Subject: State Aid SA.57476 (2020/N) – Poland
Investment aid for the construction of a biomass-fuelled high-efficiency cogeneration power unit in Chorzów

Excellency,

1. PROCEDURE

(1) By the submission registered on 26 May 2020, Poland notified the above-mentioned measure to the Commission pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”). Upon request of the Commission on 10 July 2020 and 5 October 2020, Poland provided additional information on 8 August 2020 and 26 October 2020.

(2) On 26 May 2020, the Poland waived its right under Article 342 TFEU in conjunction with Article 3 of Regulation (EEC) No 1/1958 and agreed to have the decision adopted and notified in English.

Jego Ekscelencja
Zbigniew Rau
Minister Spraw Zagranicznych
Al. Szucha 23
PL-00 - 580 Warszawa
2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objectives of the measure

(3) The notified aid is to support the construction of a high-efficiency combined heat and power (“CHP”) unit fuelled by biomass located in Chorzów in the region of Śląskie Voivodship.

(4) The main objective of the aid is to improve energy efficiency by promoting the introduction of heat production in combination with the production of electricity from a renewable source in the form of biomass. Based on the formula enshrined in Annex II of the Energy Efficiency Directive, primary energy savings (“PES”) shall be 27.75% for the biomass unit (around 244 GWh per year) compared to a separate electricity and heat production.

(5) As a second objective, the project will also help reduce CO₂ emissions. It is estimated, in compliance with the methodology for the assessment of greenhouse gas emissions and emission variations of the European Investment Bank (EIB) that the biomass unit is to reduce CO₂ emissions by 214,624 tons per year.

(6) Moreover, through the use of biomass as the fuel of the power unit, the measure will contribute to achieving the common EU target of at least 32% share of renewable energy sources on the energy consumption in 2030 set by the Directive (EU) 2018/2001 (“RED II”).

2.2. Legal basis, budget and duration

(7) The national legal basis is set out in:

(a) The Act of 11 November 2014 on the principles of implementing programs in the field of cohesion policy financed in the financial perspective 2014–2020 (Journal of Laws of 2020, item 818 (consolidated text)).

(b) The Regulation of the Minister of Economy of 23 October 2015 on granting state aid for investment projects in the construction or reconstruction of cogeneration units ensuring high-efficiency cogeneration

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1 Recognised as NUTS level 2 region.


3 Separate electricity and heat production would require primary energy consumption of 3,169,396 GJ/year, whereas combined electricity and heat production will consume 2,289,738 GJ/year. This represents PES of 879,658 GJ/year.


* Confidential information.
under the Operational Program Infrastructure and Environment 2014-2020 (Journal of Laws of 2015, item 1810, with further amendments).

(8) The aid subject to this notification is an investment aid of PLN 101.65 million\(^5\) stemming from EU structural funds\(^6\). The total cost of the project is PLN [...]* million which will be financed through the following sources:

(a) [...],

(b) a PLN 143.47 million preferential loan from the National Fund for Environmental Protection and Water Management (see recital (30)),

(c) a PLN 101.65 million State aid (EU funds).

(9) The planning for the project began in 2017 and the commissioning of the project is expected to be closed by the end of 2023. The Polish authorities have confirmed that works and any payments would be suspended until State aid approval has been obtained from the Commission.

### 2.3. Background

**Heat and electricity markets**

(10) The heat generated by the CHP unit will be sold in the cities of Chorzów, Katowice, Świętochłowice and Siemianowice Śląskie (“the project area”). The annual heat energy demand in this area is estimated at approximately 12 136.8 terajoule (TJ). Part of this demand is supplied by the cities’ district heating systems which cover approximately 4 854.7 TJ or 40% of it.

(11) Currently, the only sources of heating in the municipal heating network in the project area are Elektrociepłownia Chorzów (“EC Chorzów”) owned by CEZ Chorzów S.A., Elektrociepłownia Katowice (“EC Katowice”) owned by Tauron Ciepło S.A. and Ciepłownia Siemianowice sp. Z o.o. with 54%, 44% and 2% of market share in terms of heat generation, respectively. The district heating is mostly fuelled by coal. Both EC Chorzów and EC Katowice also use co-firing biomass with coal. Currently, there are no heat producers using biomass-fired plants connected to the district heating.

