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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.52716 (2018/N) – Poland – Construction of Treeden Group transshipment terminal at the PKP LHS station in Wola Baranowska

Excellency,

1. PROCEDURE

- (1) By electronic notification registered on 19 December 2018, the Polish authorities notified to the European Commission a measure in favour of the construction of a transshipment terminal at the PKP LHS station in Wola Baranowska under the Regional Operational Programme of Podkarpackie Province 2014-2020 (hereinafter ‘2014-2020 Podkarpackie ROP’). By letters of 14 February 2019, 21 June 2019, 8 November 2019 and 3 February 2020, the Commission requested further information. The requested information was provided by Poland by letters of 24 April 2019, 10 September 2019, 15 January 2020 and 13 February 2020.

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POLAND

2. THE NOTIFIED MEASURE

2.1. The project

- (2) The project consists in the construction of a private transshipment terminal infrastructure in Wola Baranowska station located on 395 km of broad-gauge railway line No 65¹ in Poland outside the TEN-T network². The Polish authorities intend to increase the volume of freight movements at the Wola Baranowska PKP LHS station in line with the Action 5.2. Transshipment terminal infrastructure of 2014-2020 Podkarpackie ROP. The total costs of the project amounts to PLN 32.9 million (EUR 7.6 million)³.
- (3) This freight terminal will serve for transshipment of cargo between different modes of transport and between the standard gauge and the broad-gauge railway from the Commonwealth of Independent States, as well as for storage of freight and customs services. The terminal will be equipped with specialised storage facilities for bulk materials⁴.
- (4) The objectives of the project are also related to the long-term benefits of:
 - improvement of infrastructure to scale up the transport of goods by rail, in particular with countries of Eastern Europe and Asia,
 - reduction of the negative impact on the environment as a result of the transfer of freight traffic from road to rail,
 - improvement of the capacity of terminals,
 - extension of the transshipment offer of terminals,
 - improvement of the transport accessibility of the Podkarpackie Province in rail traffic.
- (5) The peripheral Podkarpackie Province is among the least economically developed in Poland. One of the major problems of this region is the lack of an adequate transport infrastructure⁵.
- (6) The need to strengthen the transport connections of Eastern Poland was identified as one of the priority areas for intervention in the modernisation and spatial deployment of infrastructure in Poland⁶.

¹ This single-track line used only for freight traffic has a track gauge of 1520mm, a standard gauge in countries east of Poland, e.g. Belarus, Ukraine, Russia.

² Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, OJ L 348, 20.12.2013.

³ Exchange rate of October 2017: 1 EUR = 4.3122 PLN.

⁴ I.e. cereals, biomass and animal feed products.

⁵ Operational Programme Eastern Poland 2014-2020, Annex 4 Diagnosis of the challenges, needs and potential of areas covered by the Operational Programme Eastern Poland 2014-2021, https://www.polskawschodnia.gov.pl/media/1294/Zal_nr_4_POPW_Diagonoza_wyzwan_potrzeb_potencjalow_obszarow_objetych_POPW.pdf.

⁶ Transport Development Strategy to 2020 (with a view to 2030), 2013, p. 44; Transport Development Strategy of Podkarpackie Province to 2023, 2016; Development Strategy of Town and Commune Baranów Sandomierski 2016-2022, 2016.

- (7) The PKP LHS station in Wola Baranowska on the broad-gauge line is an important cargo handling point with a regional dimension and a connection to the Polish-Ukrainian border crossing point. The Strategic Programme for the Development of the Transport in Podkarpackie Region up to 2023 stresses that 'the major challenges to the growth of trade between Poland and former USSR countries are the extension and modernisation of the broad-gauge transshipment stations at Wola Baranowska and Werchrata'⁷. The construction of a new transshipment infrastructure will promote the freight transport by rail in the region.
- (8) The share of intermodal transport in Poland compared to other EU countries is relatively low. The intermodal transport in Poland relies on 37 terminals.⁸ Poland has 1 container terminal per 10 000 sq. km, which is significantly lower than in other EU Member States where intermodal transport is the key sector of the rail market (e.g. Germany 4.2 terminal per 10 000 sq. km).⁹ It is essentially due to long period of return on capital (20-30 years) and the high capital expenditure needed to start and expand intermodal operations. Private investors avoid taking the risks associated with investments in this sector, especially when faced with strong competition from road transport operators offering lower-cost services.
- (9) State aid to those investments is necessary to ensure a modal shift to more environmentally friendly modes of transport. Therefore, the Polish authorities deem it necessary to continue supporting projects, which aim at the development of rail infrastructure.

