Subject: State aid SA.47690 (2017/N) – Poland - Regional aid for SMEs for investments in shipbuilding – Pomorskie and Zachodniopomorskie Voivodship

Sir,

1. PROCEDURE

(1) By electronic notification registered on 1st of March 2017 at the Commission (SANI 2017/022189), Poland notified, pursuant to Article 108(3) TFEU, the introduction until 31 December 2020 of a regional investment aid scheme providing support in the form of grants, loans and guarantees for small and medium-sized enterprises operating in the shipbuilding sector in the Pomorskie and Zachodniopomorskie voivodships. Pursuant to Article 13(a) of the General block exemption regulation ("GBER")\(^1\) granting regional investment aid to the shipbuilding sector is excluded. For this reason, the scheme was notified for assessment under the Regional aid guidelines for the period 2014-2020 ("RAG")\(^2\).

(2) By letter of 28 April 2017 the Commission asked for supplementary information. By letter of 5 June 2017 Poland submitted the requested information. By letter of 18 October 2017, the Commission asked for further information. Poland submitted the requested information on 16 November 2017.

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\(^1\) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Article 107i and 108 of the Treaty

2. **DETAILED DESCRIPTION OF THE MEASURE**

2.1. **Objective of the aid scheme**

(3) The measure aims to promote economic and social development of the Pomorskie and Zachodniopomorskie Voivodships by providing support in the form of investment aid to small and medium-sized enterprises (SMEs) active in the shipbuilding sector in the respective regions.

(4) Poland informed that the measure represents sectoral aid as it will be granted for initial investments of SMEs in the shipbuilding sector (mainly NACE codes 30.11 – Building of ships and floating structures and 30.12 – Building of pleasure and sporting boats\(^3\)).

(5) The aid will be granted within the frameworks of the Regional Operational Programme for Pomorskie Voivodship 2014-2020 and the Regional Operational Programme for the Zachodniopomorskie Voivodship 2014-2020 respectively.

(6) The Pomorskie and Zachodniopomorskie Voivodships are assisted areas under Article 107(3) (a) TFEU, in accordance with the Polish Regional Aid Map for the period 2014-2020\(^4\). The maximum aid intensity in the Pomorskie and Zachodniopomorskie Voivodships is 35% gross grant equivalent (GGE) for large enterprises, 45% for medium-sized enterprises and 55% for small enterprises.

2.2. **Legal basis**

(7) The national legal basis for the scheme is the following:

a) The article 27(4) of the Act of 11 July 2014 on the principles governing the implementation of the programmes under Cohesion Policy financed in the 2014-2020 financial perspective (Journal of Laws 2016, item 217, 1579 and 1948);

b) The draft version of the Regulation of the Minister for Development and Finance on granting regional investment aid for micro, small and medium-size enterprises for investments in shipbuilding under the regional operational programmes for the period 2014-2020.

2.3. **The nature and form of the aid**

(8) According to Poland, the aid is to promote initial investments by SMEs in the shipbuilding sector, carried out in the two regions concerned.

(9) The aid will be granted in the form of

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(a) direct pecuniary advantage (grants);
(b) interest-rate subsidies under preferential loans;
(c) bank loan repayment guarantees or sureties.

(10) The aid amount will be calculated as the gross grant equivalent of the aid. Formulas according to which the gross grant equivalent is calculated are defined in the Regulation of the Council of Ministers[^5] and are based on the Communication from the Commission on the revision of the method for setting the reference and discount rates[^6] and the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[^7].

(11) As aid will be granted in instalments, Poland confirmed that aid/eligible costs will be discounted to its/their value at the moment of granting the aid. The interest rate to be used for discounting purposes will be the discount rate applicable on the date of granting the aid.

2.4. Beneficiaries

(12) The beneficiaries of the scheme are exclusively SMEs as defined in the Commission Recommendation on the SME definition of 6 May 2003[^8].

(13) Poland expects that the number of beneficiaries will be in the range between 11 and 50. About 18 undertakings are expected to benefit from aid in the form of grants while around 22 should benefit from aid in the form of interest-rate subsidies and bank loan repayment guarantees and sureties.

(14) The scheme will not apply to undertakings that are in difficulty in the meaning of the 2014 Guidelines on rescuing and restructuring aid[^9]. Poland committed to suspend the payment of any aid under the notified aid scheme to any undertaking that has benefited from earlier unlawful aid declared incompatible with the internal market by a previous Commission decision.