(12) The heat generated by the investment will be compensated with decreasing heat generation in EC Chorzów by exactly the same amount and therefore the structure of the supply will not change. Moreover, Poland submitted that already in 2013 in Chorzów only 70% of demand from customers potentially interested in network heat was met by supply, resulting in a potential supply gap of over 239 TJ beyond the network technical possibilities. In terms of future demand projections, Poland submitted that over the next 10 years, the demand in the project area for heat from

\(^5\) Approximately EUR 22.64 million as per exchange rate of 13.11.2020 (EUR 1 = PLN 4.49).

\(^6\) Operational Programme Infrastructure and Environment 2014-2020, Sub-measure 1.7.3 “Promoting the use of high-efficiency cogeneration of heat and electricity in the Śląskie Voivodeship”.

\(^7\) As of 2020 (Chorzów 933 TJ, Katowice 2 886 TJ, Świętochłowice 441 TJ, Siemianowice Śląskie 594 TJ).
the district heating is forecast to grow by one percent per annum due to continuous urbanisation and economic development.

(13) On the electricity market, Poland submitted that the total installed electricity production capacity in Poland in 2019 was 46,799 MW, with 158,767 GWh of electricity produced during the year of 2019.

2.4. The beneficiary of the aid measure

(14) The beneficiary of the notified measure is CEZ Chorzów II Sp. z o.o. (“CEZ Chorzów II”), a limited liability company specifically established for the purpose of implementing the project. CEZ Chorzów II will be the owner of the constructed facility. The company is fully owned by CEZ Chorzów S.A. which belongs to the capital group ČEZ A.S., an integrated energy company headquartered in Czech Republic with main operations in production, distribution and trade of electricity and heat, and coal mining. Almost 70% of ČEZ A.S. belongs to the Czech State represented by the Ministry of Finance. In Poland, the group’s estimated market shares in the district heating and electricity market amount to 2.6% and 1.4%. The group’s share in demand for biomass accounts for 1.6%.

2.5. Scope of the aid measure

The CEZ Chorzów II CHP project

(15) The scope of the CEZ Chorzów II CHP aid measure is the financing of the project consisting of a construction of a high-efficient CHP unit. The unit will have a thermal capacity of approximately 7.26 MW and electric capacity of approximately 25.7 MW, and an expected exploitation phase of […] years.

Table 1 – Planned output of the CHP unit

<table>
<thead>
<tr>
<th>Unit</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thermal capacity</td>
<td>MWt</td>
</tr>
<tr>
<td>Heat production</td>
<td>TJ/year</td>
</tr>
<tr>
<td>Electricity capacity</td>
<td>Mwe</td>
</tr>
<tr>
<td>Electricity production</td>
<td>GWh/year</td>
</tr>
</tbody>
</table>

(16) The project includes inter alia construction of a new biofuel-fired unit, biomass storage and transportation systems, installations for flue-gas cleaning and disposal, and ash handling.

Fuel used by CEZ Chorzów II power unit

(17) The CHP unit is designed to use the following types of biomass: wood pellets, agro pellets, sunflower pellets, sunflower cake and agro mix. It will use about […] thousand tons of biomass per year, all procured from third parties ([…] tons p.a. through long-term contracts and […] tons p.a. through SPOT contracts). This

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8 Values relating to the operation of the power unit in cogeneration with a normal turbine load.
volume of biomass amounts to about […] TJ (as compared to the total consumption of biomass in Poland estimated at about 215 500 TJ in 2020 and in the region of Śląskie Voivodship at 30 170 TJ). The project will result then in biomass use at the level of [0-5]% on a national scale and at about [0-10]% on a regional scale.

(18) Nevertheless, the Polish authorities submitted that the project will not result in the need for an extra production of biomass in Poland. At the same time, the demand will decrease by even larger quantity due to EC Chorzów ceasing its co-firing of biomass with coal (end of operating aid for this type of biomass use). Currently, EC Chorzów uses […] thousand tons of biomass per year and it will stop using almost all of it by the end of […].