2.2. National legal basis

- (10) The legal basis of the notified individual aid consists of the Decision No 356/7553/17 of the Executive Board of Podkarpackie Province of 24 October 2017 approving the list of assessed projects and the selection of projects for funding from the European Regional Development Fund (ERDF) under Priority Axis V - Communication Infrastructure, action 5.2. *Transshipment terminals infrastructure*, 2014-2020 Podkarpackie ROP.

2.3. Budget and form of the notified measure

- (11) The budget of the measure amounts to PLN 24.85 million (EUR 5.8 million), i.e. an aid intensity of 83.89% of the eligible expenditure, which amounts to PLN 29.62 million (EUR 6.9 million). The aid will take the form of a direct investment grant subject to authorisation by the European Commission.

⁷ Annex 1 to Decision No 129/2815/15 of the Executive Board of Podkarpackie Province of 29 December 2015 - Strategic Programme for the Development of the Transport in Podkarpackie Province up to 2023, p.15.

⁸ Report on the functioning of the rail transport market in 2018, UTK, 2018.

⁹ Analysis of rail intermodal transport in Poland, UTK, 2016; Journal of Laws of 2017, item 260, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20170000260>.

2.4. Eligible costs

- (12) The following investments are eligible for aid from the ERDF under Priority Axis V - Communication Infrastructure, action 5.2. *Transshipment terminals infrastructure* of the 2014-2020 Podkarpackie ROP :
- the construction of a transshipment terminal and the infrastructure necessary for its implementation (among which office and administrative buildings (200m²); flat warehouse (4500m²), 5 silos of 5301m³ each, and terminal cargo for 120 containers).
 - the purchase of equipment used exclusively to provide transport/transshipment services,
 - the purchase of ICT systems to be used in providing transport/transshipment services.

2.5. Beneficiary

- (13) The beneficiary, owner and operator of the planned transshipment terminal, is Treeden Group Sp. z o.o. (hereinafter 'Treeden Group'), a private entity.

2.6. Procedure

- (14) The aid is funded by the ERDF under Priority Axis V - Communication Infrastructure, action 5.2. *Transshipment terminal infrastructure*, of the 2014-2020 Podkarpackie ROP.

2.7. Cumulation

- (15) The aid may not be cumulated with any other State aid.

3. ASSESSMENT OF THE AID

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (16) Article 107(1) of the TFEU states 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 internal market"*.
- (17) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure constitutes State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. The measure shall:
- a) be granted by the State or through State resources;
 - b) confer an advantage on the beneficiary undertakings;
 - c) favour certain undertakings or the production of certain goods;
 - d) distort or threaten to distort competition, and affect trade between Member States.

- (18) The notified measure:
- a) involves State resources, as it is funded by the Polish regional authorities of the Province through an ERDF grant under shared management, and is imputable to the State as the project was selected for funding by the regional authorities (Decision No 356/7553/17 of the Executive Board of Podkarpackie Province of 24 October 2017);
 - b) confers an economic advantage, as it relieves the direct beneficiary of a part of the investment costs that it would normally have to bear;
 - c) is selective in nature because it is directed to one undertaking; and
 - d) can potentially distort competition and affect trade between Member States since it concerns freight markets that are liberalised.

Therefore, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the measure

- (19) The Commission notes that, as stated in recital (11), the aid might be granted only after the Commission has authorised the measure. Poland has complied with the obligation laid down in Article 108(3) TFEU.

3.3. Legal basis for compatibility assessment

- (20) Article 93 of the TFEU provides that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*". The concept of "coordination of transport" used in that provision has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities that is aimed at guiding the development of the transport sector in the common interest.¹⁰
- (21) The primary objective of the aid is coordination of transport. As described in recital (4), the objective of the aid measure is to shift freight transport from road to rail.
- (22) The transport sector may experience "coordination" difficulties in the economic sense of the term, for example in the connections between different transport networks. Therefore, development of intermodal transport through the construction of terminals and logistic centres is a recognised objective of coordination of transport.¹¹
- (23) For the reasons outlined above, the Commission will assess the compatibility of the notified aid with the internal market based on Article 93 of the TFEU.

¹⁰ See, for example, Commission Decision of 5 October 2011 in case SA.31981 - Netherlands - Start up aid to new combined transport services based on Twin hub railway network, paragraph 25; Commission Decision of 12 August 2015 in case SA.39962 (2014/N) - Czech Republic - Aid scheme for the modernisation and construction of combined transport terminals, paragraph 51.

