



EUROPEAN COMMISSION

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Subject: State aid – N 405/2008 – Regional aid scheme for investments in energy, telecommunications infrastructure, research and development infrastructure and spa therapeutics – Poland

Sir,

1. PROCEDURE

- (1) By electronic notification of 13 August 2008, registered at the Commission on the same day, the Polish authorities notified the above-mentioned regional aid scheme.
- (2) By letters of 14 October 2008 and 2 February 2009 the Commission requested clarifications and additional information on the measure. The Polish authorities requested extensions of deadlines to provide the requested information by letters of 13 November 2008, 24 February 2009, 16 March 2009 and 20 May 2009 which Commission accepted respectively on 18 November 2008, 25 February 2009, 18 March 2009 and 27 May 2009. The Polish authorities submitted additional information by letters of 1 December 2008 (registered at the Commission on the 2 December 2008) and of 1 June 2009 (registered at the Commission the same day).

2. DESCRIPTION OF THE AID MEASURE

2.1. Objective of the aid scheme

- (3) The notified regional aid scheme aims at introducing incentives to undertake investment projects in defined areas of activity with specific objectives. Aid can be granted for initial investment or job creation linked to an initial investment. The scheme consist of four sub-measures corresponding to the following areas:

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- (a) Production, transmission and distribution of energy and heating and production and transmission of gas. The aim of this sub-measure is to rationalize the use of natural resources, to increase environment protection, energy security, to increase energy efficiency, use of renewable sources of energy and diversification of energy sources. Under this sub-measure the aid will be granted for construction and development of infrastructure and machinery for the production, distribution or transmission of power or heating, as well as of combined heat and power (CHP), including from renewable sources, for the construction and development of infrastructure and machinery used in the production or transmission of gas and finally, for the purchase and modernisation of machinery for the production, distribution or transmission of power or heat.
 - (b) Telecommunication services. The sub-measure aims at an increased and better access to information sources and communications networks in cities and in the countryside. It will contribute to the creation of the information society and thus increase development potentials of regions. In this context, the sub-measure foresees aid for construction and development of telecommunication "core" networks and access networks and for construction and development of systems and centres for telecommunication networks management, including their equipments.
 - (c) Research and development. The sub-measures has as objectives to develop infrastructures and equipment for carrying out research activities; to ensure a research base in regions and orientate research to priority sectors for the regional development; to increase the level of research originated in the private sector; to enhance the level of commercialized research and to develop infrastructure for research corresponding to market needs; finally the sub-measure foresees to increase quality and innovative character of the research. Under the sub-measures the following activities will be aided: construction and development of infrastructures for research and development activities, including purchase of equipment, and purchase of equipment for research and development activities.
 - (d) Spa therapeutics. The measure aims at development of spa infrastructures, including equipment of spa therapeutics establishments; enhancement of the quality of proposed spa services, among which services offered in the frame of the national health system; and enlargement of the service offer. Considering the fact that spa institutions are mainly located in regions ('uzdrowiska') where industry and other services are poorly developed, increased spa infrastructure and the development of the sector will have positive impact on the employment levels in those regions and on their comprehensive development.
- (4) The objectives of all four sub-measures are based on the objectives set in Development Strategies of each of 16 regions of Poland as well as in Regional Operational Programmes for 2007-2013, which establish development programs for each region.

2.2. Legal basis

- (5) The legal basis of the scheme are:

Draft Decree of the Minister of Regional Development on aid for investments in the field of energy, telecommunication infrastructure, R&D infrastructure and spa therapeutics granted within the scope of Regional Operational Programs;

(e) Law of 6 December 2006 on the principles of regional policy¹;

(f) *Regional Operational Programs*².

