Subject: State aid SA.34235 – Poland - Gas pipeline Rembelszczyzna - Gustorzyn (phase III)

Excellency,

The Commission wishes to inform Poland that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the notified aid measure.

I. PROCEDURE

1. By electronic notification of 18 September 2012, the Republic of Poland notified, pursuant to Article 108(3) TFEU, the above-mentioned measure. The Commission asked additional information by a letter of 29 October 2012. The Polish authorities submitted the requested information by letter registered on 21 November 2012.

II. DESCRIPTION OF THE MEASURE

Background and objectives of the notified project

2. The project, consisting of an extension and modernisation of the country's gas pipelines network, covers funding of construction of phase III of the gas pipeline Rembelszczyzna - Gustorzyn (located in the Masovian region, north-east from Warsaw) and two related additional tasks: extension of the Rembelszczyzna hub and modernisation of the Rembelszczyzna compressor substation (hereinafter jointly referred to as the 'notified project').

3. The construction of the gas pipeline Rembelszczyzna - Gustorzyn has been divided into three phases:
• phase I: section Gustorzyn - Płock,
• phase II: section Rembelszczyzna – Płońsk,
• phase III: section Płock - Płońsk.

According to a feasibility study carried out in 2008 for the Rembelszczyzna – Gustorzyn gas pipeline project, it was envisaged that, initially, only the first two phases of the investment will be executed under the EU co-funding. Consequently, the Polish authorities have firstly requested a state aid approval of financing of phases I and II, which was subject to Commission's decision dated 15 March 2010 in case N 594/2009 (hereinafter referred to as the '2010 Decision'). At the outset, the project described in the 2010 Decision did not include any funding measures related to the notified project. Those constructions have been postponed to the next financial perspective beyond 2013.

4. The underlying assumptions in the 2008 feasibility study had to be later revised following the adoption of new climate policy objectives specified in the instrument Energy Policy of Poland until 2030. In line with the new objectives, it has been envisaged that the proportion of low carbon sources, including gas fuels, in the overall balance of electricity generation in Poland will be intensified, which will trigger an increased demand for gas consumption in the long-term. The analyses of the operation of the Polish gas transmission networks in subsequent time horizons revealed the need for further development of the system by 2015. The implementation of the notified project was identified in this respect.

5. As pointed out by the Polish authorities, the construction of the notified project will result in a complete and fully operational link between two main gas hubs in central Poland: Gustorzyn and Rembelszczyzna. This, in turn, will ensure adequate capacity for the volumes of gas expected to be transmitted along the entire section between the hubs, thereby guaranteeing a reliable gas supply for consumers in central Poland. In particular, the extension of the Rembelszczyzna compressor substation will result in the increase of the gas supply capacity to the customers from Warsaw and its surroundings, and in the future will create a possibility of eliminating the bottleneck towards Piotrków Trybunalski (situated south-west from Warsaw). In addition, the Polish authorities have underlined that the implementation of the notified investment project will benefit all entities using gas fuel transmission services in Poland.

6. As the notified project will complement the gas pipelines network in Poland, Poland claims it will also contribute to the improvement of energy security in Poland and in the European Union as a whole by allowing for increased and more flexible supply to and within Poland and further integrating the network and the gas supply market within the EU. In particular, the project will contribute to making it possible to reverse the flow of gas, by distributing gas imported from

---

2 At that stage, both additional tasks have not been identified in the feasibility study as part of the project. However, partial extension (częściowa rozbudowa) of the Rembelszczyzna hub was included in the project approved by the 2010 Decision, to the extent it was necessary to connect the newly constructed gas pipeline.
3 Adopted by the Council of Ministers in November 2009.
the west *via* new interconnections with other EU States and from the Liquid Natural Gas (LNG) terminal in Świnoujście throughout Poland, in particular towards central and eastern Poland. In addition, the Rembelszczyzna compressor substation will also be adapted for the Poland-Lithuania pipeline, which was recognised in the *Baltic Energy Market Interconnection Plan (BEMIP)*⁴ as one of the priority infrastructure components to integrate the gas markets within the Member States in the Baltic Sea Region and further integrate them into the wider EU energy market.

