the measure is the period from 1 February 2022 to 31 December 2022. However, in the case of Category II beneficiaries showing the reduction in EBITDA or negative EBITDA in the period between 1 July 2022 and 31 December 2022 (as explained in recital (18)), the maximum eligible period is the period from 1 July to 31 December 2022.

([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).

(27) The overall aid per undertaking and the aid intensity per beneficiary depend on the categorization referred to in recital (18) as shown in Table 1.

Table 1: Overall aid and the aid intensity

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

Source: Polish authorities.

(28) Poland submits that the aid for all categories of beneficiaries complies with the maximum aid intensity and maximum aid amount under the Temporary Crisis Framework. In the case of Category II beneficiaries the maximum aid amount is well below the limit of EUR 150 million laid down in point 67(c) of the Temporary Crisis Framework.

(29) Category II beneficiaries' EBITDA in the respective eligible period, including the overall aid, may not exceed 70 % of its EBITDA in the reference period. Moreover, in cases of Category II beneficiaries having negative EBITDA in the reference period, the aid may not lead to an increase of EBITDA in the respective eligible period (see recital (26)) above 0.

(30) The eligible costs are calculated based on the increase in natural gas and electricity costs linked to the current crisis. The eligible cost is 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 legal entity being part of the same undertaking as the beneficiary is understood as an external supplier) consumed during the eligible period (any period within the periods referred to in recital (26)) and the increase in the price that the beneficiary pays per unit consumed (measured in PLN/MWh). That price increase shall be calculated as the difference between the average unit price (no costs paid by the buyer other than the cost of electricity and/or gas are taken into account) 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.

(31) Poland submits that this method of calculating the eligible costs, that is setting the consumption of electricity and natural gas used to calculate eligible costs by reference to actual consumption and not to historical consumption, best serves the aim of the measure described in recital (7) and excludes those undertakings that significantly reduced their production in the current year.

(32) Moreover, in connection with the adoption of the Act of 27 October 2022 on Emergency Measures to Restrict Electricity Prices and Support Certain Consumers in 2023, according to which SMEs are entitled to purchase electricity at a fixed maximum price (with retroactive effect from 24 February 2022), SMEs can calculate their eligible costs only based on the increase in natural gas costs.

(33) The eligible costs for each month within the eligible period in respect of which the beneficiary applies for aid (comprising a given month, or a period of several consecutive months within the maximum eligible period referred to in

recital (26)) are calculated according to the formula $\sum_t[(p_t^{ee} - 1{,}5 * p_{ref}^{ee}) * q_t^{ee} + (p_t^{g} - 1{,}5 * p_{ref}^{g}) * q_t^{g}]$ ([10]).

(34) As required under the Temporary Crisis Framework, from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs do not exceed 70% of the beneficiary’s consumption for the same period in 2021.

(35) Potential beneficiaries will be able to apply for aid within 14 days of the opening date for applications announced by the granting authority. The applications will be based on self-declarations and then demonstrated by the beneficiary as part of a settlement of accounts (“settlement”), that is the process by which the granting authority makes a final determination of whether it has paid an excess amount of aid to a beneficiary of the scheme and the amounts which it may be owed by that beneficiary (see recital (36)).

(36) On the basis of applications, the granting authority will authorise the pay-out of the aid within 14 days of the closing date for applications. The aid in respect of December 2022 claim period may be granted as an advance payment, based on the electricity or gas consumption estimates. *Ex post* verification will be conducted in the first half of 2023 as part of the settlement (see recitals (37) to (39)).

(37) As part of the settlement, the applicant shall submit to the granting authority by 31 March 2023:

(a) an application for settlement containing data on the actual costs incurred for the purchase of electricity or natural gas and the demonstrated EBITDA in the eligible period in the case of Category II beneficiaries;

(b) a report of the beneficiary presenting the assumptions, evidence and calculations regarding the costs incurred for the purchase of electricity or natural gas and the demonstrated EBIDTA during the eligible period in the case of Category II beneficiaries;

(c) a report of an independent auditor on the performance of the attestation service ([11]) on the assessment of the report of the beneficiary.

([10]) In this formula, t is a given month, or a period of several months, between 1 February 2022 (at the earliest) and 31 December 2022 (at the latest); p_t^{ee} and p_t^{g} is the average net price per unit of, respectively, electricity or natural gas, consumed by the beneficiary in the eligible 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 in the eligible period.

