



Brussels, 20.11.2012  
C (2012) 8258 final

**PUBLIC VERSION**  
**WORKING LANGUAGE**  
**This document is made available for  
information purposes only.**

**Subject: State aid SA.34891 (2012/N) – Poland**  
**State support to Związek Gmin Fortecznych Twierdzy Przemysł**

Sir,

**1. PROCEDURE**

1. By electronic notification of 28 May 2012, registered by the Commission the day after, the Polish authorities notified the above-mentioned measure.
2. The Commission requested additional information on 25 July 2012. The Polish authorities replied on 6 September 2012.

**2. DESCRIPTION OF THE MEASURE**

**2.1. Main features**

*General objective*

3. The measure supports a project *"Zagospodarowanie zespołu zabytkowego Twierdzy Przemysł w celu udostępnienia dla turystyki kulturowej, etap I" / "Development of the Przemysł Stronghold historical area for the purpose of cultural tourism, phase I"* ("the project") to preserve and revitalise the historic site of the "Przemysł Stronghold" ("the Stronghold" thereafter). It aims primarily at the conservation of cultural heritage. In addition, the measure will also pursue an objective of education about,

Jego Ekscelencja  
Pan Radosław SIKORSKI  
Minister Spraw Zagranicznych  
Al. J. Ch. Szucha 23  
00-580 Warszawa  
POLSKA

and promotion of, monuments, and their history and meaning in the European heritage.

### ***Granting authority***

4. The granting authority is the Voivodeship Board in Rzeszow, an administration unit in charge of the region PL32 Podkarpackie, a NUTS-3 region eligible for regional aid under Art. 107(3)(a) of the Treaty on the Functioning of the European Union (TFEU).

### ***Legal basis***

5. The legal basis of the measure is:
  - Act of 6 December 2006 on the principles of development policy,
  - Resolution of the Board of the Podkarpackie Voivodeship No. 89/2008/11, of 31 November 2011 approving the project's plan,
  - The European Commission Decision of 1 October 2007 approving the Regional Operational Programme for the Podkarpackie Province for the years 2007-2013.

### ***Beneficiary***

6. The beneficiary of the measure is *Związek Gmin Fortecznych Twierdzy Przemyśl*, an Association of Fortress Municipalities of the "Przemyśl Stronghold" ("the Association" thereafter).
7. The Association was created in 2008 and comprises nine neighbouring municipalities<sup>1</sup> ("the Fortress Municipalities" thereafter) in which respective parts of the Stronghold are located.
8. As per its Articles of Association, the aim of this entity is to protect cultural heritage and to stimulate the development of tourism in the territory of the Fortress Municipalities. The Association does not conduct commercial activity and its activities are not profit-driven. Its main statutory tasks include:
  - Creation of a cultural park of the Przemyśl Stronghold as a form of conservatory preservation as per the Act of 23 July 2003 on protection and maintenance of monuments with an aim to protect cultural environment and preserve areas characteristic to Przemyśl Stronghold monuments;
  - Carrying out preservation works in the protected areas and buildings of the Przemyśl Stronghold;
  - Creation of a cultural park preservation plan;
  - Inspiring and supporting activities of municipalities in the area of protection of forts of the Przemyśl Stronghold;
  - Coordination of works on local special management plans;

---

<sup>1</sup> Bircza, Krasieczyn, Krzywca, Medyka, Orły, Wiejska Przemyśl, Stubno, Żurawica, Miejska Przemyśl.

- Supporting activities aiming at recognising the Przemyśl Stronghold as a historic monument.

Therefore, the main focus of the Association is to prevent the Stronghold monuments from the process of degradation, and to carry out renovation and adaptation works aiming at improving visibility and exposing the military fortifications.

***Form, budget and duration of financial support***

9. The total cost of the project amounts to PLN 21,720,998 (approximately EUR 5.3 million<sup>2</sup>) and will be largely covered by public resources as outlined in the table below.