7. The project will allow gas to be piped in various directions, depending on the traffic requirements of the transmission system. The new transmission routes running from the west and/or centre of the country to the east might increase prospects of competition and reduce gas prices for consumers in poorer regions of Eastern Poland. The risk of gas supply crises point to the need to ensure reliable gas transmission routes to consumers in the Warsaw agglomeration and the eastern part of the country. This requires transmitting larger gas streams towards the east.

8. Section Płock - Płońsk (phase III) of the gas pipeline will be constructed alongside the existing pipelines Włocławek I and Włocławek II, which currently connect the Rembelszczyzna and Gustorzyz hubs. The Polish authorities have stressed that the existing pipelines in the transmission system are obsolete and with relatively small pipe diameters and low operating pressure. Due to these capacity constraints, the connection of new sources of gas supply (the LNG terminal or the Baltic pipe) to the existing pipelines would not contribute sufficiently to the improvement of the security of the transmission system. In addition, to the extent that only part of the gas pipeline between Rembelszczyzna and Gustorzyz would be modernised (phases I and II), there would be differences in operating pressure, resulting in necessity to maintain numerous pressure-regulating hubs. The implementation of the project will therefore result in establishment of infrastructure with uniform operating parameters in respect of operating pressure and with larger pipe diameters. The capacity of the connection between the Rembelszczyzna hub and the Gustorzyz hub will double. The extension of the Rembelszczyzna compressor substation will make it possible to compress gas to reach the pressure parameters of the new pipeline and to transmit increased gas volumes with the use of the Rembelszczyzna hub, which also needs to be extended due to the shift in the pressure level from 5.5 MPa to 8.4 MPa. The notified project together with the use of new technologies and material engineering will help to ensure higher operational safety of the transmission system. Moreover, new technologies applied in the construction of the notified project will limit the levels of harmful air pollution emissions.

9. Poland claims that an expected distributional and social effect of the provision of public co-financing for the project is the fact that the cost of the investments will not be recouped through gas transmission consumer tariffs. According to the

calculations provided by Poland the tariff would need to increase up to 1.9 % to finance the project in the absence of aid.

**Beneficiary**

10. The beneficiary of the planned measure is Operator Gazociągów Przesyłowych Gaz-System S.A. (Gas Transmission Operator Gaz-System S.A., hereinafter referred to as 'Gaz-System'), a wholly State-owned company that owns and operates gas transmission networks in Poland. The new infrastructure subject to the present notification will be fully owned by Gaz-System.

11. The company has been fully unbundled (legal, functional and accounting separation) from PGNiG SA (Polskie Górnictwo Naftowe i Gazownictwo SA, the incumbent operator) as a result of implementing the Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas (hereinafter referred to as the 'Gas Directive'). In 2005, PGNiG transferred all shares of Gaz-System to the State Treasury.5

12. Gaz-System's key task is transport of gas *via* the transmission network throughout the country to supply with gas the distribution networks and final customers connected to the transmission system. All gas pipelines located in the Polish territory, having the status of gas transmission pipelines, are owned by Gas-System.

**Gas transmission system in Poland**

13. By means of a decision of the President of the Energy Regulatory Office (hereinafter referred to as 'ERO'), Gaz-System has been designated as the (only) national gas transmission system operator (TSO) in Poland and has been assigned a concession until 31 December 2030. Gaz-System operates on the basis of the third-party access (TPA) principle, which means that the transmission network of the network company can be used by all interested market players, with equal access to the transmission networks provided to all entities requesting the provision of transmission services. Pursuant to Article 4(2) of the Act of 10 April 1997 on Energy Law, an energy sector company engaged in the transmission of gas fuels is obliged to ensure the provision of gas fuel transmission or distribution services to all recipients and undertakings selling gas fuels on equal terms. Such services are provided on the basis of a contract.

14. Gaz-System can deny access to its pipelines in certain situations, mainly due to the technical constraints of transmission (insufficient, too low system capacity). Access cannot be denied if technical possibilities of transmission exist, the supplier is legally entitled to use the transmission network, there is measurement

---

8 Journal of Laws of 2006 No 89, item 625, as amended. Issues pertaining to gas fuel transmission services are also addressed in the Regulation of the Minister of Economy of 2 July 2010 on the detailed operating conditions of the gas system, Journal of Laws No 133, item 891.
equipment in place which measures the quantity and quality of the gas supplied and the transmission of gas will not result in an increase in tariffs of transmitted gas for other suppliers. Any decision denying a gas supplier access to the network can be appealed to the President of ERO and the administrative courts.