([11]) The attestation service is defined in Article 2(5) of the ustawa dnia z 11 maja 2017 r. o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym (the Act of 11 May 2017 on statutory auditors, audit firms and public supervision). It is to be prepared in accordance with the regulations of the National Standard on Attestation Services Other than Audit and Review 3000 (Z) in the wording of the International Standard on Assurance Engagements (revised) – ‘Assurance Engagements Other than Audits or Reviews of Historical Financial Information’, adopted by Resolution No. 3436/52e/2019 of the National Council of Statutory Auditors of 8 April 2019, as amended.

(38) Failure to submit a settlement of the aid by 31 March 2023 results in the aid granted being deemed unjustified and repayable with interest from the date of transfer of the aid to the beneficiary's account. Similarly, if the granting authority finds that the aid has been granted unduly or in an amount higher than due, the beneficiary will be obliged to repay the unduly received grant or the grant in an amount higher than due, together with interest from the date of transfer of the aid to the beneficiary's account calculated using the interest rate for the recovery of unlawful aid. ([12])

(39) In the event that the granting authority suspects that the beneficiary has submitted false information in the settlement, in particular in the event that the report on the performance of the attestation service does not confirm with reasonable certainty that the beneficiary's report has been prepared in accordance with relevant rules, and the false information may result in the aid being granted unduly or in an amount higher than due, the granting authority initiates an inspection. ([13])

2.8. Cumulation

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

(41) Poland confirms that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(42) Poland confirms that aid granted under the measure may be cumulated with aid approved by the Commission under the Temporary Framework for State aid

([12]) Interest are calculated in accordance with Chapter IV of the 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.

([13]) Inspections will be carried out in accordance with the ustawa z dnia 6 marca 2018 r. – Prawo przedsiębiorców (the Act of 6 March 2018 – Entrepreneurs Law).

([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), Commission Regulation (EU) No 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

([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), Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1) and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

measures to support the economy in the current COVID-19 outbreak ([16]) (COVID-19 Temporary Framework) ([17]) provided the respective cumulation rules of the COVID-19 Temporary Framework and the Temporary Crisis Framework are respected.

(43) 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 Framework provided the provisions in those specific sections are respected.

(44) Poland confirms that aid under the measure may be cumulated with aid under section 2.1 of the Temporary Crisis Framework, provided that the maximum applicable ceilings per undertaking as described in point 66 and 67 of the Temporary Crisis Framework are not exceeded. Poland clarifies that aid under the measure is not calculated on the basis of historical consumption (q(ref)), and therefore the prohibition on non-cumulation of aid with aid granted under section 2.7 of the Temporary Crisis Framework does not apply.

(45) Poland confirms that aid granted under the previous Temporary Crisis Framework and the Temporary Crisis Framework cannot exceed the aid ceilings provided by the Temporary Crisis Framework in section 2.4 for the same eligible period.

(46) Poland explains that compliance with cumulation rules will be ensured by obtaining statements from beneficiaries regarding any aid received for the same eligible costs.

2.9. Monitoring and reporting

(47) Poland confirms that it will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure, and above EUR 10 000 in the primary agriculture and in the fisheries sectors, on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ([18])).

([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]) SA.56979, SA.56922, SA.57282, SA.56996, SA.57015, SA.57191, SA.57726, SA.62231, SA.58185, SA.58238, SA.59763, SA.60376, SA.61173, SA.61825, SA.62472, SA.101979, SA.62885, SA.62603, SA.101234, SA.56876, SA.58848, SA.58849, SA.59872, SA.57054, SA.58102, SA.62752, SA.57519 and SA.57172.

([18]) Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

3. ASSESSMENT

3.1. Lawfulness of the measure

(48) By notifying the measure before putting it into effect, Poland has respected its obligations under Article 108(3) TFEU (recitals (12) and (17)).

3.2. Existence of State aid

(49) 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.

(50) The measure is imputable to the State, since it is administered by the Ministry of Development and Technology (see recital (14)) and it is based on the national legal basis (see recital (12)). It is financed through State resources, since it is financed by public funds (see recital (16)).

(51) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (10)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(52) 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 some sectors and subsectors, excluding the financial sector (recitals (5), (18) and (19)).

(53) 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.

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

3.3. Compatibility

(55) 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.

(56) Pursuant to Article 107(3)(b) TFEU, the Commission may declare compatible with the internal market aid to "*remedy a serious disturbance in the economy of a Member State*".

(57) By adopting the Temporary Crisis Framework, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have 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.

(58) 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)(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 serious disturbance of the economy.

(59) 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.

(60) 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 for energy-intensive and trade intensive industrial 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. 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 Framework

(61) For both Category I and Category II beneficiaries:

(a) Aid under the measure will in no circumstances be granted later than 31 December 2023 (see recital (17)). The measure therefore complies with point 66(a) the Temporary Crisis Framework.