¹¹ See, for example, Commission Decision of 9 November 2011 in case SA.32632 (2011/N) Terminal à conteneurs intermodal de Genk, paragraph 51; Commission Decision of 15 June 2011 in case SA.32224, Netherlands - Development of the Alblasserdam transshipment point, paragraph 22.

- (24) According to a constant decisional practice, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU, if the following conditions are met:
- a) the aid must contribute to a well-defined objective of common interest;
 - b) the aid must be necessary and provide an incentive effect;
 - c) the aid must be proportionate;
 - d) the access to the supported infrastructure must be open to all users on a non-discriminatory basis;
 - e) the aid must not lead to distortions of competition contrary to the common interest.

3.4. Compatibility of the measure with the internal market

3.4.1. Contribution to a well-defined objective of common interest

- (25) The European Union aims to achieve a shift from road freight to other, more environmentally friendly modes of transport. The development of intermodal transport should be a tool for sustainable development and reduction of negative externalities of certain modes of transport, imposed to the society in the form of congestion, costs of accidents, exhaust and noise emissions.
- (26) The Commission's White Paper on Transport¹² introduced the new European transport policy for 2012-2020, with an outlook up to 2050. The prime and new objectives include a fundamental reduction in Europe's dependence on oil imports and a 60% cut in carbon emissions by 2050. The White Paper also specifies the target of switching 30% of road freight over 300 km to other modes of transport, such as rail or inland water transport, rising to more than 50% by 2050. Moreover, the White Paper underlines the need to develop appropriate infrastructure to meet these goals.
- (27) The Europe 2020 Strategy for smart, sustainable and inclusive growth¹³ also recalled these objectives. The "Resource-efficient Europe" initiative targets a 20 % greenhouse gas emission reduction. The "Industrial policy for the globalisation era" initiative requires the transport and logistics network to provide industry throughout the Union with efficient access to the single market and the international market beyond the Union's borders.
- (28) Decarbonising transport in particular through creating the conditions for an ambitious modal shift of long-distance freight traffic to energy-efficient transport modes remains a key policy objective of the European Union, contributing to the EU ambitions towards fighting climate change embedded in the Paris agreement of 2016. The development of transshipment terminals in this context is particularly relevant to encourage such modal shift.

¹² White Paper, Roadmap to a Single European Transport Area - Towards a competitive and resource-efficient transport system, COM(2011)144 of 28.3.2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0144&from=EN>.

¹³ Europe 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010)2020 final ; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020&from=EN>.

- (29) In the Podkarpackie Province, 895 km of railway lines were operated in 2017. Compared to 2016, the length of railway lines operated in this province decreased by 83 km.¹⁴ The road network of Podkarpackie, however, consisted in 2017 of over 20 976 km of public roads. According to available data, the total length of expressways and highways in the province was 182.5 km, and their length increased by 59.2 km compared to 2014.¹⁵
- (30) The construction of the transshipment terminal equipped with specialised handling and storage facilities for bulk materials and cargo terminal for containers in Wola Baranowska means that more goods will be imported by rail from beyond the eastern border of Poland and the Polish regions. The construction and automation of the terminal will increase the capacity of the Wola Baranowska station. The Polish authorities assume that one year after the completion of the project, [10 000 - 15 000]* wagons will be operated per year and this number will rise to [30 000 – 45 000] wagons in 2041. The Polish authorities assume that this will translate into cost savings of [PLN 2 – 3 million] [EUR 0,46 – 0,7 million] in the second year after the completion of the project (cost savings for each wagon of [PLN 150 – 250] [EUR 35 – 58]).¹⁶
- (31) The Commission considers that the arguments put forward by the Polish authorities are convincing and that the project contributes to the attainment of the objective of common interest¹⁷ of developing more sustainable modes of transport and reducing air pollution, CO₂, noise emissions, road congestion, and accidents.

3.4.2. *Necessity and incentive effect of the aid*

- (32) As stated in recitals (5-6) the intermodal transport is less developed in Eastern Poland and in this region, the number of transshipment terminals is insufficient¹⁸.
- (33) According to the information provided, the high access rates to railway infrastructure in relation to road transport, fragmented investments and incomplete modernisation of main transport corridors, insufficient number of intermodal terminals in relation to the needs, as well as poorly developed

¹⁴ Transport development strategy in Podkarpackie 2030 - project - Rzeszów, October 2019 r., p. 38-40.