15. The capacity (przepustowość) within the transmission system and in particular at exit points is governed by the rule first come first served (według kolejności wpływu wniosków). The capacity at the entry points to the transmission system, i.e. at interconnections, is made available on the basis of the Open Season Procedure, according to which undertakings which are granted access to exit points have priority access to the transmission system in order to ensure smooth gas flow throughout the system.

16. The prices for transmission of gas are tariffs designed in line with the rules established by ERO and need the regulator's approval every year. Tariffs cover two types of costs: (i) all substantiated costs of companies transmitting gas, including costs of depreciation (40 years in case of gas transmissions networks), maintenance and development of the networks, taxes, wages etc.; and (ii) return on capital.

17. Tariffs are based on the principle of covering all substantiated costs, protection of consumers against unsubstantiated increase of tariffs and avoidance of cross-subsidisation by introducing separate accounting for gas transmission transactions.

18. Tariffs cover a justified return on engaged capital of the operators. ERO applies in respect to the TSO a calculation method where the Weighted Average Cost of Capital (WACC) is multiplied by the sum of net engaged capital and of the liquidity. The return on capital applicable to Gaz-System as of 1 August 2011 amounts to 7.85%.

**Budget, aid intensity and duration**

19. The notified project will be co-financed from the EU Structural Funds within the Environment and Infrastructure Operational Programme (hereinafter referred to as 'EIOP'), on the basis of the co-financing agreement signed on 15 December 2010 with an annex signed on 10 June 2011. Pursuant to Article 202 of the Public Finance Act, transfers from the European Regional Development Fund to the Infrastructure and Environment Operational Programme are paid into a separate bank account at the National Bank of Poland or Bank Gospodarstwa Krajowego. The Minister for Public Finance or the Minister for Regional Development authorises the payment of funds.

20. The Structural Funds Regulation requires that the eligible expenditure on revenue-generating projects shall not exceed the current value of the investment

---

10 Journal of Laws No 157, item 1240, as amended.
cost, less the current value of the net revenue from the investment over a specific reference period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance (so-called funding gap). In other words, the funding gap is established on the basis of investment costs, less any foreseeable revenues resulting from operating the infrastructure after investment. Furthermore, under the EIOP, the maximum share of co-financing may not exceed 57% of the funding gap.

21. The funding of the notified project is provided for the purpose of covering investment costs which are estimated at PLN 472.07 million (approx. EUR 115 million). Based on the above explained methodology, the funding gap has been calculated at the level of PLN 383.8 million (approx. EUR 93.5 million). The Polish authorities estimated the amount of funding from EIOP at PLN 212.02 million (approx. EUR 51.67 million). The aid intensity is at the level of 44.9% of the total investment costs. Moreover, the planned aid amount is determined so as not to exceed the maximum aid intensities of 57% in line with the rules under EIOP, established on the basis of the funding gap methodology.

22. It has been confirmed by the Polish authorities that the aid will not be regarded as engaged capital and hence, will not generate additional revenues for the beneficiary in terms of return of engaged capital. The aid is expected, however, to have an impact on the costs of operating the infrastructure, i.e. the costs related to operation of the pipeline will increase as more gas will be transmitted due to the extension of the modernised pipeline and possibilities for capacity increase, the costs to maintain the network; depreciation and property tax will also increase. Poland also expects an increase of the tariffs due to higher operating costs, but the tariffs will still remain lower than in the absence of aid granting.

23. The following financial analyses of the notified project have been presented by the Polish authorities:

<table>
<thead>
<tr>
<th>Analysis of the financial performance of the project</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FNPV/C</td>
<td>-303,688 PLN</td>
</tr>
<tr>
<td>FRR/C</td>
<td>-4.43%</td>
</tr>
<tr>
<td>FNPV/K</td>
<td>-132,370 PLN</td>
</tr>
<tr>
<td>FRR/K</td>
<td>-2.67%</td>
</tr>
<tr>
<td>B/C</td>
<td>0.26</td>
</tr>
</tbody>
</table>

FNPV/C – financial net present value without the aid  
FRR/C – financial rate of return without the aid  
FNPV/K - financial net present value with the aid  
FRR/K - financial rate of return with the aid

24. The Polish authorities have explained that, at the time of the notification, an amount of PLN 204.4 million (approx. EUR 49.8 million) has been reserved for the notified project in the individual project list of EIOP. This amount can
increase to the planned level, as specified above, at the time of the release of the funds as part of the re-allocation of funds within the EIOP.