2.5. Eligible projects

(15) Under the scheme the only projects eligible are those which qualify as initial investment in the meaning of paragraph 20(h) of the RAG. The scheme explicitly sets out that investments aiming exclusively at replacing production capacity, or investments consisting exclusively in the sole acquisition of shares of an undertaking, or the mere replacement of machines or equipment cannot be deemed to constitute initial investment[^10].

[^5]: Cabinet Regulation of 11.08.2014 on the detailed method of calculation of state aid granted in different forms
[^6]: OJ C 14, 19.01.2008, p.6
[^7]: OJ C 155, 20.06.2008, p.10
[^10]: In art. 5, paragraph 2 of the draft Regulation of the Minister for Development and Finance
2.6. Eligible expenditure

(16) The scheme provides that the aid can be granted to cover eligible costs related to (i) tangible and intangible assets related to an initial investment, (ii) wage costs linked with job creation as a result of implementation of an initial investment, (iii) a combination of investment costs and wage costs, up to whichever amount is higher, (iv) the costs of preparatory studies or consultancy costs linked to the initial investment, up to a maximum of 50% of their total amount\(^1\).

(17) For aid granted for a fundamental change in the production process, the cost of the investment in tangible and intangible assets to be qualified as eligible expenditure must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years\(^2\).

(18) For the aid granted for the diversification of the output, the cost of the investment in tangible and intangible assets to be qualified as eligible expenditure must exceed at least 200% of the book value of the assets that are reused, as registered in the fiscal year preceding the start of works\(^3\).

(19) The costs of acquisition of the assets of an establishment which has closed or would have closed had it not been purchased are eligible expenditure only if the assets are purchased from third parties unrelated to the buyer and the transaction takes place under market conditions\(^4\).

(20) Where the eligible expenditure relates to tangible assets, the value of the investment is established as a percentage of the total costs on the basis of the land, buildings, and plant, machinery, and equipment.

(21) In case of leasing of tangible assets, for land and buildings the lease must continue for at least three years after the expected date of completion of the investment, while for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset at the expiry of the term of the lease\(^5\).

(22) Where eligible expenditure under the scheme relates to intangible assets, the value of the investment shall be established on the basis of expenditure entailed by the transfer of technology through the acquisition of patent rights, licenses, know-how or unpatented technical knowledge.

(23) Intangible assets are eligible for the calculation of investment costs if they fulfil the following conditions:

(a) they must be used exclusively in the establishment receiving the aid;

(b) they must be amortisable;

\(^{11}\) Art. 7 of the draft Regulation of the Minister for Development and Finance
\(^{12}\) Art. 8, paragraph 1 (1) of the draft Regulation of the Minister for Development and Finance
\(^{13}\) Art. 8, paragraph 1 (2) of the draft Regulation of the Minister for Development and Finance
\(^{14}\) Art. 8, paragraph 3 of the draft Regulation of the Minister for Development and Finance
\(^{15}\) Art. 8, paragraph 2 of the draft Regulation of the Minister for Development and Finance
(c) they must be purchased under market conditions from third parties unrelated to the buyer, and

(d) they must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least three years.\(^{16}\)

(24) Where eligible expenditure under the scheme is calculated on the basis of wage costs, the posts must be filled within three years of the completion of works and each job created through the investment must be maintained within the area concerned for a period of three years from the date the post was filled. The wage costs will be calculated by reference to the expected wage costs of persons hired due to job creation resulting from the initial investment over a period of two years.\(^\text{17}\)

2.7. Administration of the scheme

(25) In case of grants, the granting authority will be the bodies in charge of implementing the Regional Operating Programmes. For aid in the form of financial instruments, the implementing bodies will still be determined by Poland.

2.8. Budget and duration of the notified scheme

(26) The aid scheme is financed from resources of two Regional Operational Programmes: The Regional Operational Programme for Pomorskie Voivodeship ("Pomorskie ROP") and The Regional Operational Programme for Zachodniopomorskie Voivodeship ("Zachodniopomorskie ROP") in the programming period 2014 – 2020. Both programmes are co-financed from the European Fund for Regional Development ("ERDF") and European Social Fund ("ESF"). The total budget available from the ERDF for the scheme amounts to approx. 19,000,000 PLN for Pomorskie and around 60,000,000 PLN for Zachodniopomorskie. The overall maximum budget for both regions is as follows: (i) direct grants - 70,628,000 PLN, (ii) subordinated loans - 3,600,000 PLN, (iii) guarantees - 2,700,000 PLN, (iii) other instruments - 4,000,000 PLN.