<b>SOURCE</b>	<b>PLN</b>
Association of Fortress Municipalities of the "Przemyśl Stronghold"	3 141 676
Municipalities of Krzywca and Bircza	776 493
National Budget	7 330 577
European Regional Development Fund (ERDF)	10 472 252
<b>TOTAL COST OF THE PROJECT</b>	<b>21 720 998</b>

10. In particular, PLN 7,330,577 will be provided from the Polish National Budget in the form of a direct grant, which will be disbursed in six instalments over the period of 01/04/2013 to 30/09/2014. The project will be co-financed by the European Regional Development Fund<sup>3</sup> in an amount of PLN 10,472,252, accounting for 48% of the total project costs.
11. The beneficiary will contribute the remainder of PLN 3,918,169 (approximately EUR 956,350)<sup>4</sup> through their own budget.
12. The infrastructure created as a result of the project will be owned by the Association until its dissolution. The Fortress Municipalities will maintain the infrastructure for a period of at least five years after the completion of the works.
13. The project works are expected to start in April 2013 and to be completed in June 2014.
14. Phases 2 and 3 of the project are planned for the period 2015 to 2020 and are conditional on the completion of phase 1. The notification at hand concerns exclusively phase 1 of the project. At this moment, no detailed budget is available for the possible subsequent phases 2 and 3. The preliminary estimates of the costs of these further two phases amount to PLN 100 million. The objects renovated during those possible subsequent phases 2 and 3 will not be used commercially.

<sup>2</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

<sup>3</sup> Within the frames of Regional Operational Programme for Podkarpackie Voivodeship for years 2007-2013.

<sup>4</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

## 2.2. Characteristics of the project

15. The Przemyśl Stronghold is a series of fortifications constructed at Przemyśl by the Austro-Hungarian Empire between the mid-19th century and the First World War. Being an example of European military architecture of the 19th century, it is listed among the biggest strongholds of this kind in Europe. The fortress was destroyed in 1915 and since then has been in ruins.
16. The Stronghold is situated in the Przemyski Powiat<sup>5</sup> counting 73 778 inhabitants and 1 211 square kilometres located in the South-East of Poland next to the border with Ukraine and approximately 80 kilometres from the border with Slovakia.
17. The project consists of renovating the fortification objects, monuments, military objects (e.g. barracks, battlefields), military cemetery and roads located in the area of the Przemyśl Stronghold, and in their adaptation for the cultural tourism purposes. Specifically, the project consists of 7 tasks:
  - 1) Development of the Humniccy Palace in Bircza (Bircza municipality).
  - 2) Renovation of the fortification road of Kruhel Wielki-Prałkowce and rebuilding a fence of the Austro-Hungarian soldiers' cemetery in Brylinka.
  - 3) Revitalisation of the manor house and park complex in Babice (Krzywca municipality).
  - 4) Revitalisation of fortification roads, the area of military barracks in Siedliska and Fort No. XV "Borek".
  - 5) Development of the route from Brama Sanocka Dolna through a fortification object of Brama Sanocka Gorna, military defense wall, Fort Trzy Krzyże to Brama na Zniesieniu.
  - 6) Development of a historic, nature and didactic footpath Stubno-Strzawa-Kalników.
  - 7) Development of a fortification touristic culture trail of Północna Rokada in the Przemyśl Stronghold.
18. Tasks 2 and from 4 to 7 will account for the majority (80.9% or PLN 17,568,447 or approximately EUR 4.3 million<sup>6</sup>) of the total project's costs. The infrastructure created as a result of these tasks will be an open-air tourist attraction addressed to persons interested in historic and cultural tourism. It will also serve children and young people from the primary and secondary schools for an educational purpose complementary to history lessons. This infrastructure will continue to have a public character and will remain available and accessible for tourists without any limitation and totally free of charge. It will therefore **not be commercially used** and nobusiness activity will be conducted in this area.
19. In contrast, tasks 1 and 3, accounting for 19.1% of the total project's costs (PLN 4,152,551 or EUR 1.0 million<sup>7</sup>) will be realised in the Humniccy Palace in Bircza (dated the 18<sup>th</sup> century) and the manor house and park complex in Babice (dated the 19<sup>th</sup> century). In the former one, the renovation will be limited to the palace's cellar in which there will be rooms to be used for trainings and conferences (two rooms for

---

<sup>5</sup> Second-level unit of local government and administration in Poland, equivalent to a county, district or prefecture. Przemyski Powiat is one of 21 Powiats constituting the Podkarpackie Voivodeship (NUTS 3) counting 2 128 687 inhabitants and 17 846 square kilometres (data as per 31 December 2011; source: Główny Urząd Statystyczny / Central Statistical Office of Poland).