25. All revenues of the TSO are regulated and must receive prior approval by the ERO. The level of this revenue is determined on an annual basis, based on plans for the tariff year and results for previous years. Due to the above, results determined in the ex-ante regulated revenue are adjusted in subsequent tariff years. As regards the funding of the project under assessment, the Polish authorities have explained that in case the project generates revenue not taken into account at the moment of the signature of the co-financing agreement, the co-financing from EIOP can be reduced or even recovered, in line with the general principles.\textsuperscript{12}

26. The accomplishment of the project has been foreseen for the year 2015. The co-financing agreement contains a clause whereby payment of the funds is conditional upon the nature of the state aid decision of the Commission. Any provisions in this Decision must be incorporated into the agreement and when the funding is paid to the beneficiary.

III. ASSESSMENT

Presence of state aid

27. Article 107 (1) TFEU provides that “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 common market”.

\textit{Aid granted by a Member State or through State resources}

28. The project is co-financed from the Structural Funds of the EU within the EIOP. Before being granted to the beneficiary undertaking, those funds are first

\textsuperscript{12} See Article 55.4 of Regulation No. 1083/2006 and “Guidelines on the method of making payments and settlements” issued by the Minister of Regional Development. If circumstances that might result in reducing the level of maximum co-financing for the revenue-generating project occur, the beneficiary, not later than when filing the application for the final payment and then, three years after closing the operational programme, is obliged to notify the responsible authority of these circumstances, when necessary updating the information in this respect in accordance with the"Guidelines of the Minister of Regional Development regarding selected issue related to preparation of investment projects, including revenue-generating projects". In accordance with the Act of 30 June 2005 on public finance and the co-financing contract, the competent authority controls fulfilment of the beneficiary's duties regarding the principles of calculation, surplus control and compensation recovery. In accordance with Article 211 of the Act on public finance, when co-financing received by the beneficiary was used contrary to its purpose or with a breach of procedures applying in respect of the project implementation, or its receipt was unjustified, or the amount excessive, it should be recovered in accordance with the procedure and principles defined in the aforementioned Act. At the same time, all documents and accounting entries related to the implementation of the project are verified by competent national institutions, European Commission and European Court of Auditors. The beneficiary is obliged to ensure access to the documentation and submit to checks.
disbursed to the Member State in question and thus, are under the control of the Member State's authorities at the moment of the final payment to the beneficiary. In the case at hand, since the choice of the project and the final transfer of the Structural Funds depend on the discretion of the Polish authorities (see above recital 19), the aid is considered to be granted from State resources within the meaning of Article 107 (1) TFEU.

Favouring certain undertakings or the production of certain goods

29. The contribution to the financing of the project from the State resources provides the beneficiary undertaking, Gaz-System, with additional funds to cover the investment costs of the extension and modernisation of the gas pipeline network. Under normal market conditions, the beneficiary would have to bear those costs from the own means. Therefore, the Commission considers that Gaz-System receives an economic advantage within the meaning of Article 107 (1) TFEU.

30. As this advantage is only granted to Gaz-System, the Commission concludes that it has a selective nature.

Distortion of competition and affectation of trade between Member States

31. Although there is no competition at present on the Polish market for gas transmission, the aid granted for the project under assessment will allow Gas-System to own and operate transmission assets that will make it more unlikely for any alternative operators to bid for the transmission licence when the current one expires in 2030. This again will be reinforced by the public co-financing of the notified project, thus, the measure is liable to threaten to distort competition on the markets on which these undertakings are active.

32. Furthermore, it is likely that the new investment will attract new suppliers of gas from other EU and non-EU States to operate in Poland. Therefore, the extension and modernisation of the gas pipelines network might give some suppliers of gas indirect benefits of increased sales to the (new) customers. Therefore the aid is likely to affect competition on the downstream markets of gas in Poland to the benefit of new entrants on the market for gas supply. The aid also affects competition between energy sources in favour of gas.

