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**Subject: State Aid SA.63894 (2021/NN) – Poland  
Aid to the Museum of Polish History in Warsaw**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification dated 1 July 2021, the Polish authorities notified to the Commission aid granted to the Museum of Polish History for the design and the construction of its permanent headquarters in Warsaw (“the measure”).
- (2) On 22 July 2021, the Commission sent a letter requesting additional information to the Polish authorities, to which they replied by letter registered on 17 August 2021. On 31 January 2022, 9 March 2022, 1 July 2022, 21 September 2022 and 21 December 2022, the Commission sent requests for additional information to the Polish authorities, to which the Polish authorities replied on 3 March 2022, 7 April 2022, 3 August 2022, 9 December 2022 and 9 January 2023, respectively.

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## **2. DETAILED DESCRIPTION OF THE AID**

### **2.1. Background**

- (3) The Museum of Polish History was established on 2 May 2006 and is considered by the Polish authorities to be one of the most important projects of promotion of Polish history and culture.
- (4) The Museum of Polish History is a non-profit entity whose purpose is to collect and protect cultural goods, inform the public of the values and content of its collections and share the fundamental values of Polish history, science and culture.
- (5) The objectives of the Museum of Polish History are manifold and include the creation of an attractive exhibition space and a centre for stimulating reflection on the history of Poland, performance of educational, promotional and publishing activities, co-organisation and co-financing of projects related to Polish history and culture, research on Polish history and promotion of Polish historical heritage abroad.
- (6) In addition, the Museum of Polish History performs, and will continue to do so in its permanent headquarters, a number of ancillary activities, including in particular the sale of publications, souvenirs, promotional materials and books, organisation of cultural, scientific and educational events, films, plays, concerts, exhibitions, conferences and trainings, as well as tourist services. The average annual revenues of the Museum for the years 2015-2021 from such ancillary activities amounted to PLN 225 650 (approx. EUR 47 825 <sup>(1)</sup>).
- (7) Since its establishment, the Museum of Polish History has been operating in rented premises, which according to the Polish authorities, are not sufficient to properly exhibit and take care of all the historical items that are part of its collections, due to their limited space, their availability and the fact that a permanent exhibition can only be established in permanent headquarters.

### **2.2. Objective**

- (8) The Polish authorities note that the current rented premises of the Museum of Polish History are not sufficient to fulfil all the purposes of the only museum depicting the history, culture and heritage of Poland as a whole, since their availability is not always guaranteed and a permanent exhibition cannot be established in temporary premises.
- (9) In view of the above, the objective of the measure is to design and build the permanent headquarters of the Museum of Polish History. The building, in construction since May 2018, is situated in the Warsaw Citadel and will have a net surface of approximately 44 856 m<sup>2</sup>. The area of the premises needed was calculated considering the needs to fulfil the objectives of the Museum.
- (10) The measure also aims at financing the establishment of the permanent exhibition of the Museum of Polish History at the premises of the Museum. The permanent

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<sup>(1)</sup> Exchange rate on 1 September 2022, EUR 1 = PLN 4.7128, OJ C 335, 2.9.2022, p. 7.

exhibition will have a net surface of approximately 7 000 m<sup>2</sup> and will show the most important aspects of the history of Poland, Polish culture, social life and customs, and Poland's freedom and independence. According to the Polish authorities, only a well-designed, well-prepared and tailor-made permanent exhibition can properly achieve these objectives.

- (11) According to the Polish authorities, the relocation of the Museum of Polish History to its permanent headquarters will allow for the proper exhibition of the collections in its possession and will increase the number of cultural initiatives it undertakes. This will increase its popularity amongst the public, including the youth, and will attract domestic and foreign tourists. Thus, according to the Polish authorities, the construction and the subsequent relocation of the Museum of Polish History to its permanent headquarters will effectively fill that gap.
- (12) Finally, the Polish authorities explain that the revenues of the Museum of Polish History (recital (6)) are marginal compared to the estimated costs of the project (recital (19)), which essentially means that without any State support the Museum would never be able to build its own permanent headquarters and its own permanent exhibition.

### **2.3. Legal bases**

- (13) The Polish authorities have financed the project on the basis of a multiannual programme. The legal basis of the Multiannual Programme is the Cabinet Resolution No 118/2015 of 21 July 2015 establishing the multiannual programme 'Construction of the Museum of Polish History in Warsaw', as amended by Resolution No 165/2017 of the Council of Ministers of 17 October 2017, Resolution No 55/2018 of the Council of Ministers of 20 March 2018 and Resolution No 17/2021 of the Council of Ministers of 1 February 2021. This Multiannual Programme provides for the implementation of the measure until 31 December 2023. The Polish authorities are in the process of prolonging the period of implementation of the Multiannual Programme until 31 December 2025, on the basis of a new Cabinet Resolution, which is still in draft form.
- (14) Furthermore, the Polish authorities have granted additional funds for the completion of the project on the basis of Part 24 of the State budget for 2020.

### **2.4. Administration of the measure**

- (15) The measure is administrated by the Polish Ministry of Culture and National Heritage.

### **2.5. Beneficiary**

- (16) The beneficiary of the measure is the Museum of Polish History, established by Order No 10 of the Minister for Culture and National Heritage of 2 May 2006.
- (17) The Museum of Polish History is registered in the Polish register of cultural institutions kept by the minister responsible for culture and national heritage (under number RIK 73/2006) and has a legal personality.