(19) The estimated energy potential of biomass in Poland amounts to 602 PJ/year\(^9\) while current demand is estimated at 215.5 PJ and is expected to rise to about 240.5 PJ in 2040\(^{10}\). Therefore, in prospective years Poland is not expected to use its whole biomass potential.

(20) Although the regulations of RED II have not been yet implemented in the Polish legal system (Member States are required to transpose the Directive by 30 June 2021), the beneficiary informed that it will provide certain measures to ensure that the rules on the use of biomass set out in the Directive will be complied with. The Polish authorities confirmed also that, as from the moment of transposition of the RED II, the sustainability criteria on the use of biomass set out therein will be complied with.

### 2.6. Form of aid, eligible costs and aid intensity

(21) The notified aid is to be provided in the form of a direct non-reimbursable grant stemming from the EU structural funds\(^{11}\).

(22) Eligible costs are calculated as the difference between the baseline scenario capital investments and the counterfactual scenario capital investments.

(23) The total costs of the project are estimated at PLN […] million out of which PLN […] million cannot be considered eligible for aid.

(24) The counterfactual scenario presented by Poland is a construction of a gas-fired boiler facility with the same heat output as the biomass CHP unit. Estimates of the investment costs are derived from an independent analysis\(^{12}\).

(25) The Polish authorities estimate that the investment cost for the reference natural gas-powered energy installation is PLN 3,826,456, i.e. PLN 527,060 per MW of thermal output.

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\(^{10}\) According to ”The National Energy and Climate Plan for 2021-2030”.

\(^{11}\) See footnote 6.

\(^{12}\) The costs were estimated based on the following 2016 study: https://www.tgpe.pl/pl/a/analiza-w-zakresie-instalacji-referencyjnych-dla-oze-i-wysokosprawnej-kogeneracji-juz-dostepna.
Based on the cost estimations in recitals (23) and (25), the costs eligible for support amount to PLN 284.5 million (see Table 2).

**Table 2 – Capex of the biomass CHP unit and maximum aid amount calculation**

<table>
<thead>
<tr>
<th>Projects costs</th>
<th>Item type (total/eligible costs)</th>
<th>Amount [PLN]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of the facility, of which:</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td>Construction works</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td></td>
<td>eligible</td>
<td>[...]</td>
</tr>
<tr>
<td>Technical equipment and machinery</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td></td>
<td>eligible</td>
<td>[...]</td>
</tr>
<tr>
<td>Construction supervision</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td></td>
<td>eligible</td>
<td>[...]</td>
</tr>
<tr>
<td>VAT</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td></td>
<td>eligible</td>
<td>[...]</td>
</tr>
<tr>
<td>Information and promotion</td>
<td>total</td>
<td>[...]</td>
</tr>
<tr>
<td></td>
<td>eligible</td>
<td>[...]</td>
</tr>
</tbody>
</table>
| TOTAL – total cost | [...]
| TOTAL – eligible costs | [...]
| Cost of constructing the reference facility | [...]
| TOTAL – eligible costs minus cost of constructing the reference facility | 284,546,544

Consequently, the aid intensity of the project amounts to 38.78% (PLN 101.65 + PLN 8.7 million seeing recital (30)) / PLN 284.5 million).

According to the documents provided by the Polish authorities, within the group in which the beneficiary operates, acceptable project profitability is [...]%. However, due to the social and environmental aspect of the planned project, the beneficiary agrees to implement the project with a lower profitability including the grant.

Poland provided a detailed business model for the project with 20-year cash flows. The business model includes revenues from energy demand for electricity and heat as well as the expenses stemming from operating costs, including fuel costs. The business plan assumes a weighted average cost of capital ("WACC") of [...]% given the financing structure including the EU grant and the preferential loan (see recital (30)). Based on this model, without aid the internal rate of return ("IRR") of the project is [...]% in nominal terms, pre-tax (and a negative Net Present Value ("NPV") of – PLN [...] million). With the envisaged investment aid, the project IRR increases to [0-5]% (and a positive NPV of PLN [...] million).