2.3. Administration of the scheme/Authority granting the aid

- (6) The aid under the notified scheme will be granted on a discretionary basis, on the base of a decision of the authorities on the compliance of the proposed projects with the conditions laid down in the scheme and, in view of the co-financing of the scheme from EU structural assistance, with the administrative requirements relevant for that purpose. In this context, the criteria for the selection of projects for the financing under Structural Funds were adopted for each of 16 Regional Operational Programmes and are detailed in the text of each programme. The criteria consist of formal and substantial requirements which enable the selection of beneficiaries following a competitive procedure. In specific cases, where a public tender is to be published for the realisation of a project, the selection criteria will be included in the text of the tender.
- (7) Projects selected for aid under the notified scheme and concerning telecommunication infrastructure will have to fulfil additional criteria, which will also be published in the list of selection criteria of projects in the domain and which will ensure that:
- selection process of projects will be technologically neutral – no specific technology will be favoured in the selection process,
 - infrastructure aided in the scope of the notified scheme will be open and equal to all providers of internet services,

¹ O.J. of 2006 No. 227, item 1658 and O.J of 2007 No. 140 item 984.

² ROP Woj. Dolnośląskie: <http://www.rpo.dolnyslask.pl/>

ROP Woj. Kujawsko-Pomorskie: http://fundusze.kujawsko-pomorskie.pl/index.php?option=com_content&task=blogcategory&id=61&Itemid=146#dok%20prog

ROP Woj. Lubelskie: <http://www.rpo.lubelskie.pl/>

Lubuski ROP: <http://www.lrpo.lubuskie.pl/>

ROP Woj. Łódzkie: <http://www.lodzkie.pl/lodzkie/fundusze/programowanie/rop/index.html>

Małopolska ROP:

http://www.wrotamalopolski.pl/root_MRPO/Wazne+dokumenty/Dokumenty+programowe/

ROP Woj. Mazowieckie: <http://www.mazovia.pl/?a=news&id=2837>

ROP Woj. Opolskie: <http://www.umwo.opole.pl/serwis/index.php?id=3467>

ROP Woj. Podkarpackie: <http://www.si.podkarpackie.pl/Urząd/K0/>

ROP Woj. Podlaskie: <http://www.rpowp.wrotapodlasia.pl/?strona-glowna>

ROP Woj. Pomorskie: <http://www.dpr.woj-pomorskie.pl/?dzial=862>

ROP Woj. Śląskie: http://rpo.silesia-region.pl/?grupa=1&art=1130167451&kat=0_02&katrodzic=0

ROP Woj. Świętokrzyskie: <http://www.rozwoj-swietokrzyskie.pl/pliki.html>

ROP Warmia i Mazury: http://www.rpo.warmia.mazury.pl/index.php?page=dzial&dzial_id=79

Wielkopolska ROP:

http://www.wrpo.wielkopolskie.pl/index.php?option=com_content&view=article&id=13&Itemid=236

ROP Woj. Zachodniopomorskie: <http://www.um-zachodniopomorskie.pl/index.php?wiad=3651>

- wholesale open access to the aided infrastructure will be ensured and offered at national market prices.

2.4. Geographical and sectorial scope of the scheme

- (8) The scheme is applicable in the whole territory of Poland. All sixteen regions of Poland entirely qualify as assisted regions under the derogation in Article 87(3)(a) of the EC Treaty, in conformity with the Polish Regional State Aid Map³.
- (9) The notified scheme is sectorial, because it applies only to sectors with the following NACE codes:
- *D3501 – Electric power generation, transmission and distribution,*
 - *D3502 – Manufacture of gas, distribution of gaseous fuels through mains,*
 - *J61 – Telecommunication,*
 - *M72 – Scientific research and development,*
 - *Q86 – Human health activities.*

2.5. Beneficiaries

- (10) The beneficiaries of the scheme are all types of enterprises irrespective of their size (small, medium and large).

Production, transmission and distribution of energy and heating and production and transmission of gas.

In the frame of this sub-measure, beneficiaries of the aid can be companies operating in energy sector in production, transformation, storage, transmission, distribution of fuels or energy or their marketing.

- (g) Telecommunication services

The beneficiaries of the aid in the context of telecommunication infrastructure can be telecommunication companies – companies or other entities entitled to exercise economic activity on the basis of separate provisions and which exercise activity of providing telecommunication networks, accompanying facilities or providing telecommunication services.

- (h) Research and development

In the scope of the sub-measure, beneficiaries of the aid can be all entities exercising economic activity consisting in research and development, in particular third level education institutions, scientific bodies and enterprises.