¹⁵ Idem.

* Confidential information.

¹⁶ Feasibility Study, Construction of the transshipment terminal in Wola Baranowska LHS PKP Station in Knapy, page 108 and Annex to the Feasibility Study, page 56.

¹⁷ Point 2.1.5 of the Communication from the Commission on the European Green Deal, COM(2019)640 of 11.12.2019; JRC Scientific and Policy Report on Measuring road congestion (2012) https://ec.europa.eu/info/sites/info/files/european-green-deal-communication-annex-roadmap_en.pdf.

¹⁸ Potrzeba centrów logistycznych, także na wschodzie kraju, Forsal.pl 21.04.2015, <http://forsal.pl/artvkuły/866639.potrzeba-centrow-logistycznych-takze-na-wschodzie-kraju.html>; Ściana wschodnia potrzebuje więcej terminali kontenerowych, 21.11.2017, Trans.info, <https://trans.info/pl/terminaie-kontenerowe-polska-wschodnia-potaebuie-ich-wiecei-72133>.

infrastructure are some of main barriers to the development of intermodal transport in Poland.

- (34) In view of this, taking into account the low profitability of intermodal operations coupled with the high capital expenditure needed to start and expand such operations, the Polish authorities had put in place a scheme to support the construction of transshipment terminals, with an aid intensity of 50%.¹⁹ However, the Polish authorities point out that no undertaking submitted an application for funding of similar project with such an aid intensity, underlining the unwillingness of market operators to take risks inherent in switching from road to the alternative modes.
- (35) The activities set out in the Treeden Group project are characterised by a long period of return on capital with the need for major investments at the start of the project. As regards the necessity of the aid, the Polish authorities indicate that without public support the project is not financially sustainable: in such scenario, the cost-benefit analysis submitted by the authorities projects a negative internal rate of return of [-1 to -5%] for the planned terminal (calculated for a period of 25 years, with a discount rate of [2 – 5%]). By contrast, when the initial investment grant of PLN 24 851 969,69 (EUR 5.8 million) is taken into account, the internal rate of return is slightly positive, at [0,60 – 0,90%].
- (36) The Commission recognises that it is in the first place the task of market operators to improve intermodal transport within markets, to which access is free and where the rules of free competition and supply and demand prevail. The Commission notes, however, that the lack of a functional market and objectives related to railway infrastructure are calling for coordination measures of the government. The Commission considers that the arguments put forward by the Polish authorities with regard to the necessity of support for these intermodal connections, as mentioned in recitals (7), (8) and (9) are convincing. First, the increase of a number of railway terminals and their throughput is an investment priority in the Eastern Poland. Second, in the specific case of Treeden Group, the planned aid measure is necessary to implement the project to ensure that it is financially viable.

3.4.3. *Proportionality of the aid*

- (37) The Polish authorities submitted the financial calculations for the project identifying a maximum funding gap of PLN 29.86 million (EUR 6.9 million). The value of the aid from ERDF is lower than this maximal amount and will be PLN 24.85 million (EUR 5.8 million), i.e. an aid intensity of 83.89% of the eligible expenditure.
- (38) The remaining eligible costs and non-eligible costs of the project will be covered by Treeden Group from its own resources [PLN 3 000 000 – 4 000 000] [EUR 700 000 – 930 000] and a bank loan [PLN 4 000 000 – 5 000 000] [EUR 0,93 – 1,2 million].

¹⁹ Regulation of the Minister for Regional Development of 17 March 2009 on the granting of aid for investment in multimodal transport in the framework of regional operational programmes, Journal of Laws 2009, No 52, item 430.

- (39) The Commission approved investment aid for intermodal terminals in many instances, with an intensity covering in most cases a maximum of 50% of the eligible costs. However, in some cases, if Member States prove such a need the Commission may approve higher aid intensities.²⁰
- (40) As mentioned in recital (34), the Commission notes the absence of interest from market operators to invest in intermodal facilities with an intensity of public support up to 50% of eligible costs.
- (41) As mentioned in recital (6) and (7), the Commission also notes the specific suboptimal situation of the Podkarpackie region with regard to intermodal transport and the unique character of the broad-gauge line No 65 as an important cargo handling point and a connection to the Polish-Ukrainian border crossing point that justify renewed efforts to incentivize market operators to invest there.
- (42) Finally, the Commission notes the contribution to the Wola Baranowska station and its catchment area of an investment in new handling and storage facilities of specific bulk materials not present so far in the area.
- (43) In this specific context, it can be noted that the investment project has a negative present value (NPV) and a negative internal rate of return (IRR) in the event that no aid is granted, and a slightly positive IRR with the aid, as mentioned in recital (35). The aid amount remains however lower than the maximum calculated funding gap (see recital (37)).
- (44) In view of the above, the Commission considers that the Polish authorities have demonstrated that the planned aid is proportionate to the objective of contribution to the increase of intermodal transport in the region.