(27) The scheme as notified will be operated until 31 December 2020. Any aid awarded under the scheme will be granted by that date.

2.9. Own contribution

(28) The beneficiary is obliged to participate with an own contribution of at least 25% of the eligible costs, in a form that is free of any public support, in accordance with recital 38 of the RAG.\(^{18}\)

2.10. Incentive effect

(29) In order for the incentive effect to be fulfilled, the beneficiary will have to apply

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\(^{16}\) Art. 8, paragraph 6 of the draft Regulation of the Minister for Development and Finance

\(^{17}\) Art. 9 of the draft Regulation of the Minister for Development and Finance

\(^{18}\) Art. 11 of the draft Regulation of the Minister for Development and Finance
for aid prior to the starting of works\textsuperscript{19}. The granting authority will carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect corresponding to one of the scenarios described in the application form\textsuperscript{20}.

(30) The aid application, regardless of the form of aid applied for, will include at a minimum all the mandatory elements required in the Annex V of the RAG\textsuperscript{21}.

2.11. Maintenance of the investment for a minimum period after its completion

(31) According to the legal basis of the scheme, the aid beneficiary will have to maintain the investment for a minimum period of three years after the date of completion of the investment project\textsuperscript{22}.

2.12. Aid intensity, maximum aid amounts and cumulation

(32) The maximum allowed aid intensity in the regions concerned is 35% GGE in the meaning of recital 20(m) of the RAG. Since in the scheme at hand aid is awarded exclusively to SMEs, the aid ceilings are increased as provided for in recital 177 of the RAG, with the exception of aid to be awarded for large investment projects.

(33) Notwithstanding the abovementioned aid ceilings, for aid in the form of grants the maximum eligible cost is limited to PLN 2 million for the Pomorskie Voivodeship and PLN 4 million for the Zachodniopomorskie Voivodeship. For financial instruments these amounts can be increased but remain in any event limited due to the limited budget allocated to financial instruments.

(34) The aid granted under the scheme may be cumulated with other aid schemes that cover the same eligible costs, provided that the total amount of aid received from all sources does not exceed the maximum permissible aid intensity per project as defined in the Polish Regional Aid Map 2014-2020, where that amount is calculated by a granting authority prior to the granting of the aid. The aid application will require the applicant to provide the information needed to ensure that the aid granting authorities will be able to enforce cumulation rules effectively\textsuperscript{23}. Furthermore, the authority granting the aid may verify the accuracy

\textsuperscript{19} Art. 14, paragraph 1 of the draft Regulation of the Minister for Development and Finance
\textsuperscript{20} Art. 15 of the draft Regulation of the Minister for Development and Finance
\textsuperscript{21} Art. 15 of the draft Regulation of the Minister for Development and Finance
\textsuperscript{22} Art. 14, paragraph 2 of the draft Regulation of the Minister for Development and Finance
\textsuperscript{23} According to Art. 14, paragraph 3 of the draft Regulation of the Minister for Development and Finance, the economic operator must ensure that the application form is accompanied by documents prepared in accordance with the provisions issued under Article 37(6) of the Polish Act of 30 April 2004 on procedural issues concerning State aid (Journal of Laws 2016, item 1808, as amended). The applicant is required to include a statement on whether the requested aid will be allocated to the investment project for which the applicant has already received other aid and whether the requested aid will be used to cover the same eligible costs. If so, the applicant is required to provide detailed information on the other aid received, including nominal and gross value and information on the project including project description, location, the list of eligible costs, implementation stages and the start and end date.
of information declared by the aid beneficiary by using the SUDOP database.

(35) Poland further confirmed that the beneficiary shall provide to the granting authority all necessary data regarding the aid already received for the project in the last 3 years in the same NUTS 3 area and where the investment will be located, as well as declarations specifying regional aid and de minimis aid received or to be received for the same project from other granting authorities.

(36) Poland confirmed that where aid is awarded to a beneficiary for an investment that is considered to be part of a single investment project at group level (as per recital 20(t) of the RAG), the aid must be scaled down for the eligible costs exceeding EUR 50 million.

2.13. Definition of large investment projects and individual notification requirement

(37) In accordance with recital 20(l) of the RAG under the scheme a 'large investment project' is defined as initial investment with an eligible expenditure above EUR 50 million.

(38) In the cases where the aid is granted for a large investment project which has received aid (at group level) exceeding EUR 26.25 million for an initial investment, the aid may be granted only if a decision authorising it by the European Commission has been received following a notification procedure provided for in Article 108(3) TFEU.