- (i) Spa therapeutics

³ State aid N 531/2006, Poland, Regional aid map, approved by the Commission on 13.9.2006, OJ C 256, 24.10.2006, p. 7

In the context of spa therapeutics infrastructure, aid is targeted at establishments of spa therapeutics having the status of healthcare centres. Healthcare centres participate in the public healthcare system to the extent defined in their contracts with the National Health Fund (Narodowy Fundusz Zdrowia – NFZ). Public and private spa therapeutics establishments can be selected for signature of contract with the NFZ and thus for providing part or the totality of their services under the public healthcare system (services provided in the public healthcare system are refunded to patients from the NFZ funds). The selection of establishments takes form of a competition and the submitted applications are evaluated on the basis of transparent, published criteria. In parallel to services provided within the framework of the public healthcare system, the same spa therapeutics establishments offer services to clients which are fully paid and are provided on commercial basis.

- (11) The scheme will not apply to undertakings that are in difficulty in the meaning of the Community guidelines on State aid for rescuing and restructuring of firms in difficulty⁴.

2.6. Duration of the scheme

- (12) The scheme will come into effect after its approval by the Commission. The last date until which the aid under the scheme can be granted is 31 December 2013. The eligible expenditure can be incurred after that date in accordance with the relevant principles on Structural Funds.

2.7. Budget of the scheme

- (13) The budgets of the scheme amounts to PLN 4 310.37 million (EUR 1 311.698 million⁵).

2.8. Definition of initial investment under the scheme

- (14) An initial investments shall include:

an investment into fixed assets and intangible assets relating to:

- the setting-up of a new enterprise,
 - the extension of an existing enterprise,
 - diversification of the output of an enterprise into new, additional products or
 - a fundamental change in the overall production process of an existing enterprise;
- (j) acquisition of fixed assets directly connected with an enterprise that has been closed down or would have been closed down if the purchase had not taken place, such assets being purchased under market conditions by an investor independent of the seller. Purchase of shares is not eligible.

- (15) Replacement investment is not eligible under the scheme.

⁴ OJ C 244 of 1.10.2004, p. 2.

⁵ Applying the exchange rate at the date of notification, i.e. of 13 August 2008, where EUR 1= PLN 3.2861, OJ C 207, 14.08.08, p. 6

2.9. Eligible expenses under the scheme

- (16) Eligible expenses under the scheme are costs of initial investments or expected 2 year wage costs, comprising gross wage, before tax, and the compulsory social security contributions, of newly created jobs linked to an initial investment.

Eligible investment costs

- (17) Eligible investment costs comprise expenditure on land, buildings, plant/machinery and equipment, including costs of realisation of internal technical infrastructure (internal roads, cables network, canalisation, etc.)
- (18) Cost of preparation of the investment (e.g. legal advice and consultancy services) is only eligible in case of micro, small and medium-sized enterprises up to the intensity of 50% of the costs actually incurred.
- (19) Costs of purchase of immaterial assets (patent rights, licences, know-how or unpatented technical knowledge) are also eligible under the scheme. In case of micro, small and medium-sized enterprises 100% of such costs are eligible. For large enterprises expenditure on immaterial assets is eligible only up to the level corresponding to 50% of the total eligible costs of the investment. Further, the eligible immaterial assets forming part of the initial investment must be regarded as amortizable assets, they must be acquired from third parties under market conditions, must be used exclusively in the establishment receiving the aid under the scheme and must be included in the assets thereof and remain in the establishment receiving the aid for the period of at least five years.
- (20) With the exception of micro, small and medium-sized enterprises, the acquired assets forming part of the initial investment must be new.
- (21) Costs related to the acquisition of assets other than land and buildings under lease can only be taken into consideration if the lease takes the form of financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. For the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project for large companies, and three years for SMEs.
- (22) In case of an acquisition of an establishment - if the aid was previously granted to any of its constituents, the costs of the acquisition of such constituents are not eligible.