33. Gas is traded between the Member States in the EU and, as mentioned above, the extension and modernisation of the gas transmission network is likely to contribute to attracting gas flows from the west to the east and in particular from the new LNG terminal. It is therefore likely that, through the implementation of the notified project with the co-financing from EIOP, the trading conditions will be affected across the European Economic Area (EEA) between the Contracting Parties to the EEA Agreement.

Conclusion with regard to the presence of state aid
34. Taking the above into consideration, the Commission concludes that the financing of the project involves state aid within the meaning of Article 107 (1) TFEU.

Legality

35. By notifying the aid measure, the Polish authorities have complied with Article 108 (3) TFEU.

Compatibility under Article 107(3) (c) TFEU

36. The Commission notes that the measure aims at extending and modernising gas transmission network in Poland. As regards support for gas infrastructure, aid for such projects does not fall within the scope of the 2008 Environmental Aid Guidelines.13

37. The area covered by the measure is located within areas eligible under the European Regional Development Fund, as well as assisted areas under Article 107(3)(a) TFEU within the meaning of the Guidelines on national regional aid for 2007-2013 (hereinafter referred to as the 'Regional Aid Guidelines').14 However, the regional aid is designed to contribute to regional development by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there. In the case at hand, neither job creation nor setting up new establishments are the main objective of the aid. As stated by the Polish authorities and assessed below, the main objective of the aid is the development of the Polish system for the transmission of natural gas and in this way contributing to the creation of the basic infrastructure for the operation of the internal market in natural gas and increased energy security in the European Union.

38. The Commission therefore considers that the assessment of the compatibility of the measure with the internal market requires an evaluation of the contribution of the measure to the development of the European Union markets for gas and the contribution to the security of supply in the European Union and needs a wider basis for assessment than that covered by the Regional Aid Guidelines. Therefore, the measure is assessed directly on the basis of Article 107 (3) (c) TFEU which states that: “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest” may be considered to be compatible with the internal market.

39. In order to be compatible under Article 107 (3) (c) TFEU, the aid measure must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Commission considers it appropriate to assess the following questions:

Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or another objective of common interest)?

Is the aid well designed to deliver the objective of common interest? In particular:

- Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?
- Is there an incentive effect, i.e. does the aid change the behavior of firms?
- Is the aid measure proportional, i.e. could the same change in behavior be obtained with less aid?

Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

Objective of common interest

The aid measure has to aim at a well-defined objective of common interest. An objective of common interest is an objective which has been recognised by the EU as being in the common interest of the EU Member States.

Gas pipelines contribute to the development of the Polish system for the transmission of natural gas. Construction of new gas pipelines and modernisation of the network increase the system’s efficiency by increasing its capabilities, thus ensuring greater security of supply. These pipelines also make a key contribution to the promotion of the interest of the European Union, which may be defined as the creation of the basic infrastructure for the operation of the internal market in natural gas and increased energy security. This becomes evident in the context of development plans for inter-system connections between different Member States, to which the notified project contributes.

Poland claims that the implementation of the investment project covered by the present notification is essential for the following reasons:

- Diversification of gas supply sources in Poland and tightening the Polish market closer with the EU markets;
- Implementation of the Baltic Energy Market Interconnection Plan;
- Reliability of gas supply for consumers in central and eastern Poland, thereby contributing to the increased level of security of supply in Poland;
- Improvement of the security of the transmission system;

According to Article 194 TFEU, "In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

a) ensure the functioning of the energy market;

b) ensure security of the energy supply in the Union;"
c) (...) and
d) promote the interconnection of the energy networks."

44. As mentioned above, the notified project will contribute to making it possible to reverse gas flows in Poland, by distributing gas imported from the west via new interconnections with other EU states and from the Liquid Natural Gas (LNG) terminal in Świnoujście, throughout the territory of Poland, in particular towards central and eastern Poland. In addition, the Rembelszczyzna compressor substation will also be adapted for the potential future cooperation with the Poland-Lithuania pipeline, which was recognised in the Baltic Energy Market Interconnection Plan (BEMIP) as one of the priority infrastructure components to integrate the gas markets of the Member States in the Baltic Sea region and further integrate them within the European gas markets.

45. Furthermore, construction of gas pipelines in Poland are one of the priorities laid down in the framework of European Commission Communication of July 2008 concerning Second Strategic Energy Review. In particular, the extension of the gas pipeline Rembelszczyzna – Gustorzyn together with the additional tasks prepares the way for potential connections on the East West axis with the Baltic States. In addition, this work will allow the transfer of gas from a new source of supply, namely the LNG terminal.

