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Subject: State Aid SA.105347 (2022/N) – Poland
TCF: Subsidised loan scheme for undertakings in the gas market

Excellency,

1. PROCEDURE

- (1) By electronic notification of 16 December 2022, Poland notified liquidity support in the form of subsidised loans (“Programme to support undertakings with significant functions in the gas market through subsidised loans”⁽¹⁾), the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”) ⁽²⁾.

⁽¹⁾ Program wspierania przedsiębiorstw pełniących istotne funkcje na rynku gazu poprzez dotowane pożyczki.

⁽²⁾ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022, p.1) This Temporary Crisis Framework (‘current Temporary Crisis Framework’) replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ 131 I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) (‘previous Temporary Crisis Framework’). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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- (2) Poland exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 ⁽³⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Poland considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (“the current crisis”) so far affect the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity. In particular, the current situation on the gas market, associated with limited supply, a marked increase in prices and high price volatility, results in far-reaching uncertainty for undertakings operating on the gas market and a significant increase in their operating costs. This is particularly evident in the process of withdrawal from the market of certain suppliers who previously provided gas supplies to end-consumers on the basis of so-called comprehensive services (gas supplies unified with distribution services in one agreement), which results in the necessity of taking over their services by suppliers of last resort. Due to the serious disturbances on the natural gas market caused by the current crisis, all suppliers on the gas market face the risk of liquidity shortage and difficulties in obtaining external financing, which is necessary to maintain continuity of operation in the context of rising energy prices. The risks caused by the current crises reduce incentives of financial institutions to increase their exposure to the gas market, which means that the ability of businesses operating in this area to obtain financing and, consequently, to secure stable supplies to end users, including consumers, is either limited or associated with the need to incur high costs of securing possible financing. Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia.
- (4) Poland confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.3 of the Temporary Crisis Framework.

⁽³⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

2.1. The nature and form of aid

- (6) The measure provides aid in the form of loans with subsidised interest rates. These loans will enable the beneficiaries to continue the provision of a comprehensive service to customers of gaseous fuels in households, in particular for the purchase and settlement of gaseous fuels and obligations related to this purchase and its settlement, gaseous fuel transmission services, gaseous fuel distribution services, liquefied natural gas regasification services, gaseous fuel storage services.

2.2. Legal basis

- (7) The legal basis for the measure is Article 14 b of the Act of 26 January 2022 on special solutions for the protection of gas fuel consumers in connection with the gas market situation ⁽⁴⁾, to be implemented by the Act of 15 December 2022 on special protection of certain gas fuel consumers in 2023 resulting from the gas market situation ⁽⁵⁾, which the Polish authorities provided in a draft form. The draft contains a standstill obligation.

2.3. Administration of the measure

- (8) Bank Gospodarstwa Krajowego (“BGK”), the publicly owned Polish national promotional bank, is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The maximum nominal amount of loans under the measure will not exceed PLN 14.1 billion (EUR 3.02 billion) ⁽⁶⁾.
- (10) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2023.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are undertakings (SMEs and large enterprises ⁽⁷⁾) active on the Polish gas market, specifically default sellers of last resort ⁽⁸⁾, designated sellers of last resort ⁽⁹⁾ and entities obliged ⁽¹⁰⁾ to sell

⁽⁴⁾ Ustawa z dnia 26 stycznia 2022 r. o szczególnych rozwiązaniach służących ochronie odbiorców paliw gazowych w związku z sytuacją na rynku gazu. Journal of Laws 2022, item no. 202 with subsequent amendments.

⁽⁵⁾ Ustawa z dnia 15 grudnia 2022 r. o szczególnej ochronie niektórych odbiorców paliw gazowych w 2023 r. w związku z sytuacją na rynku gazu. Act not yet officially published, awaiting to be signed by the President of the Republic of Poland. Act can be accessed on the website of Polish Parliament – Sejm RP (Polish version only): https://orka.sejm.gov.pl/proc9.nsf/ustawy/2804_u.htm

⁽⁶⁾ The exchange rate used in the conversion is: EUR 1= PLN 4.68

⁽⁷⁾ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁸⁾ As defined by Article 13 item 29 of the Energy Law Act of April 1997. Ustawa z dnia 10 kwietnia 1997 r. - Prawo energetyczne. Journal of Laws 1997, item no. 348 with subsequent amendments.

natural gas on the gas exchange. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.

- (12) Aid is granted under the measure directly through BGK.
- (13) Poland confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (14) Poland confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations ⁽¹¹⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to beneficiaries in the energy sector, as defined in recital (11). It applies to the whole territory of Poland.