2.14. Monitoring

(39) Poland agreed to submit a yearly report to the Commission on the application of the notified scheme.

(40) In addition, Poland agreed to maintain, for at least 10 years from the date of award of any aid under the scheme, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and that these records will be provided to the Commission upon request.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

(41) The Pomorskie ROP and Zachodniopomorskie ROP were approved by Commission Implementing Decision No C(2015) 903 and C(2015) 908. Both Regional Operation Programmes are co-financed from the ERDF and ESF. Any financial contributions from the ERDF or ESF are transferred to the national budget of the Member State. The Member States then transfer those funds onto the beneficiaries, in this case to the fund. The ERDF and the ESF resources therefore constitute State resources.

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The measure is selective since it will be granted only to certain firms in the Pomorskie and Zachodniopomorskie Voivodeships. Moreover, the State has discretionary power in awarding the loans, grants and guarantees.

The measure conveys an advantage by making available amounts of aid which would not be available to the beneficiaries without the measure.

The measure is liable to distort trade and can affect trade between Member States since it concerns activities which are open to competition and for which trade between Member States exists.

In view of the above, the Commission considers that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the measure

By notifying the aid measure before putting it into effect, Poland respected its obligations under Article 108(3) TFEU.

Considering the fact that pursuant to Article 13 (a) of the GBER 2014 granting regional investment and operating aid to the shipbuilding sector is excluded, this scheme has to be assessed according to the criteria laid down in the RAG.

3.3. Compatibility of the scheme

The Commission has examined the measure in the light of Article 107(3)(a) TFEU and of the RAG.

To assess whether a notified aid measure can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition. To that end, the Commission analyses the following elements:

a) Contribution to regional objective and need for State intervention

According to the paragraphs 31 and 32 of the RAG, regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives and should be consistent with and contribute towards those objectives. Those requirements are met by measures implemented in accordance with regional development strategies defined in the context of the European Structural Funds with a view to contributing towards the objectives of the Europe 2020 strategy.

The Commission notes in that context that the notified scheme is a part of the Pomorskie ROP and the Zachodniopomorskie ROP for the programming period 2014-2020 and on that basis contributes to regional objectives.

When awarding aid to individual investment projects on the basis of a scheme, the granting authority must confirm that the selected project will contribute towards the objective of the scheme and thus towards the development strategy of the area concerned.
(52) In that context, the Commission notes that a prioritization of the projects to be supported is made on the basis of the promotion of main objectives pursued by the strategy of the Pomorskie ROP and Zachodniopomorskie ROP, such as economic development of the region, competitiveness, innovativeness, creation or safeguard of permanent jobs, conformity with the intelligent specialisation of the region.

(53) To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment must be maintained in the area concerned for at least three years after its completion.

(54) In that context, the Commission notes that the assets forming part of the assisted investment must remain in the area concerned for at least three years after completion of the investment project.

(55) To ensure that the investment is viable, the Member State must ensure that the beneficiary provides a financial contribution of at least 25% of the eligible costs, through its own resources or by external financing, in a form that is exempt of any public financial support.

(56) To that end, the Commission notes that the contribution of the borrower to finance the investment project must be at least 25% of total financing.

b) Appropriateness of the scheme

(57) According to section 3.4 of the RAG, the notified aid measure must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development.

(58) The notified scheme including the chosen instruments are covered by the Pomorskie ROP and Zachodniopomorskie ROP in the programming period 2014-2020. The Commission considers that the chosen instruments of the scheme are appropriate.

c) Incentive effect

(59) According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

(60) Works on an individual investment can start only after submitting the application form for aid.

Member States must introduce a standard application form for aid annexed to
In the application form, SMEs must explain counterfactually what would have happened had they not received the aid, indicating which of the scenarios described in paragraph 61 of the RAG applies without providing additional supporting documents.

(61) The granting authority must carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect. A counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

(62) The Commission notes that Poland committed to respect those requirements.

\textit{d) Proportionality of the scheme}

(63) According to section 3.6 of the RAG the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned.

(64) Poland explains that the scheme is applicable only to SMEs. Pursuant to paragraph 82 of the RAG, in cases of schemes applicable to SMEs the maximum aid intensities from the regional aid map serve as safe harbours. As long as they are not exceeded the criterion of "aid limited to the minimum" is deemed to be fulfilled and therefore the aid is proportional.