46. Pursuant to the Gas Directive, TSOs are required to develop the transmission system notably as regards throughput of their reciprocal interconnectors. In addition, the Member States must ensure access to the transmission system for third parties. In the context of such requirements, implementation of the notified project may be perceived as compliance with the duties imposed on Poland under these provisions. Indeed the full implementation of the provisions of the Gas Directive, notably the third party access to the gas transmission infrastructure strengthens the EU dimension of the envisaged investments.

47. In this respect the Commission notes that the beneficiary has been fully unbundled (legal, functional and accounting unbundling) from the mother-company PGNiG SA in order to implement the provisions of Gas Directive in respect to transmission of gas. Furthermore, Poland implemented the provisions of the Gas Directive regarding the third party access rules to transmission pipelines. Access cannot be denied if technical possibilities of transmission exist, the supplier is legally entitled to use the transmission network, there is measurement equipment in place which measures the quantity and quality of the gas supplied and the transmission of gas will not result in an increase in tariffs of transmitted gas for other suppliers. In all cases of denying the access gas suppliers can appeal the decision to the ERO and to the administrative courts. These provisions seem to ensure that the rights of gas companies to access the gas transmission network in Poland are satisfied.

48. The capacity within the transmission system and on exit points is governed by transparent rule of first-come-first-served. Separate set of rules governs the access to entry points of gas to the transmission system. However, these rules are organised in Poland on the basis of the Open Season procedure established in line
with the European Regulators’ Group for Electricity and Gas (ERGEG) Guidelines of 21 May 2007\textsuperscript{15}.

49. The planned aid contributes to achieving those goals by providing for financing with a view to cover investment costs of the extension and modernisation of the gas pipeline. The Commission considers therefore that the extension and modernisation of the gas transmission system in Poland through the implementation of the notified project will contribute to the effective performance of the internal natural gas market and to improved energy security within the European Union. It can thus be concluded that the project aims at a well-defined objective of common interest.

\textit{Appropriate Instrument}

50. The Polish authorities have explored possibilities to achieve the above mentioned objectives by deployment of alternative instruments than co-funding from the EU Structural Funds. In this context, it has been pointed out that an alternative of imposing legal obligations on the beneficiary undertaking to realise the investment at hand from the own means could only be financed \textit{via} a tariff increase for gas transmission. All investments in infrastructure carried out by a network operator can only be financed from tariffs. This would, in turn, increase prices for gas for consumers, which has been considered by the Polish authorities to be socially unacceptable.

51. Based on the information provided by the Polish authorities, it seems that the financing of the notified project alone from the tariffs would result in a rather insignificant increase of the tariffs by 1.19\%. However, the Polish authorities have emphasised that a much broader picture containing a significant volume of investment tasks carried out by the beneficiary undertaking must be seen in this context. The amount of these investments was estimated at PLN 2 billion (approx. EUR 487.4 million) in 2012 and financing of those projects from own sources of Gaz-System and/or facilities provided by credit institutions would result in considerable tariff increase which would be difficult to accept from the social point of view, in particular as, according to Poland, the transmission tariffs in Poland are among the highest within the EU in terms of consumer purchase power.\textsuperscript{16}

52. Therefore, and in view of the large size of other investments planned by the beneficiary undertaking, the notified project, which has been identified above as pursuing the specific energy policy objectives of common interest, would risk not to be realised by the TSO in the foreseeable future. Indeed, the Polish authorities have confirmed that, in the absence of the co-financing from EIOP, the notified project would have to be postponed to 2018.

\textsuperscript{15} C06-GWG-29-05c, http://www.ceer-eu.org
\textsuperscript{16} According to an analysis of the level of charges for gas transmission services (prepared by the beneficiary), Gaz-System has the highest annual average charge for clients with specified consumption profile in 16 cases on 20.
53. Given that the current infrastructure of Włocławek I and Włocławek II is not compatible with the remaining sections of the gas pipeline, the abandonment or even delay of the construction of all phases of the gas pipeline Rembelszczyzna – Gustorzyn creates an increased risk of system breakdowns on the entire section and threats of temporary disconnections due to aggravating technical condition of gas pipelines being in operation for a very lengthy period.