2.7. Basic elements of the measure

- (16) The measure will be implemented through the issuance of subsidised loans under section 2.3 of the Temporary Crisis Framework.
- (17) The subsidised loans will be granted by the Polish national promotional bank BGK ⁽¹²⁾.
- (18) The loans will be granted to beneficiaries in order to obtain funds for guaranteeing the continuity of services to consumers of gaseous fuel, in particular for the purpose of purchase and settlement of ⁽¹³⁾:
 - (a) Gaseous fuels;
 - (b) Gas transmission services;
 - (c) Distribution services of gaseous fuels;

⁽⁹⁾ As defined by Article 13 item 29a of the Energy Law Act of April 1997. Ustawa z dnia 10 kwietnia 1997 r. - Prawo energetyczne. Journal of Laws 1997, item no. 348 with subsequent amendments.

⁽¹⁰⁾ In accordance with Article 49b of the Energy Law Act of April 1997. Ustawa z dnia 10 kwietnia 1997 r. - Prawo energetyczne. Journal of Laws 1997, item no. 348 with subsequent amendments.

⁽¹¹⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁽¹²⁾ See paragraph 1 of Article 14b of the legal basis.

⁽¹³⁾ See paragraph 1 of Article 14b of the legal basis.

- (d) Regasification services of liquefied natural gas;
 - (e) Storage services of gaseous fuels.
- (19) The loans may be granted as from the notification of the Commission's decision approving the measure until no later than 31 December 2023 ⁽¹⁴⁾.
- (20) The duration of the loan may not exceed six years.
- (21) The overall amount granted to a beneficiary will not exceed the highest value of ⁽¹⁵⁾:
- (a) 15% of the beneficiary's average total annual turnover over the last three closed accounting periods;
 - (b) 50% of energy costs over the 12 months preceding the month when the application for aid is submitted;
 - (c) In cases where the use of the limits provided in recitals (21)(a) and (21)(b) does not fully cover the liquidity needs of the beneficiary, the amount of the loan may be increased, either:
 - To cover the liquidity needs of the beneficiary for the coming 6 months from the moment of granting of the loan; or
 - For large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover liquidity needs derived from these activities from the moment of granting for the next coming 12 months.
- (22) The possibility described in recital (21)(c) will only be used exceptionally. In particular, this concerns beneficiaries that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. This concerns especially the beneficiaries, which are active in the energy sector. The current situation on the gas market, associated with limited supply, a marked increase in prices and high price volatility, results in far-reaching uncertainty for undertakings operating on the gas market and a significant increase in their operating costs. As regards beneficiaries trading energy products on derivatives markets or exchanges, they have to post collateral (so-called margin) for the fulfilment of their contracts. In line with the recent unprecedented rise in energy prices companies had to serve substantial margin calls by posting cash collateral which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The increases in operating costs and volume of margin calls depend on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover. For the purpose of

⁽¹⁴⁾ See paragraph 5 and 9 of Article 14b of the legal basis.

⁽¹⁵⁾ See paragraph 6 of Article 14b of the legal basis.

using this possibility, a reasoned justification will be required by the potential beneficiary. BGK will have to verify the needs for liquidity of the undertakings, on the basis of documents such as potential beneficiary's financial projections with the underlying macroeconomic assumptions for the relevant period (6/12 months) from the moment of granting aid.

- (23) For loans granted until 31 December 2022, the interest rates will be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) available on 1 February 2022 plus the credit risk margin, as set out below:

Type of recipient	Credit risk margin for 1st year	Credit risk margin for a 2nd -3rd year	Credit risk margin for 4th-6th year
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

- (24) For loans granted in 2023, the interest rates will be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) available on 1 October 2022, plus the credit risk margin, as set out above ⁽¹⁶⁾.

2.8. Cumulation

- (25) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations ⁽¹⁷⁾ or the General Block Exemption Regulation ⁽¹⁸⁾ provided the provisions and cumulation rules of those Regulations are respected.
- (26) The Polish authorities confirm that aid under the measure may be cumulated with aid measures approved in cases SA.56876 ⁽¹⁹⁾, SA.56896 ⁽²⁰⁾, SA.56979 ⁽²¹⁾,

⁽¹⁶⁾ See paragraph 4 of Article 14b of the legal basis.

⁽¹⁷⁾ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

⁽¹⁸⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1).