<sup>6</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

<sup>7</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

maximum 20 people each), for gastronomy service (for maximum 20 people) and for tourist information. The Babice complex will be fully revitalised and, apart from the tourist information, will be used as an accommodation facility with 20 places. After the completion of the works, the premises will be rented to external operators who will carry out the aforementioned **commercial activities** (operating the training and conferences rooms, the gastronomy and accommodation facility). The operators will be also responsible for the maintenance of the premises occupied by them. They will be selected by means of a transparent open tender and on normal market terms. The rent received by the Association will be used for the maintenance of the project's infrastructure.

20. It is estimated that currently the Stronghold is visited by 14 to 20 thousand tourists per year. The Polish authorities forecast that five years after the completion of the project, this number will increase to 30 to 40 thousand persons per year. In particular:
- about 70% or 21 to 28 thousand individual visitors and tourists, including families with children,
  - about 10% or 3 to 4 thousand visitors and tourists with professional motivation,
  - about 20% or 6 to 8 thousand children and young people from primary and secondary schools.
21. The project is expected to generate yearly revenues of approximately PLN 265 thousand (app. EUR 65,000<sup>8</sup>) coming exclusively from the rent of the facilities described in paragraph 19 above which, however, will be more than offset by operational costs related to the maintenance of the whole Stronghold, resulting in net losses of approximately PLN 175 thousand (app. EUR 46,000<sup>9</sup>) per year.

### **3. STATE AID ASSESSMENT OF THE MEASURE**

#### **3.1. State aid in the sense of Article 107(1) TFEU**

22. According to Article 107(1) TFEU, "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*". Therefore, in order to be classified as a State aid in the meaning of Article 107(1) TFEU, a support measure must fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure has to affect intra-Union trade.
23. The aid measure will be provided from the Polish National Budget in the form of a direct grant and co-financed by the European Regional Development Fund. Therefore, the measure is granted through State resources.
24. The beneficiary of the aid is the Association comprising nine Fortress Municipalities. The aid is therefore selective.

---

<sup>8</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

<sup>9</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

25. According to settled case-law, the concept of an 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed<sup>10</sup>. An economic activity consists in offering goods or services on a given market<sup>11</sup>. However, a mere use of its capital is insufficient to characterise as economic an activity of the entity when it gives rise only to the income which is merely the fruits of the ownership of an asset.<sup>12</sup>
26. In this regard, the Commission notes that the beneficiary of the aid, i.e. the Association (comprising nine Fortress Municipalities), has been created purely with the aim to protect cultural heritage and to stimulate the development of tourism in the territory of the Fortress Municipalities. The Association's activities are not profit-driven (it does not perform any commercial activities itself) and are of a very local character (it does not operate outside of the area of the nine municipalities). Although after the completion of the works certain premises will be used for limited commercial activities (operating the training and conferences rooms, the gastronomy and accommodation facility), these activities will be carried out by external operators and not by the Association itself, who will only receive a rent from these operators and will therefore not be engaged in an economic activity as such.
27. Further, the Commission notes that 80.9 % of the financing of the total project's costs will be used for tasks aimed at the renovation of the non-commercially used infrastructure. It is, therefore, appropriate for the assessment of the measure at stake to make a distinction between the financing (representing 80.9 % of the total project's costs) of the tasks described in paragraph 18 above and the remaining 19.1% of the financing which will support the tasks described in paragraph 19 above.

*3.1.1. Financing of the renovation of the non-commercially used infrastructure (paragraph 18 above)*

28. The majority (80.9% or PLN 17,568,447 or approximately EUR 4.3 million<sup>13</sup>) of the public financing will cover the renovation of historical infrastructure aimed at the creation of an open-air tourist attraction addressed to persons interested in historic and cultural tourism. This infrastructure will continue to have a public character and will remain available and accessible for tourists without any limitation and totally free of charge.
29. Since in this regard the renovation financed by public money will serve the improved accessibility of an infrastructure which will be visited without any limitation and totally free of charge and this part of the project is not connected with any business activity, the Commission considers that this public funding will not support the conduct of any economic activity and therefore not benefit any undertaking within

---

<sup>10</sup> Case C-41/90 Höfner and Eher [1991] ECR I-1979, paragraph 21, and Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 AOK Bundesverband and Others [2004] ECR I-2493, paragraph 46.