3.4.4. Non-discriminatory access

- (45) The beneficiary must provide equal access for all interested entities to the infrastructure on transparent, equal and non-discriminatory terms according to Law of 23 March 2003 on railway transport.²¹
- (46) The Commission considers therefore that this condition is fulfilled.

3.4.5. Distortions of competition

- (47) In the case of individual aid for a specific economic operator, the Commission examines whether the notified project assessed would restrict competition in

²⁰ Commission Decision of 17 July 2013 in case SA.34369 (13/C) (ex 12/N) - Slovakia - Construction and operation of public intermodal transport terminals; Commission Decision of 17 October 2012 in case SA.34501 - Germany - Extension of the inland port Königs Wusterhausen/Wildau.

²¹ Journal of Laws 2003, No 86, item 789.

relation to existing transshipment infrastructure located in the catchment area of 200 km of the planned investments.²²

- (48) The transshipment terminal of the Treeden Group is planned in the immediate vicinity of the Wola Baranowska LHS station. At this station there are currently several transshipment terminals belonging to different companies operating on land leased from PKP LHS, the exclusive railway infrastructure manager for the line No 65. According to the information from the Polish authorities, each of these companies has its own transshipment infrastructure. They identify some of these companies as competitors of the planned transshipment terminal.²³ Staszów LHS (34 km away), Gołuchów LHS (72 km away) and Biłgoraj LHS (89 km away) are further transshipment points located directly on the broad-gauge railway line.
- (49) Furthermore, the company intends to extend the scope of the services currently offered by deploying a new and unique infrastructure in Wola Baranowska for the transshipment and storage of bulk materials in silos. The information provided by Poland indicates that the transshipment points located directly around the Wola Baranowska LHS station and railway line No 65 are not equipped with professional facilities for handling complete train carrying cereals between the standard gauge and the broad-gauge railway.²⁴ Therefore, they offer a potentially limited range of activities as compared to the planned transshipment terminal of the Treeden Group.
- (50) In addition, the Polish authorities submitted detailed information in respect of a possible distortion of competition in relation to the Medyka-Żurawica Logistics Centre (112 km away) resulting from the construction of the planned transshipment terminal. It is explained that Medyka-Żurawica Logistics Centre, located on another line No 91/472, does not have cereal storage facilities in silos. Furthermore, the railway line No 91/472 of Medyka-Żurawica is used mainly for transport to the central territory of Ukraine. By contrast, the railway line No 65, on which Treeden Group terminal will be constructed, allows an easier access through Ukraine to the Belarussian and Russian market.
- (51) The Treeden Group would not be therefore, in the Polish authorities' view, in competition with the other operators, owing to the differences on the manner of cargo handling and storing of transhipped goods, the nature of some of these goods, as well as the destination markets.
- (52) It should also be noted that Treeden Group commits to apply the charges for using the planned terminal '*in line with market prices*'²⁵.

²² See Commission Decision of 17 July 2013 on measure/aid scheme/State aid SA.34369 (13/C) (ex 12/N) - Construction and operation of public intermodal transport terminals, which the Slovak Republic is planning to implement, OJ L238, 9.8.2014, paragraphs 132-135, and Commission Decision of 20 December 2011 in Case SA.33434 (2001/N) - Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre, paragraph 23.

²³ These include BSM Salt Sp. z o.o, Trade & Trans Expert Czaicki and Czaicki Sp. J.

²⁴ Annex 2 to the Feasibility Study, Construction of the transshipment terminal in Wola Baranowska LHS PKP Station in Knapy, page 56.

²⁵ Declaration of Treeden Group Sp. z o.o. of 9 August 2019.

- (53) In the light of the foregoing, the Commission considers that the aid contributes to an objective of common interest, it is necessary and proportionate to this objective, and competition will not be affected in a way contrary to the common interest.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid because it is compatible with the internal market pursuant to Article 93 of the 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 electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President