⁽¹⁹⁾ Commission decision of 3 April 2020 C(2020) 2225 final in case SA.56876 (2020/N) – Poland – COVID-19: Liquidity guarantee fund.

⁽²⁰⁾ Commission decision of 8 April 2020 C(2020) 2340 final in case SA.56896 (2020/N) – Poland – COVID-19: anti-crisis measures in the form of loans and guarantees financed from EU funds, amended by Commission decision of 27 October 2020 C(2020) 7549 final in case SA.58848 (2020/N) – Poland – COVID-19: Amendment of SA.56896 (2020/N) - anti-crisis measures in the form of loans and guarantees financed from EU funds.

⁽²¹⁾ Commission decision of 10 April 2020 C(2020) 2362 final in case SA.56979 (2020/N) – Poland – COVID-19: Interest rate subsidy scheme.

SA.56922 ⁽²²⁾, SA.56996 ⁽²³⁾, SA.57015 ⁽²⁴⁾, SA.57054 ⁽²⁵⁾, SA.57065 ⁽²⁶⁾,
SA.57172 ⁽²⁷⁾, SA.57191 ⁽²⁸⁾, SA.57306 ⁽²⁹⁾, SA.57519 ⁽³⁰⁾, SA.57726 ⁽³¹⁾,
SA.58102 ⁽³²⁾, SA.58185 ⁽³³⁾, SA.58238 ⁽³⁴⁾, SA.59763 ⁽³⁵⁾, SA.60376 ⁽³⁶⁾,

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- ⁽²²⁾ Commission decision of 23 April 2020 C(2020) 2686 final in case SA.56922 (2020/N) – Poland – Polish anti-crisis measures – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes related to COVID-19, as amended by Commission decision of 13 May 2020 C(2020) 3268 final in case SA.57282 (2020/N) – Poland – Amendment to the scheme SA.56922 (2020/N) – Polish anti-crisis measures – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes related to COVID-19.
- ⁽²³⁾ Commission decision of 27 April 2020 C(2020) 2822 final in case SA.56996 (2020/N) – Poland – COVID-19: repayable advance scheme for micro, small and medium-sized enterprises.
- ⁽²⁴⁾ Commission decision of 24 April 2020 C(2020) 2782 final in case SA.57015 (2020/N) – Poland – State aid in the form of grants or repayable assistance under operational programmes for 2014 - 2020 to support the Polish economy in connection with the occurrence of the COVID-19 pandemic outbreak.
- ⁽²⁵⁾ Commission decision of 29 May 2020 C(2020) 3656 final in case SA.57054 (2020/N) – Poland – COVID-19: The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak, as amended by Commission decision of 17 June 2021 C(2021) 4534 final in case SA.62752 (2021/N) – Poland – COVID-19: The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak 2.0, and amendments to schemes SA.57054 and SA.57306.
- ⁽²⁶⁾ Commission decision of 22 April 2020 C(2020) 2634 final in case SA.57065 (2020/N) – Poland – COVID-19: anti-crisis measures in the form of loans and guarantees financed from the re-use of resources returned from 2007-2013 financial instruments, amended by Commission decision of 27 October 2020 C(2020) 7549 final in case SA.58849 (2020/N) – Poland – COVID-19: Amendment of SA.57065 (2020/N) - anti-crisis measures in the form of loans and guarantees financed from the re-use of resources returned from 2007-2013 financial instruments.
- ⁽²⁷⁾ Commission decision of 13 November 2020 C(2020) 7998 final in case SA.57172 (2020/N) – Poland – COVID-19: Anti-crisis measure - tax deferrals.
- ⁽²⁸⁾ Commission decision of 11 May 2020 C(2020) 3163 final in case SA.57191 (2020/N) – Poland – State aid in the simplified repayable form from financial engineering instruments resources subject to re-use and from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak.
- ⁽²⁹⁾ Commission decision of 25 May 2020 C(2020) 3535 final in case SA.57306 (2020/N) – Poland – COVID-19: Financial shield for large enterprises: Liquidity loans, amended by Commission decision of 15 December 2020 C(2020) 9315 final in case SA.59715 (2020/N) – Poland – COVID-19: Modifications to SA.56876, SA.56922, SA.56979, SA.56996, SA.57015, SA.57054, SA.57055, SA.57191, SA.57306, SA.57452, SA.57519 and SA.57726, amended by Commission decision of 1 March 2021 C(2021) 1512 final in case SA.59872 (2020/N) – Poland – COVID-19: Second amendment of SA.57306 (2020/N) Financial shield for large enterprises: Liquidity loans.
- ⁽³⁰⁾ Commission decision of 18 June 2020 C(2020) 4186 final in case SA.57519 (2020/N) – Poland – COVID-19: R&D aid for Covid-19 relevant research and development, investment aid for the construction and upgrade of relevant testing and upscaling infrastructures, and investment aid for investments into production facilities for the production of Covid-19 relevant products.
- ⁽³¹⁾ Commission decision of 28 July 2020 C(2020) 5280 final in case SA.57726 (2020/N) – Poland – COVID-19: State aid in the form of reduction of the annual fee for perpetual usufruct and relief in rent, lease and usufruct fees to support entrepreneurs affected by the COVID-19 pandemic outbreak.
- ⁽³²⁾ Commission decision of 21 September 2020 C(2020) 6582 final in case SA.58102 (2020/N) – Poland – COVID-19: Support to tour operators and other undertakings active in tourism and culture, as amended by Commission decision of 2 June 2021 C(2021) 4059 final in case SA.62231 (2021/N) – Poland – COVID-19: Amendments of SA.58102 and aid in the form of limited amounts of aid (Section 3.1 TF), amended by Commission decision of 25 April 2022 C(2021) 2776 final in case SA.101979 (2022/N) – Poland – COVID-19: Amendments to aid scheme SA.58102, as amended by SA.62231, and aid in the form of limited amounts of aid to tour operators.