### 2.7. Cumulation and transparency

The beneficiary also applied for investment aid in form of a loan on preferential terms at the National Fund for Environmental Protection and Water Management in Warsaw to cover the same eligible costs of the project. This aid is not subject to this notification because it falls under the framework scheme exempted from

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13 WACC based on net expenditures of the project with [...]% equity at [...]%, [...]% preferential loan at [...]% and [...]% grant at [...]%.

notification under the General Block Exemption Regulation (“GBER”)\(^\text{15}\). The granting authority granted the loan subject to the Commission’s approval of the individual aid for CEZ Chorzów II. Gross Grant Equivalent of the State aid involved in this loan amounts to PLN 8.7 million resulting in the total investment aid for the project of PLN 110.34 million.

(31) The beneficiary is also eligible to apply for operating aid for the production of electricity from renewable energy sources under the support scheme approved by the Commission in 2017 (“the RES scheme”)\(^\text{16}\) or for a cogeneration premium for the production of energy from high-efficiency CHP installations under the support scheme approved by the Commission in 2019\(^\text{17}\). Nevertheless, as stated in Article 39 of the Act of 20 February 2015 on Renewable Energy Sources\(^\text{18}\) (“the RES Act”), which is the legal basis for the RES scheme, any investment aid received will be deducted from operating aid. Also, the Act on the promotion of electricity from high-efficiency cogeneration (“the CHP Act”)\(^\text{19}\) requires to reduce the cogeneration premium by the investment aid received.

(32) Poland confirmed that all transparency requirements set out in paragraphs 104-106 of the Commission Guidelines on State aid for environmental protection and energy 2014 (“the EEAG”)\(^\text{20}\) as corrected by the corrigendum adopted by the Commission\(^\text{21}\) will be complied with.

3. ASSESSMENT OF THE AID

3.1. Existence of aid

(33) 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 internal market”.

(34) According to Article 107(1) TFEU, the qualification of a measure as State aid therefore requires the following conditions to be met cumulatively:

\begin{itemize}
  \item the measure is imputable to the State and financed through State resources;
  \item it grants a selective advantage liable to favour certain undertakings or the production of certain goods;
\end{itemize}

\begin{itemize}
\end{itemize}


\textsuperscript{16} SA.43697 Polish support scheme for RES and relief for energy-intensive users.

\textsuperscript{17} SA.51192 CHP support and State aid.

\textsuperscript{18} Journal of Laws 2020, item 261, consolidated text.

\textsuperscript{19} Journal of Laws 2020, item 250, consolidated text.

\textsuperscript{20} OJ C 200, 28.06.2014, p.1.

\textsuperscript{21} OJ C 290, 10.08.2016, p.11.
the measure distorts or threatens to distort competition;
- it has the potential to affect trade between Member States.

3.1.1. State Resources and Imputability

(35) According to settled case-law, only advantages which are granted directly or indirectly through State resources are to be regarded as aid within meaning of Article 107(1) TFEU.

(36) The measure used to finance the CEZ Chorzów II CHP unit stems from EU Structural Funds (see footnote 6). However, since these funds are under control of the Polish State, who has discretion as to the use of those resources, the Commission considers that the aid is granted out of State resources. In addition, since the decision to grant the measure to the beneficiary was taken directly by the Polish State (see recital (7)), it is therefore imputable to the State within the meaning of Article 107(1) TFEU.

3.1.2. Selective Economic Advantage

(37) The Commission notes that the notified measure provides CEZ Chorzów II with an economic advantage because the beneficiary will obtain a direct non-reimbursable grant that would not be available under normal market conditions.

(38) The aid is only granted to CEZ Chorzów II for the construction of the biomass CHP unit, therefore the Commission considers that the measure is selective.

(39) It follows that the measure at issue confers a selective advantage within the meaning of Article 107(1) TFEU.

3.1.3. Effect on Trade and Distortion of Competition

(40) In accordance with settled case-law, for a measure to impact competition and trade it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(41) The electricity market has been liberalised. Electricity producers compete with each other in an open market to obtain customers and are engaged in trade between Member States.

(42) It follows that the advantage granted to CEZ Chorzów II is therefore liable to distort competition and affect the conditions of trade between Member States.

3.1.4. Conclusion on the Existence of State aid

(43) The Commission therefore concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

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3.2. **Legality of the aid measure**

Poland has fulfilled its notification and standstill obligation according to Article 108(3) TFEU by notifying the investment aid before putting it into effect.