(65) In line with paragraph 87 of the RAG, Poland confirms that if the increased aid intensities for SMEs are used in line with the regional aid map those increased aid intensities for SMEs will not apply to large investment projects.

(66) Poland confirmed that it will respect the applicable regional aid ceiling, where appropriate taking into account any combination with other regional investment aid. Thus the aid is considered to be limited to the minimum.

\textit{e) Avoidance of undue negative effects}

(67) For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.

(68) Poland provided information indicating that the markets concerned by the aid scheme are cyclical and not in structural absolute decline. An increase in demand is expected for several shipbuilding segments. The Commission therefore considers that the aid will not lead to such negative effects that could exclude compatibility pursuant to paragraph 120 of the RAG.

(69) In line with the requirement from paragraphs 121 and 126 of the RAG the Commission notes that when awarding aid under the scheme to individual projects, the granting authority will verify and confirm that without aid the investment would not have been located in a region with a regional aid intensity which is higher or the same as the target region.

(70) As required by paragraphs 23 and 122 of the RAG, the Commission notes that
when awarding aid under the scheme to individual projects, the granting 
authority will notify individual aid grants in cases where the beneficiary has 
closed down the same or similar activity in another area in the EEA two years 
preceding the date of applying for aid or at the moment of the aid application 
has the intention to close down such an activity within a period of two years 
after the investment to be subsidised is completed.

(71) The Commission considers that Poland has demonstrated that the negative 
effects will be limited to the minimum taking into account in particular the 
limited financial resources of the overall scheme and the limited maximum 
amounts of aid that can be granted for individual beneficiaries. Also the size of 
expected beneficiaries (SMEs), the innovative character of the projects 
concerned and the election criteria of the projects indicate that negative effects 
will be limited. In addition, by limiting the scope to SMEs, the aid is not aimed 
at strengthening the position of any large companies dominating the market. On 
the contrary, the scheme supports innovative investments of the SMEs related to 
intelligent specialisations of the region and it is not intended to sustain or 
enlarge the existing production capacities. Rather, in a market that is 
characterized by large shipbuilding companies based mainly in Asia, the aid is 
expected to contribute to a strengthening of the position of the small and 
medium-sized companies active in the shipbuilding industry in Poland, so that 
they will be better prepared to face competition from the large companies 
located in third countries.

f) Transparency

(72) In view of paragraph II.2 of the Transparency Communication Member States 
must ensure the publication on a comprehensive State aid website, at national or 
regional level, of a full text of the approved aid scheme or the individual aid 
granting decision and its implementing provisions, or a link to it; the identity of 
the granting authority(ies); the identity of the individual beneficiaries, the form 
and amount of aid granted to each beneficiary, the date of granting, the type of 
undertaking (SME/large company), the region in which the beneficiary is 
located (at NUTS level II) and the principal economic sector in which the 
beneficiary has its activities (at NACE group level). Such information must be 
published after the decision to grant the aid has been taken, must be kept for at 
least ten years and must be available to the general public without restrictions.

(73) Poland confirms that all requirements concerning transparency set out in 
paragraph II.2 of the Transparency Communication will be respected.

3.4. Conclusion on the compatibility of the scheme

(74) In view of the above, the Commission is of the view that the notified aid 
measure can be expected to have significant positive effects (especially a

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25 Communication from the Commission amending the Communications from the Commission on EU 
Guidelines for the application of State aid rules in relation to the rapid deployment of broadband 
networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other 
audiovisual works, on Guidelines on State aid to promote risk finance investments and on 
positive contribution to the development of two less developed regions, to the
creation of jobs and to a strengthening of competitive position of SMEs). At the
same time, Poland has ensured that the potential negative effects in terms of
distortion of competition are minimised to an extent that they will be
outweighed by the likely positive effects.

(75) The Commission therefore concludes that the notified measure meets all the
compatibility criteria of the RAG.

3.5. Final conclusion

(76) The Commission is of the opinion that the notified scheme is in line with the
general provisions of the RAG.

4. CONCLUSION

(77) The Commission has accordingly decided to consider the notified scheme as
compatible with the internal market.

(78) The Commission, therefore, accepts that Poland grants investment in the form of
direct grants, loans, guarantees and sureties in the Pomorskie and
Zachodniopomorskie Voivodeship on the basis of that scheme until 31 December 2020.

(79) The Commission reminds Poland of its commitment to fulfil the reporting
obligations.

(80) The Commission further reminds Poland that all plans to modify that aid
scheme must be notified to the Commission.

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:

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

Margrethe VESTAGER
Member of the Commission