Eligible costs of job creation linked to an initial investment

- (23) Aid for an initial investment granted under the scheme can be also calculated on the basis of expected 2 year wage costs (gross wage costs, before tax, and compulsory social security contributions) of the newly hired persons due to the initial investment.
- (24) Numbers of jobs created by an initial investment is calculated under the scheme as a net increase of the number of employees in the establishment compared with the average over the previous 12 months. The number of employees includes number of persons employed full time during a year, as well as those employed part time or for a seasonal work calculated as a ratio of a full work employment.

- (25) Moreover, jobs must be created within 3 years of the completion of the works on the investment.
- (26) Only projects for which expenses are incurred after the date of publication of the scheme on the internet are eligible for aid under the scheme.

2.10. Definition of a large investment project and individual notification requirement

- (27) Large investment projects, i.e. projects with an eligible expenditure above EUR 50 million undertaken in a period of three years by one or more companies and consisting of fixed assets combined in an economically indivisible way can also be aided by the scheme.
- (28) However, the maximum aid intensity to such projects is scaled-down according to the formula described under point 2.13. below.
- (29) In case where aid amount under the scheme alone or combined with other sources of aid exceeds the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 million can receive under the scale and the rules laid down in point 2.13. below, it will be notified individually to the Commission. The aid amounts that will trigger the individual notification requirement are: EUR 37.5 million euro in an area with the maximum aid intensity of 50%, EUR 30 million in an area with the maximum aid intensity of 40% and 22.5 million in an area with the maximum aid intensity of 30%.

2.11. Monitoring of large investment projects

- (30) The Polish authorities confirmed that whenever regional aid is granted on the basis of the aid scheme at hand for non-notifiable large investments projects, they will, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in Annex III of the RAG.
- (31) They also confirmed that detailed records regarding the granting of aid for all large investment projects will be maintained. Such records, which will contain all information necessary to establish that the maximum allowable aid intensity has been observed, will be maintained for 10 years from the date on which the aid was granted.

2.12. Starting date of the project and incentive effect principle

- (32) To be eligible for aid, works on projects have to start after the beneficiary of the aid applied for aid and received from the granting authorities a written confirmation that, subject to detailed verification, the project meets in principle the conditions of eligibility for aid.

2.13. Form of the aid and aid intensity

- (33) The aid will be awarded in the form of a direct grant.

- (34) The aid intensity under the scheme is calculated as a ratio of the gross grant equivalent and the eligible expenditure and is limited to the following ceilings:
- 50 % - in NUTS II regions of Lubelskie, Podkarpackie, Warmińsko-mazurskie, Podlaskie, Świętokrzyskie, Opolskie, Małopolskie, Lubuskie, Łódzkie or Kujawsko-pomorskie;
 - 40 % - in NUTS II regions of Pomorskie, Zachodniopomorskie, Dolnośląskie, Wielkopolskie, Śląskie, and until 31 December 2010, within the area of the Mazowieckie region excluding the capital city of Warsaw;
 - 30 % - in the area of NUTS III region of the capital city of Warsaw, and during the period from 1 January 2011 to 31 December 2013 and in the NUTS III area of NUTS II region of Mazowieckie.
- (35) In the case of microenterprises, small or medium-sized enterprises, the aid intensity referred to above may be increased by 10 percentage points, in the case of a medium-sized enterprise and 20 percentage points, in the case of a microenterprise or a small enterprise.
- (36) The allowable aid amount for a large investment project will be calculated according to the following formula: maximum aid amount = $R \times (50 + 0,50 \times B + 0,34 \times C)$, where R is the standard regional aid ceiling as described under paragraph 35 above, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million.
- (37) If the total value of aid from all sources were to exceed its maximum value determined as described in section 4, which may be granted for the implementation of a new investment with eligible expenditure being the equivalent of Euro 100 million, such aid shall require individual notification to the European Commission.

2.14. Own contribution

- (38) In case where aid is calculated on the basis of investment costs the beneficiary will provide a contribution of at least 25 per cent of the value of the total eligible costs in a form which is free of any public support, including de minimis support.