3.3. **Compatibility under Article 107(3)(c) TFEU and the EEAG**

Article 107(3)(c) TFEU provides that the Commission may declare compatible “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”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity. Furthermore, the aid should not distort competition in a way contrary to the common interest.

Moreover, the EEAG set out specific compatibility conditions for aid for energy from renewable sources. The notified measure intends to support investment in high-efficiency CHP production from a renewable source in the form of biomass, thus creating primary energy savings compared to separate production of heat and electricity. Consequently, this aid measure falls within the scope of the EEAG.

The Commission will therefore assess the compatibility of the aid measure on the basis of the EEAG, in particular the general compatibility conditions in Section 3.2 and the rules on energy efficiency including CHP in Section 3.4.

3.3.1. **Contribution to the development of an economic activity**

Under Article 107(3)(c) TFEU, in order to be considered compatible, the measure must contribute to the development of certain economic activities.\(^\text{23}\)

The notified aid measure contributes to the development of cogeneration of heat and electricity from a renewable source in the form of biomass, in Poland. The measure supports the construction of a high-efficiency combined heat and power unit that would not otherwise be constructed. In so doing, the measure at issue will contribute to the development of the economic activity of cogeneration of heat and electricity from renewable sources. Besides, the Commission welcomes that the development of such activity promotes environmental protection.

In view of the above, the Commission considers that the notified measure facilitates the development of certain economic activities, as required by Article 107(3)(c) TFEU.

3.3.2. **Need for State intervention**

According to section 3.2.2 of the EEAG, the Member State needs to demonstrate that there is a need for State intervention and in particular that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of production of renewable energy, the Commission presumes that a residual market failure remains, which can be addressed through supporting it with aid, for the reasons set out in paragraph 115 of the EEAG.

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\(^{23}\) Judgment of 22 September 2020, C-594/18 P, Austria v Commission, EU:C:2020:742, paragraphs 20 and 24 (‘the Hinkley judgment’).
(52) In addition, as recognised in paragraph 142 of the EEAG, energy-efficiency measures target negative externalities as referred to in paragraph 35 of the EEAG by creating individual incentives to attain environmental targets for energy-efficiency and for the reduction of greenhouse gas emissions.

(53) Poland demonstrated that without the aid the notified project would not be financially viable, as shown in recital (59)[Error! Reference source not found.]. Undertakings do not have sufficient incentives to invest in expensive and complex projects such as biomass cogeneration installations and, without public support, would rather construct a plant fired with conventional fuels such as natural gas or hard coal, or a plant that would not co-generate heat and electricity. For this reason, public support is needed to promote the development of the economic activity of cogeneration of heat and electricity from renewable sources.

(54) Based on the information provided by the Polish authorities, the Commission concludes that the measure is a necessary instrument to contribute to the development of certain economic activities.

3.3.3. Appropriateness

(55) According to paragraph 145 of the EEAG, State aid may be considered an appropriate instrument to finance energy efficiency measures, independently of the form in which it is granted.

(56) The Commission therefore concludes that the notified aid measure to CEZ Chorzów II is an appropriate instrument to incentivise investments in the clean and efficient energy generation facility and therefore contributes to the development of the economic activity at issue, which concerns cogeneration of heat and electricity from renewable sources.

3.3.4. Incentive effect

(57) An aid measure has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of certain economic activity pursued by the aid measure and if the change in behaviour would not occur or would not occur to the same extent without the aid.24

(58) For the conclusion of financial profitability of the investment, two main financial performance indicators are calculated: i) the IRR on investment and ii) the NPV of investment.

(59) In the case where the project does not get financial support in the form of the direct grant, the CEZ Chorzów II CHP results in a negative IRR of […]% (in nominal terms, pre-tax) generating a negative NPV of PLN […] million.

(60) With the aid, the investment reaches a positive IRR of [0-5]% (in nominal terms, pre-tax), which is in line with the cost of capital required by the beneficiary to conduct the project (WACC of […]%), and a positive NPV of PLN […] million.