SA.61173 ⁽³⁷⁾, SA.61825 ⁽³⁸⁾, SA.62472 ⁽³⁹⁾ and SA.62603 ⁽⁴⁰⁾. Those measures were approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ⁽⁴¹⁾ (COVID-19 Temporary Framework) and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.

- (27) The Polish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.
- (28) The Polish authorities confirm that for the same underlying loan principal aid granted under section 2.3 of the Temporary Crisis Framework will not be cumulated with aid granted under section 2.2 of that framework and vice versa. For different loans, aid granted under section 2.3 may be cumulated with aid granted under section 2.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 61(e) of the Temporary Crisis Framework.
- (29) The Polish authorities confirm that when the overall amount of the loan is calculated on the basis of liquidity needs of the beneficiary (point 61(e)(iii) of the

⁽³³⁾ Commission decision of 29 October 2020 C(2020) 7619 final in case SA.58185 (2020/N) – Poland – COVID-19: Polish anti-crisis measures – State aid granted by the State Forests.

⁽³⁴⁾ Commission decision of 14 December 2020 C(2020) 9237 final in case SA.58238 (2020/N) – Pan-European Guarantee Fund in response to COVID-19.

⁽³⁵⁾ Commission decision of 23 December 2020 C(2020) 9630 final in case SA.59763 (2020/N) – Poland – COVID-19: The Financial Shield for SME 2.0.

⁽³⁶⁾ Commission decision of 20 January 2021 C(2021) 409 final in case SA.60376 (2020/N) – Poland – Support to undertakings affected by restrictions applied to industries whose activities may contribute to the spread of the COVID-19 pandemic.

⁽³⁷⁾ Commission decision of 9 February 2021 C(2021) 941 final in case SA.61173 (2021/N) – Poland – Subsidy schemes to non-governmental organisations, other entities engaged in public benefit work and religious entities affected by the COVID-19.

⁽³⁸⁾ Commission decision of 11 March 2021 C(2021) 1756 final in case SA.61825 (2021/N) – Poland – Subsidy schemes to industries affected by the COVID-19, as amended by Commission decision of 21 June 2021 C(2021) 4649 final in case SA.62885 (2021/N) – Poland – Amendment of the aid scheme SA.61825 “Subsidy schemes to industries affected by the COVID-19”, as amended by Commission decision of 15 February 2022 C(2022) 836 final in case SA.101234 (2021/NN) – Poland – COVID-19: Fourth amendment of the aid scheme SA.61825 “Subsidy schemes to industries affected by the COVID-19”.

⁽³⁹⁾ Commission decision of 6 May 2021 C(2021) 3333 final in case SA.62472 (2021/N) – Poland – COVID-19: Leasing guarantees combined with the Pan-European Guarantee Fund in response to COVID-19.

⁽⁴⁰⁾ Commission decision of 24 June 2021 C(2021) 4832 final in case SA.62603 (2021/N) – Poland – COVID-19: Support to bus operators.

⁽⁴¹⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

Temporary Crisis Framework), the same beneficiary cannot cover with loans under the measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework.

- (30) A beneficiary may benefit in parallel from multiple schemes under section 2.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 61(e) of the Temporary Crisis Framework.