54. Consequently, the Commission considers that co-financing of the notified project from the EU structural funds is an appropriate instrument to accelerate investments in transmission system network in Poland and thereby to fulfil the objectives of common interest, as identified above.

**Incentive Effect**

55. Incentive effect is present, if the aid changes the recipients' behaviour towards reaching the objective of common interest.

56. The analysis presented in recital 23 above on the financial performance indicates that the notified project would not be financially profitable without the co-financing from EIOP. Indeed, both the FNPV/K and FRR/K are negative which means that the revenue generated by the project would not cover the expenses incurred. Accordingly, a rational investor would not undertake it. In the specific case of Gaz-System, the regulated return on capital it can presently expect from its investments amounts to 7.85%, as shown in recital 18. It is therefore most unlikely that the beneficiary, or any hypothetical alternative investor, would carry out the project without public financial support.

57. In case of absence of the co-financing from EIOP, it would only be possible to finance the investment under assessment based on tariff increase for gas transmission services. However, as explained above, the Polish regulator may object to tariff increases on social grounds. Therefore, since the beneficiary undertaking would not be certain to be able to cover the costs of the investment, the project would not be executed in the near future, thus delaying the achievement of the objectives of common interest, as defined above. It follows therefore that, in order to achieve those objectives, the notified project can only be financed by a co-financing from the public sources.

58. Therefore it can be concluded that the planned aid to the notified project will provide for the necessary incentive effect.

**Proportionality**

59. A state aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum.

60. In the case at hand, the financial analysis portrayed at recital 23 indicates that even with the planned aid, the project would still yield a negative profitability. In light of the negative profitability of the investment, the aid intensity does not seem inadequate. It follows that the planned aid amount can *a priori* be seen as
preventing that any excess return is achieved and proportionate to incentivise the beneficiary. In particular, the *funding gap* methodology (recitals 20-21 above) for the determination of the planned aid amount ensures that all benefits which can be predicted for the relative long lifetime of the project are deducted from the aid and financed entirely by the operator.

61. The Commission considers that comprehensive mechanisms are put in place to ensure that the benefits are properly calculated and any surpluses are controlled and recovered if they arise unduly (see above at recital 25 and footnote 12). It can thus be concluded that the state aid granted for the notified project is proportional, as it is limited to the minimum necessary to achieve the above-identified objective of common interest.

*Distortion of competition and balancing test*

62. The TSO on the market of gas transmission in Poland has been assigned by the State by means of a licence, therefore the aid granted for the project under assessment will allow Gas-System to own and operate transmission assets that will make it more unlikely for any alternative operators to bid for the transmission licence when the current one expires in 2030.

63. However, the existence of a single national TSO is widespread in the EU. Moreover, the impacts on potential competition on the market for transmission of gas are mitigated on the downstream markets, as the beneficiary of the aid is obliged to ensure the third party access to its network for all suppliers of gas.

64. Third party access rules to transmission pipelines ensure satisfactory access rights of gas companies to the gas transmission network in Poland. Accordingly, appropriate third party access provisions ensure that access to the networks is granted in a non-discriminatory manner and the notified project ensures positive effects in terms of increased interpenetration of gas systems within the internal market. Increased and more flexible gas flows within the Polish transmission network which are made possible by the notified project should have a positive effect on competition on the market for gas supply. Hence, relatively low negative effects on potential competition of the planned aid are outweighed by the identifiable positive effects of the aid.

65. Therefore, it can be concluded that the possible distortions of competition and trade resulting from the State aid for the envisaged measures are limited, and that the overall balance with regard to the objective of common interest is positive.

*Conclusion with regard to the compatibility of the measure*

66. In light of the above, the Commission considers that the notified project financing pursues an objective of common interest in a necessary and proportionate way and thus, is compatible with the internal market on the basis of Article 107 (3) (c) TFEU.
IV. CONCLUSION

67. The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

68. The Commission reminds the Polish authorities that, in accordance with Article 108 (3) TFEU, any plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of 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 the EC Treaty (now Article 108 TFEU).17

69. 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 Registry
B-1049 BRUSSELS
Telefax nº: +32-2-296.12.42

Please mention the name and number of the case in all correspondence.

Yours faithfully,

For the Commission

Joaquin ALMUNIA
Vice-President

---