<sup>11</sup> Case C-35/96 Commission I Italy [1998] ECR I-3851, paragraph 36, and Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451, paragraph 75.

<sup>12</sup> Case C-222/04 Casa di Risparmio di Firenze and Others [2006] ECR I-00289, para. 111 "... the fact of holding shares, even controlling shareholdings, is insufficient to characterise as economic an activity of the entity holding those shares, when it gives rise only to the exercise of the rights attached to the status of shareholder or member, as well as, if appropriate, the receipt of dividends, which are merely the fruits of the ownership of an asset."

<sup>13</sup> Calculated at an exchange rate as of 10 September 2012 of EUR 1 = PLN 4.097.

the meaning of EU competition law<sup>14</sup>. Therefore, this financing does not constitute State aid within the meaning of Article 107(1) TFEU.

*3.1.2. Financing of the renovation of the commercially used infrastructure (paragraph 19 above)*

30. In view of the nature of the measure that concerns the commercially used infrastructure, the Commission will first examine whether that financing is liable to affect trade between Member States. Trade between Member States is only affected if the measure (as defined above in paragraph 26) is at least potentially liable to affect such trade. The Commission takes the view that the current measure would not have such potential, even if the other criteria of the State aid definition were met.
31. The commercial activities carried out in the supported facilities of Bircza (two rooms for training and conference purposes with a capacity of 20 persons each and a gastronomy service room for 20 persons) and Babice (an accommodation facility with 20 places) have a very small scale and local character to be capable to purposely attract tourists from other Member States. In addition, tourists are not confined to the Stronghold's limited conference, gastronomy and accommodation facilities as in the vicinity there is a wide choice of alternative conference, gastronomy and accommodation facilities, including some under well-known brands and widely recommended in guidebooks and on the Internet. These Stronghold facilities are therefore not capable of deviating tourist flows from other Member States<sup>15</sup> and any possible foreign users of these facilities can be deemed to have made their decision to travel to Poland irrespective of the existence of these facilities.
32. The Commission therefore considers that the local and very small scale character of the commercial activities to be carried out in the Stronghold should ensure that an effect on intra-Union trade can for all practical purposes be excluded<sup>16</sup>

**3.2. Conclusion on the existence of State aid**

33. Accordingly, on account of the specificities of the case at hand, it can therefore be concluded that the notified measure does not constitute State aid within the meaning of Article 107(1) TFEU, because (a) the public financing of the non-commercially used infrastructure does not support any economic activity and thus does not benefit any undertaking, and (b) the public financing of the commercially used infrastructure will not have an effect on trade between Member States.
34. In view of the above findings, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU.

---

<sup>14</sup> See footnotes 8 to 10 above.

<sup>15</sup> In this context, it is also noteworthy that the Podkarpackie Voivodeship is already characterised by one of the lowest numbers of foreign tourists in Poland (14th place out of 16 voivodeships in terms of a number of foreign tourists in accommodation facilities per 1000 inhabitants as per year 2010. Source: Główny Urząd Statystyczny / Central Statistical Office of Poland).

<sup>16</sup> Compare Commission Decisions of 21 December 2000 on Leisure Pool Dorsten - Germany (Case N258/2000, OJ C 172, 16.6.2001) of 21 January 2003 on measures concerning l'Ecomusée d'Alsace – France (Case NN136a/2002, OJ C 97, 24.4.2003, p. 10 Case NN 136/A/2002) of 27 June 2007 on Subsidies for theatre productions in the Basque country – Spain (Case N257/2007, OJ C 173, 26.7.2007, p. 2) and of 28 November 2007 on Support to Bataviawerf - Netherlands (Case N 377/2007, OJ C 35 of 08.02.2008, p. 3).

#### 4. CONCLUSION

35. On the basis of the foregoing assessment, the Commission has decided that the measure does not constitute State aid within the meaning of Article 107(1) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, 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/competition/elojade/isef/index.cfm>

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

European Commission  
Directorate-General for Competition  
State Aid Greffe  
SPA 3 6/5  
B-1049 Brussels  
Fax No: +32 2 296 12 42

Yours faithfully,  
For the Commission

*Joaquin ALMUNIA*  
Vice-president of the Commission