2.9. Monitoring and reporting

- (31) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website ⁽⁴²⁾ or Commission's IT tool within 12 months from the moment of granting ⁽⁴³⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (32) By notifying the measure before putting it into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (33) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (34) The measure is imputable to the State, since it is made available and administered by BGK, a publicly owned national promotional bank, and it is based on the Act of 26 January 2022 on special solutions for the protection of gas fuel consumers in connection with the gas market situation, implemented by the draft Act of 15 December 2022 on special protection of certain gas fuel consumers in 2023 resulting from the gas market situation (recitals (7) and (8)). It is financed through State resources, since it is financed by public funds (recital (9)).
- (35) The measure confers an advantage on its beneficiaries in the form of loans with subsidised interest rates not in line with market conditions (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not

⁽⁴²⁾ <https://sudop.uokik.gov.pl/>

⁽⁴³⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For loans, the nominal value of the underlying instrument shall be inserted per beneficiary.

have had and relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

- (36) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular SMEs and large enterprises active on the Polish gas market, which are designated and default sellers of last resort, and entities obliged to sell natural gas on the gas exchange, excluding the financial sector (recital (11)).
- (37) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (38) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

3.3. Compatibility

- (39) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (40) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (41) By adopting the Temporary Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Poland. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken so far, for example by Russia.
- (42) The measure aims at facilitating the access of undertakings active in the Polish gas market to liquidity in the form of loans at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Poland.
- (43) The measure is one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. The importance of the measure to provide liquidity to undertakings active in the Polish

gas market is widely accepted by economic commentators. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (*“Aid in the form of loans with subsidised interest rates”*) described in section 2.3 of the Temporary Crisis Framework.

- (44) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework. In particular:
- (a) Loans under the measure granted in response to the current crisis will not be granted to credit institutions or other financial institutions (recital (11)). The measure therefore complies with point 64(a) of the Temporary Crisis Framework.
 - (b) The applicable interest rates for loans granted under the measure until 31 December 2022 are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) ⁽⁴⁴⁾ available on 1 February 2022 plus a credit margin of 0.25%, 0.5% or 1.0% for SMEs, and 0.5%, 1.0% or 2.0% for large enterprises (recital (23)). The applicable interest rates for loans granted under the measure in 2023 are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) available on 1 October 2022 plus a credit margin of 0.25%, 0.5% or 1.0% for SMEs, and 0.5%, 1.0% or 2.0% for large enterprises (recital (24)). The measure therefore complies with point 64(b) of the Temporary Crisis Framework.
 - (c) The loan contracts will be signed by 31 December 2022 at the latest and are limited to a maximum of six years (recital (20)). The measure therefore complies with point 64(d) of the Temporary Crisis Framework.
 - (d) The maximum loan amount per beneficiary granted under the measure is limited in line with point 64(e) of the Temporary Crisis Framework (recitals (21) to (22)). The Polish authorities explained that the option included in recital (21)(c) will only be used as exception, with an appropriate justification by the beneficiary. In particular, this concerns undertakings that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. Since the current situation on the gas market, associated with limited supply, a marked increase in prices and high price volatility, results in far-reaching uncertainty for undertakings operating on the gas market and a significant increase in their operating costs, the beneficiaries of the measure are especially affected by the current crisis. As regards beneficiaries trading energy products on derivatives markets or exchanges, they have to post collateral (so-called margin) for the fulfilment of their contracts. In line with the recent unprecedented rise in energy prices companies had to serve substantial margin calls by posting

⁽⁴⁴⁾ Base rates calculated in accordance with the Commission’s Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

cash collateral which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The increases in operation costs and volume of margin calls depends on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover. The Commission considers that the use of the option under recital (21)(c) is, therefore, appropriately justified. The Polish authorities confirm that the same beneficiary cannot cover with loans under the measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework (recital (29)). The measure therefore complies with point 64(e) of the Temporary Crisis Framework.

- (e) Loans granted under the measure relate to working capital needs (recital (18)). The measure therefore complies with point 64(f) of the Temporary Crisis Framework.
 - (f) The cumulation rules set out in point 63 of the Temporary Crisis Framework are respected (recitals (25) to (30)).
- (45) The Polish authorities confirm that, pursuant to point 46 of the Temporary Crisis Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).
- (46) The Polish authorities confirm that, pursuant to point 47 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (13)).
- (47) The Polish authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (31)). The Polish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (25) to (30)).
- (48) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Crisis Framework.

4. 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)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