2.15. Maintenance of the investment and of the jobs created

- (39) The notified scheme requires a beneficiary of the aid to maintain the investment in the assisted region for a minimum period of five years (three years in case of SMEs) after its completion.
- (40) In case of calculation of the aid on the basis of wage costs of created jobs linked to the initial investment, it also requires the beneficiary of the aid to maintain in the assisted region and for at least five years each job created following the investment (three years in case of SMEs).

2.16. Cumulation of aid

- (41) According to the notified scheme, aid may not be cumulated with any other aid for the same eligible expenses of the project, whether the aid comes from the sources of the Member State or from the Community sources, if due to such

cumulation the above-mentioned aid intensity ceilings, which are set for each sub-measure, are exceeded. The aid under the scheme will not be cumulated with *de minimis* support⁶ in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in each sub-measure.

2.17. Contribution of the sectorial aid measure to regional development strategies

- (42) The Polish authorities indicate a series of arguments which justify that projects to be aided under the scheme will contribute towards coherent regional development strategies and that they will not result in unacceptable distortions of competition.
- (43) In fact, the scheme puts in place certain priority actions defined in 16 Regional Operational Programmes. Regional Operational Programmes are based on Strategies elaborated for each region.
- (44) The objectives of the notified scheme can be summarised as follows:
- *to rationalize the use of natural resources, an increased environment protection, energy security, an increased energy efficiency and use of renewable sources of energy, diversification of energy sources;*
 - an increased and better access to information sources and communications networks in cities and the countryside, as a contribution to the creation of information society and to the increase of development potentials of regions;
 - to develop infrastructures and equipment for carrying out research activities; ensure research base in regions and orientate research to priority sectors for the regional development; to increase the level of research originated in the private sector; to enhance the level of commercialized research and to develop infrastructure for research corresponding to market needs; finally to increase quality and innovative character of research;
 - enhancement of the quality of proposed spa services, among which services offered in the frame of the national health system and enlargement of the service offer. Considering the fact that spa institutions are mainly located in regions ('uzdrowiska') where industry and other services are poorly developed, an increased spa infrastructure and the development of the sector will have positive impact on the employment levels in those regions and on their comprehensive development.
- (45) The objectives for comprehensive development of regions are listed in Regional OPs⁷ and each of 16 Regional OPs had been approved by the Commission.

Regional OP for Województwo Lubelskie aims at increasing competitiveness of the region, which should result in a rapid economic growth and an increase of the employment, while respecting natural and cultural heritage. The programme lists three specific targets: support to modern sectors of economy and to innovations; enhancement of conditions for investment while respecting equal

⁶ Commission Regulation (EC) No 1998/2006 on the application of Articles 87 and 88 to *de minimis* aid, OJ L 379, 28.12.2006, p. 5.

⁷ Objectives as presented on the internet site of the Ministry for Regional Development of Poland: <http://www.mrr.gov.pl>

development of the whole region; increase of the attractiveness of the region as a place for living, working and tourism.

Regional OP for Województwo Podkarpackie mainly aims at increasing competitiveness of the region and to facilitate access to the region. The following priorities have been identified for the region: competitive and innovative economy; technical infrastructure; information society; protection of the environment and prevention; public infrastructure; tourism and culture; internal cohesion of the region; technical assistance.

Regional OP for Województwo Świętokrzyskie targets creation of a competitive and jobs creating economy. Priorities defined for the region are: development of entrepreneurship; support to innovations, information society and increase of innovation potential of the region; higher quality of the communication network; development of infrastructure for protection of the environment and of energy infrastructure; better quality of social infrastructure and investments in cultural heritage, tourism and sport; development of cities and revitalisation of small towns; technical assistance.

Regional OP for Województwo Małopolskie prioritises creation of conditions for economic growth and higher employment level. Those objectives should be reached mainly through investment in infrastructures leading to an increase of competitiveness; support to innovations and information society and through preservation of natural and cultural heritage.

Regional OP's for Województwo Śląskie main objective is to stimulate dynamic growth while strengthening social, economic and territorial cohesion of the region. It requires creation of conditions enabling transformation of the economy based on heavy industry into a knowledge based one and liquidation of obstacles for such transformation (bad condition of environment, not efficient communication and transport network, numerous degraded municipalities which high number of social and economic problems, high level of use of educational and health infrastructure).