(61) The Commission considers that the calculations submitted by the Polish authorities are consistent with market practices. It thus considers that the Polish authorities

24 See in that sense paragraphs 49 and 144 of the EEAG, as well as the Hinkley judgment.
demonstrated that State support is needed to change behaviour towards investing in cogeneration of heat and electricity from renewable sources, which is not financially viable. In absence of State support, such investments in the biomass CHP project would not be carried out or would not be carried out to the same extent.

(62) With reference to paragraphs 50 and 51 of the EEAG, the Commission considers that aid does not present an incentive effect in all cases where works on the project started prior to the aid application. Poland confirmed that the application for funding was submitted to the national authorities before the start of the implementation of the project.

(63) The Commission therefore concludes that the aid has an incentive effect, as the measure induces the beneficiary to change its behaviour towards the development of cogeneration of heat and electricity from renewable sources by investing in the biomass CHP project, which it would not undertake without the aid.

3.3.5. Proportionality

(64) Paragraph (27)(e) of the EEAG stipulates that for aid to be proportionate it should be limited to the minimum amount necessary to achieve the objective of development of certain economic activities.

(65) As stated in Section 3.2.5.1 EEAG, aid is considered to be proportionate if it is limited to the minimum needed to induce the additional investments or activity by the beneficiary.

(66) Where the costs of inducing the additional investments or activity by the beneficiary cannot be identified in the total investment costs as a separate investment, the aid is considered to be limited to the minimum necessary if it corresponds to the net extra costs necessary to induce that additional investments or activity, compared to the counterfactual scenario in the absence of aid.

(67) Poland submitted documents calculating eligible costs (those needed to achieve energy efficiency and environmental protection measures) based on the counterfactual scenario of a construction of a gas-fired boiler facility with an equivalent heat output (see recital (25) above). Against this counterfactual, the aid intensity of the project amounts to 38.78% (see recital (27)).

(68) The Commission notes that the Śląskie Voivodship, where the project is located, is recognised as being a NUTS level 2 region while the beneficiary is classified as a large enterprise. As set out in the EEAG for a CHP project in a NUTS level 2 region, the aid intensity can reach 60%. Therefore, the aid intensity involved in the project complies with the limit set above.

(69) As for the profitability, with reference to paragraph 85 of the EEAG, the Commission verified whether the aid amount increases the IRR beyond the normal rates of return applied by the undertaking. The Polish authorities have demonstrated, on the basis of the business plan, that the project with the aid included would result in an IRR of [0-5]% on a nominal pre-tax basis.

25 Cf. Annex I of the EEAG setting aid intensity applied for a CHP project at 45%, increased by a bonus of 15% points for regions covered by Article 107(3)(a) TFEU.
Commission notes that this is consistent with the level of WACC of the beneficiary used for the project ([...]%). The Commission also notes that this rate of return on the project is below rates previously approved by the Commission in other Member States. It follows that the beneficiary is not likely to obtain excessive profits from the construction and operation of the aided project.

(70) In light of those elements, the Commission concludes that the notified aid measure is proportionate.

3.3.6. Distortion of competition and balancing test

(71) The negative effects of the measure on competition and trade must be sufficiently limited, so that the overall balance of the measure is positive. The Court has clarified that in order to assess whether a measure adversely affects trading conditions to an extent contrary to the common interest, the Commission must weigh up the positive effect of the planned aid for the development of the activities that aid is intended to support and the negative effects that the aid may have on the internal market.

(72) In line with paragraph 98 of the EEAG, if the aid is proportionate and limited to the extra investment costs, which has been shown in section 3.3.5 above, the negative impact of the aid is in principle softened.

(73) The Commission will however assess more in details the positive effect of the planned aid for the development of the activity that the aid is intended to support and the negative effects that the aid may have on the internal market.