(b) The aid takes the form of direct grants (recital (10)). The measure therefore complies with point 66(b) of the Temporary Crisis Framework.

(c) Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (15)). As described in recitals (18) and (24) the sectoral scope of the measure is limited to sectors or sub-sectors listed in Annex I of the Temporary Crisis 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. The Commission considers that the measure is designed broadly and does not lead to an artificial limitation of potential beneficiaries. As regards the eligible costs for SMEs (see recital (32)), Poland explained that additional electricity costs should not be taken into account as such enterprises will instead benefit from regulated electricity prices. The Commission therefore concludes that this does not lead to an artificial limitation of potential beneficiaries. The measure therefore complies with point 66(d) of the Temporary Crisis Framework.

(d) The eligible costs are calculated in line with point 66(e) of the Temporary Crisis Framework over the eligible periods as indicated in recital (26), based on the increase in natural gas and electricity costs linked to the current crisis as specified in recitals (30) to (32). These eligible costs are calculated according to the formula which gives the same outcome as the formula set out in point 66(e) of the Temporary Crisis Framework. The formula used by Poland is more detailed so as to enable the calculation of the eligible costs both based on the increase in natural gas and electricity costs. In addition, as from 1 September 2022, 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 (see recital (34)). The measure therefore complies with point 66(e) of the Temporary Crisis Framework.

(e) The measure includes an *ex-post* mechanism on the basis of actual cost incurred to verify that the advance payments paid for costs incurred in December 2022 do not exceed the aid ceilings laid down in the Temporary Crisis Framework (see recital (37)). In line with point 68 of the Temporary Crisis Framework, the measure includes also a claw back mechanism recovering any aid payment that exceeds those ceilings no later than six months after the eligible period has ended (see recital (38)).

(f) Aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the maximum ceilings in point 66 and 67 of the Temporary Crisis Framework are not exceeded. Aid under the measure is not calculated on the basis of historical consumption (q(ref)), and therefore the prohibition on non-cumulation of aid with aid granted under section 2.7 of the Temporary Crisis Framework does not apply (see recital (44)). The measure complies with point 66(g) of the Temporary Crisis Framework.

(62) In the case of Category I beneficiaries, the nominal value of direct grants does not exceed the applicable aid intensity and aid ceilings laid down in point 66(f) of the Temporary Crisis Framework. The overall aid per beneficiary will not exceed 50% of the eligible costs and the overall aid per undertaking will not exceed EUR 4 million at any given point in time; all figures used are gross, that is, before any deduction of tax or other charges (recital (11)). The measure therefore complies with point 66(f) of the Temporary Crisis Framework.

(63) In the case of Category II beneficiaries:

(a) Aid under the measure will be granted to 'energy-intensive business' defined as a legal entity where the purchases of natural gas and electricity amount to at least 3% of the production value, based on data from the financial accounting reports for the calendar year 2021. If data for the first semester of 2022 is used, the beneficiary may qualify as 'energy-intensive business' if the purchases of natural gas and electricity) amount to at least 6% of the production value. The 'energy intensive businesses' must further be active in the sectors and subsectors covered by Annex I to the Temporary Crisis Framework (see recital (18)). Thus, the overall aid intensity may be increased to a maximum of 80% of the eligible costs and the overall aid amount will not exceed EUR 50 million per undertaking at any given point in time (see Table 1). All figures used are gross (see recital (62)). In addition, beneficiaries are only those that have either a reduction in EBITDA (excluding aid) of at least 40 % in the eligible period compared to the reference period [19], or a negative EBITDA (excluding aid) in the eligible period (see recital (18)(b)). The measure therefore complies with point 67(c) of the Temporary Crisis Framework.

(b) The 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 (29)). The measure therefore complies with point 67(d) of the Temporary Crisis Framework.

(64) As regards section 2.4, Poland confirms that aid granted under the previous Temporary Crisis Framework and the Temporary Crisis Framework cannot exceed the aid ceilings provided by the Temporary Crisis Framework for the same eligible period (see recital (45)).

(65) Poland confirms that, pursuant to point 46 of the Temporary Crisis 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 (recital (8)).

(66) Poland confirms that, pursuant to point 47 of the Temporary Crisis 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 (22)).

(67) Poland confirms that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (47)). Poland further confirms that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (see recitals (40) to (45)).

(68) 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)(b) TFEU and it meets all the relevant conditions of the Temporary Crisis Framework.

([19]) The reference period refers to 1 January 2021 to 31 December 2021.

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)(b) of the Treaty on the Functioning of the European Union.

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

Margrethe VESTAGER
Executive Vice-President