Regional OP for Województwo Zachodniopomorskie aims at increasing innovation and economic effectiveness; creating better conditions for investing and assuring internal cohesion of the region; enhancement of life conditions through preservation and protection of environment and an increase of a social base in the region.

Regional OP for Województwo Pomorskie foresees enhancement of the functioning of the transport networks in the cities of the region, projects of revitalisation of degraded areas, modernisation of public areas, improvement of the cohesion of the region through development of the rail and road networks, investments in environmental protection, tourism infrastructure and public health infrastructure. The programme also emphasizes needs for the improvement of the education infrastructure and research infrastructure in universities, better access to information and communication technologies and development of e-services.

Regional OP Warmia and Mazury mainly aims at enhancement of the competitiveness of the region and development of telecommunications and transport networks in the region. Projects are to be carried up under the following priorities: entrepreneurship, tourism, society infrastructure, development and

revitalisation of cities, transport infrastructure, environment, information society infrastructures, and technical assistance.

Regional OP for Województwo Podlaskie aims are economic growth and creation of new jobs in other than agricultural sectors, while preserving environment and cultural heritages. The Programme puts priorities on enhancement of the attractiveness of the cities for investments, increase of the national and international competitiveness of companies from the region and development of tourism.

Regional OP for Województwo Mazowieckie lists the following objectives: development of knowledge based economy and of the information society, improving technical infrastructure, higher standards for the development of the human capital in the region.

Regional OP for Województwo Kujawsko-Pomorskie aims at improving the competitiveness of the region and its socio-economic and territorial cohesion. Those objectives should be reached through realisation of projects oriented at development of technical infrastructure, preservation of environment, development of social and information society infrastructures, improving competitiveness of the local firms, development of tourism, revitalisation of cities and other areas, technical assistance.

Regional OP for Województwo Wielkopolskie is oriented at enhancement of the competitiveness of the region and of the employment. Specific aims of the programme are improving conditions for investing, increase of the professional activities of the population and bigger part of knowledge and innovation in the regional economy.

Regional OP for Województwo Lubuskie list the following specific objectives: development of infrastructures which are influencing competitiveness, stimulating investment in companies and increasing innovation potentials, protection and better management of natural resources, development and modernisation of the society, cultural and tourism infrastructures.

Regional OP's for Województwo Dolnośląskie main objective is to increase living conditions in the region and to improve competitiveness of the region while respecting equal development. The programme foresees co-financing of projects carried out in the frame of the following priorities: improving competitiveness of the local companies, development of the information society, development of transport infrastructure, improvement of the environment and of ecological and anti-flood securities, regional environment friendly energy infrastructure, promotion of tourism, development and modernisation of education infrastructure and of public health infrastructure, regeneration of degraded urban areas, technical assistance.

Regional OP for Województwo Opolskie lists such strategic priorities as: improving attractiveness of the region, development of information society, transport, protection of environment, society infrastructure and university education, activation of urban and degraded areas, technical assistance.

Regional OP for Województwo Łódzkie foresees co-financing of projects carried out within the following priorities: transport infrastructure, protection of

environment, economy, innovation and entrepreneurship, information society, society infrastructures, revitalisation of urban areas, technical assistance.

- (46) The notified programme is to be financed from the state contribution, with funds of European Regional Development Fund.