(74) On the negative side, the Commission considers that the measure is liable to strengthen the competitive position of CEZ Chorzów II as opposed to its competitors (including co-firing biomass with coal infrastructures) in the electricity and district heating markets. However, the Commission notes that the market for district heating is local since the district heating would only be delivered to the customers connected to the municipal heat distribution networks in Chorzów, Katowice, Świętochłowice and Siemianowice Śląskie. The heat generated by the project will cover only around 4% of the local demand for the district heating in the project area and will compensate by the same amount the heat already generated in EC Chorzów. In addition, according to Poland, already in 2013 only in Chorzów there was a supply gap (239 TJ) exceeding the amount of heat that the project will generate (201.6 TJ) and over the next 10 years the demand for district heating is expected to increase. Moreover, the heat prices are regulated i.e. determined by the Energy Regulatory Office on the basis of generators’ operating costs which means that impact on the price side should be marginal. Given all the above, the business of the other heat producers should not be strongly affected. Furthermore, there are currently no other heat producers using biomass fired plants in the project area who could be crowded out of the market further to the implementation of the project.

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27 See the Hinkley judgment, paragraph 101.
(75) As concerns the electricity market, the electric capacity of CEZ Chorzów II will be 25.7 MW and electricity production approximately 198.1 GWh per year. Therefore, the installed capacity of CEZ Chorzów II will account for only 0.05% of the total installed capacity and the volume of electricity produced will account for only 0.12% of the total annual electricity production in Poland. The Commission concludes that CEZ Chorzów II will therefore have no significant impact on the electricity generation and wholesale supply market. Also, the market share of the whole CEZ group in the Polish electricity market is relatively low (1.4%).

(76) Finally, the Commission notes that the project will use only [0-5]% of biomass at a national and [0-10]% at a regional level, while the unused potential of biomass in Poland is ample. In any case, the currently relatively small share of CEZ group in the biomass demand in Poland of [0-5]% will further decrease due to the reduction in the overall use of biomass by EC Chorzów, which in parallel will cease co-firing it with coal (see recitals (17) and (18)).

(77) In view of the above, the Commission therefore concludes that the distortion of competition remains limited.

(78) On the positive side of the balance, the Commission notes that the measure will facilitate the development of the economic activity of cogeneration of heat and electricity from renewable sources. Moreover, the measure will have positive effects in terms of environmental protection.

(79) Indeed, the Commission welcomes the fact that the aid measure will help achieve primary energy savings through electricity production in a high-efficient CHP plant, as set out in paragraph 139 of the EEAG. As laid down in the Energy Efficiency Directive, the EU set the target of saving 20% of the Union’s primary energy consumption by 2020, as well as minus 32.5% by 2030, and recognised high efficient cogeneration as having significant potential for saving primary energy and thus contributing to energy efficiency and to CO₂ reduction efforts. Poland confirmed that the CEZ Chorzów II CHP complies with the high efficient CHP definition provided by paragraph 19(13) of the EEAG and satisfies the criteria of high-efficient cogeneration within the meaning of the Energy Efficiency Directive, as detailed in recital (4), with primary energy savings estimated at 27.75%, thus in line with paragraphs 139 and 141 of the EEAG.

(80) In addition, the aided project will help to reduce CO₂ emissions (see recital (5)) and contribute to increase the share of the electricity and heat produced from renewable sources (see recital (6)). The energy generated through the use of biomass is a renewable energy within the meaning of paragraph 19(5) of the EEAG. The Polish authorities confirmed that the biomass used by the power unit will meet the definition set out in paragraph 19(6) of the EEAG and that the sustainability criteria on the use of biomass set out in the RED II, when transposed into national law, will be complied with. As such, the measure will also contribute to achieving the common EU target of at least 32% share of renewable energy sources on the energy consumption in 2030 set by the RED II. Finally, the measure will also back the

28 Article 2(34).
achievement of the goals set by the Commission in the European Green Deal, in particular in relation to the supply of clean, affordable and secure energy.\textsuperscript{29}

(81) In light of the above, the Commission concludes that, overall, the positive effects of the planned aid for the development of the economic activity of cogeneration of heat and electricity from renewable sources, which support energy efficiency and thus promote environmental protection, outweigh the limited negative effects of the aid on the internal market in terms of competition distortion.

3.3.7. Transparency of aid

(82) Poland has committed to comply with the transparency requirements set out in section 3.2.7 EEAG.

3.3.8. Conclusion with regard to the compatibility of the measure

(83) In light of the above, the Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU and on the relevant provisions of EEAG.

4. Authentic Language

(84) As mentioned under section 1 above, the Polish authorities have accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. Conclusion

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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.

\textsuperscript{29} Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions from 11 December 2019.
Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President