3. ASSESSMENT

3.1. State aid character of the scheme

- (47) According to the proposed measure, the aid in the form of a direct grant will be granted to undertakings carrying out investment projects in the energy sector, telecommunication infrastructure, R&D infrastructure or in the spa-therapeutics sector.
- (48) The scheme will be financed using the resources from the European Regional Development Fund which are transferred to the Polish authorities in order to implement activities set in the Regional Operational Programmes. The Polish authorities are responsible for implementing and managing the Regional Operational Programmes, including the selection of beneficiaries and projects under the specific measures and payment of financing to the ultimate selected beneficiaries for realisation of their projects. Therefore, the financing from the Structural Funds is imputable to the Polish authorities, and it is also at the disposal of the Polish authorities. Hence it can be concluded that the aid under the notified scheme will be provided by public authorities through State resources within the meaning of Article 87(1) of the EC Treaty.
- (49) The aid foreseen under this scheme constitutes an economic advantage because it allows the beneficiaries to reduce the investment costs that they should normally face in order to develop this type of projects. It may therefore distort or threaten to distort competition.
- (50) The scheme is selective because it applies only to undertakings which implement projects in specific sectors: energy, telecommunication, spa therapeutics and research and development.
- (51) In view of the fact that the scheme concerns undertakings which are active in those sectors, which are involved in trade between Member States, there is a risk that the aid could affect that trade.
- (52) Consequently, the proposed aid scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

3.2. Legality of the aid measure

- (53) The Polish authorities have fulfilled their obligation according to Article 88(3) of the EC Treaty by notifying the aid scheme before putting it into effect.

3.3. Compatibility of the aid measure

- (54) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the scheme can be found to be compatible with the common market.
- (55) The Commission has examined the proposed aid scheme in the light of Article 87(3)(a) of the EC Treaty and in the light of the Guidelines on national regional aid⁸ ("RAG"). This assessment has led to the observations laid down below.
- (56) Pursuant to paragraph 10 of the RAG, regional aid as a general rule should be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. Where, exceptionally, it is envisaged to grant aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project; it will not result in unacceptable distortions of competition.
- (57) The notified scheme can be seen as sectoral as aid is confined to four selected areas of activity.
- (58) The scheme puts in place certain priorities of the sixteen Regional Operation Programmes and is to be co-financed by European Regional Development Fund. The objectives of the scheme are in line with the objectives of the Operation Programmes (see point 2.17 above) which can be considered as programmes/strategies for the development of each region. Development of telecommunication networks contributes to the development of information society, to the increase of the competitiveness of regions and their attractiveness for investing as well as to the increase of the level of entrepreneurship and of the education infrastructure. As foreseen by the scheme aid for projects in energy sector should have a significant impact on environmental protection, competitiveness and attractiveness of the Polish regions, revitalisation and regeneration of degraded areas and constitutes an important element of society infrastructures which lead to the enhancement of living conditions. Investments in development of R&D infrastructure should increase levels of research and innovation as well as education infrastructure. All those elements significantly impact economic growth and socio-economic development. Finally, investments in spa therapeutics infrastructure will have a significant impact on the tourism development, should increase attractiveness of regions and improve health systems offer. In regions hosting spa therapeutics establishments (regions with specific natural and geographical characteristics named 'uzdrowiska'), and where other industries are poorly developed, the spa therapeutics sector is also an important employer and the extension of service offer of spa therapeutics establishments will lead to the increase of the employment in the region. Therefore the Commission considers that the scheme to be implemented in each of the sixteen regions of Poland, and as it foresees development of certain activities in the priority sectors of economy in each region, constitutes an integral part of each regional development strategy.

⁸ Guidelines on national regional aid for 2007-2013, OJ C 54, 4.3.2006, p. 13.

- (59) Considering the likely effects of the aid on competition, it should be noted that the scheme beneficiaries can be all firms from the specific sectors. In case of aid for the development of spa infrastructure foreseen by the scheme, it is open to all potential beneficiaries, spa therapeutics establishments, which have the status of healthcare centres. The aforementioned status is accorded to all operators of the sector which fulfil specific and transparent conditions. Moreover, it has to be underlined that the scheme is not confined to one area of activity but to certain selected sectors, which constitute priorities for development of the Polish regions. Thus the scheme does not seem to distort significantly competition in each of those sectors.
- (60) In light of the foregoing considerations, the Commission considers that although the notified scheme is sectoral, it is on balance acceptable since it contributes towards coherent regional development strategies of all regions of Poland and it will not result in unacceptable distortions of competition.
- (61) In line with paragraph 9 of the RAG, the scheme will not apply to undertakings that are in difficulty in the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁹.
- (62) The scheme relates to initial investment in line with paragraph 34 of the RAG as it covers investment in material and immaterial assets in relation to the extension of an existing establishment, diversification of the output of an establishment into new, additional products or a fundamental change in the overall production process of an existing establishment.
- (63) In accordance with paragraph 36 and 41 of the RAG, the level of aid is calculated as a percentage of the value of the investment project's eligible material and immaterial costs and will not exceed the applicable regional aid ceiling.
- (64) The scheme also covers aid for creation of jobs linked to an initial investment. In those cases, in accordance with paragraphs 36, 57, 58 and 59 of the RAG, aid is calculated as a percentage of two year wage costs of newly hired persons.
- (65) The number of jobs created by an investment projects means the net increase in the number of employees directly employed in the establishment compared with the average over the previous 12 months. Therefore, the number of jobs created is calculated in accordance with the provisions of the Regional aid guidelines 2007-2013 (cf. point 58).
- (66) The Polish authorities confirmed that in case of aid for the creation of jobs linked to an initial investment, jobs will be filled within three years of the completion of the investment works (cf. point 40).
- (67) The scheme includes a reference to the applicable Polish regional aid map for 2007-2013 and the maximum allowable aid intensities are in conformity with the regional aid map.
- (68) The duration of the scheme is in line with the duration of the regional aid map for Poland. The aid under the scheme can be granted till the end of December 2013.

⁹ OJ C 244 of 1.10.2004, p. 2.

- (69) Under the scheme the award of aid is discretionary and in all cases an administrative decision to grant the aid is required. The scheme, in line with paragraph 38 of the RAG, provides that the application for aid must be submitted before work is started on the project and the competent authorities must have confirmed in writing that, subject to the final outcome of a detailed verification, the project meets the conditions of eligibility laid down by the scheme.
- (70) In accordance with paragraph 108 of the RAG, the scheme excludes the award of aid to projects which have started before the publication of the scheme on the internet.
- (71) In case where aid amount under the scheme alone or combined with other sources of aid exceeds the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 million can receive under the scale and rules laid down in paragraph 67 of the RAG it will be notified individually to the Commission.
- (72) The monitoring obligations of large investment projects as provided for in paragraphs 65 and 66 of the RAG will be respected.
- (73) The scheme includes a clause stipulating that in case of aid calculated on the basis of material or immaterial investment costs the beneficiary makes a financial contribution of at least 25 per cent of the total eligible costs and that this contribution will be free of any public support in accordance with paragraph 39 of the RAG.
- (74) Replacement investments are excluded from the scheme in accordance with paragraph 34 of the RAG.
- (75) In line with paragraph 54 of the RAG, the scheme ensures that the acquired assets are new.
- (76) In line with paragraph 55 of the RAG, the scheme contains a clause ensuring that the eligible costs of investments in immaterial assets do not exceed 50 per cent of the total eligible investment expenditure for the project. Furthermore, the scheme ensures that such eligible immaterial assets are used exclusively in the establishment receiving regional aid, are regarded as amortisable assets, are purchased under market conditions and are included in the capital assets of the firm and remain in the establishment receiving the regional aid for five years for all undertakings, in line with paragraph 56 of the RAG.
- (77) The aid under the scheme is conditioned on the obligation of maintaining the investment or the jobs created linked to an initial investment in the assisted region during a minimum period of five years (three years in case of SMEs) after its completion in accordance with paragraph 40 of the RAG.
- (78) In view of the above, the Commission considers that the notified aid scheme is compatible with the common market in accordance with Article 87(3)(a) of the EC Treaty.

4. DECISION

- (79) The Commission has accordingly decided to consider the aid scheme compatible with the EC Treaty.
- (80) The Commission reminds the Polish authorities that the reporting conditions described in the Commission Regulation (EC) No. 794/2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of EC Treaty¹⁰ have to be respected.
- (81) The Commission further reminds the Polish authorities that all plans to modify this aid scheme have to be notified to the Commission.

If the Commission does not receive a reasoned request by fifteen working days of the date of the receipt, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B – 1049 Brussels
Fax No: 32 2 296 12 42

Yours faithfully,
For the Commission

Leonard ORBAN
Member of the Commission

¹⁰ OJ L 140, 30.4.2004, p. 1.