## 2.6. Budget, duration and eligible costs

- (18) The measure is financed from the State budget in the form of direct grants to the Museum of Polish History.
- (19) The total budget of the measure for the period 2016-2025 is currently estimated at PLN 1 214 106 000 (approximately EUR 258.7 million), under the Multiannual Programme 2016-2023 (PLN 757 270 000), under Part 24 of the State budget for 2020 (PLN 25 871 000) and for the years 2023-2025 (PLN 430 965 000). The total budget is divided annually in the following way:

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>PLN</b>	10.864 million	21.613 million	74.897 million	69.396 million	81.72 million	57.85 million	137.807 million	442.142 million	223.334 million	94.483 million
<b>EUR (approx.)</b>	2.32 million	4.61 million	15.96 million	14.79 million	17.42 million	12.33 million	29.37 million	94.23 million	47.596 million	20.136 million

- (20) According to the Polish authorities, the total amount of grants cannot exceed the overall costs of the project, which are estimated at PLN 1 214 106 000. That estimated amount comprises the total estimated costs for the construction of the permanent headquarters of the Museum (PLN 765 438 000), the costs for the establishment of the permanent exhibition (PLN 333 751 000), the costs for the design works for the permanent headquarters (PLN 33 870 000) and for the permanent exhibition (PLN 9 884 000), the project maintenance costs (PLN 6 948 000), the costs related to the site preparation, the land development and the grid connections (PLN 18 499 000), the costs related to the equipment of the building (PLN 30 000 000), and the remuneration of the investment team appointed by the Polish Minister of Culture and National Heritage (PLN 15 716 000).
- (21) According to the Polish authorities, the design phase of the building was preceded by a number of analyses of potential locations and an estimation of the needs of a modern museum facility in line with the expectations of visitors. On that basis, the Polish authorities negotiated a contract with an architectural firm for the implementation of the project, following a design contest undertaken on the basis of public procurement rules. The firm was selected following a negotiated public procurement procedure, in accordance with Article 67(1)(2) of the Polish Public Procurement Law Act of 29 January 2004 <sup>(2)</sup>. The Polish authorities explain that they have used that procedure to award the contract to the winning firm in a specialised architectural competition.
- (22) Furthermore, the Polish authorities explain that the contract for the design of the permanent exhibition was also awarded following a negotiated public procurement procedure in accordance with Article 67(1)(2) of the Polish Public Procurement Law Act of 29 January 2004, to a specialised firm, which had won a specialised competition.
- (23) As regards the construction of the permanent headquarters, the Polish authorities explain that the costs of the construction of the permanent headquarters were

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<sup>(2)</sup> Public Procurement Law Act of 29 January 2004, (Journal of Laws of 2018, item 1986, 2215). The Act transposes EU public procurement directives, in particular Directive 2014/24/EU and Directive 2014/25/EU.

calculated based on a contract signed with a contractor selected via a competitive tender procedure, in accordance with public procurement law. The agreed amount with the selected contractor was set at PLN 523 275 000. However, in addition to the significant impact of the COVID-19 pandemic in Poland, a legal dispute between the Museum of Polish History and the contractor over certain errors detected in the documentation, insufficient proper monitoring of the project's implementation and the level of detail of the project led to a situation where the two parties could not reach an agreement on the costs of the project. Following a settlement between the parties, the Polish authorities increased the budget allocated to the construction of the permanent headquarters to PLN 765 430 000.

- (24) Finally, the costs for the construction of the permanent exhibition will also be calculated on the basis of a competitive tender procedure, which has been launched on 16 September 2022. Out of the total estimated costs of PLN 333 751 000, the remuneration of the selected contractor is estimated at PLN 266 980 000.
- (25) Regardless of the budget allocated for the design and the construction of the permanent headquarters and the permanent exhibition, payments have been made and will be made only on the basis of expenditure actually incurred in accordance with submitted invoices and accounts and only after those have been verified by the Polish authorities. In any event, the provided funds cannot exceed the allocated budgets, as broken down in recital (20) <sup>(3)</sup>. Furthermore, any unused funds allocated for the project must be returned to the Polish State.

## **2.7. Cumulation**

- (26) The Polish authorities confirm that aid under the Multiannual Programme and under Part 24 of the State budget has not so far and will not in the future be cumulated with aid for the same eligible costs. Furthermore, the Polish authorities confirm that aid under Part 24 of the State budget cannot be used to cover eligible costs already covered by aid under the Multiannual Programme.

## **2.8. Comparison of the costs with similar projects**

- (27) In order to justify the costs of the different components of the Museum of Polish History, the Polish authorities have sent to the Commission a cost comparison with two similar projects that are in the process of being implemented in Poland. The first project is the construction of the Museum of Józef Piłsudski in Sulejówek, a museum complex in the form of a cultural park with a surface area of more than 4 hectares, which was designed to link the family house of Józef Piłsudski to the surrounding forest and garden. <sup>(4)</sup> The building of the Museum has a net surface of around 6 000 m<sup>2</sup> and contains a permanent exhibition, as well as an educational area and a multifunctional room where temporary exhibitions, conferences and other events can take place.

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<sup>(3)</sup> As established in Article 134 of the Public Finances Act of 27 August 2009, (Journal of Laws of 2019, item 869, as amended).

<sup>(4)</sup> The financing of this project has been established by the multiannual programme entitled: 'Construction of the Józef Piłsudski Museum in Sulejówek', established by Resolution No 169/2011 of the Council of Ministers of 6 September 2011 and amended by Resolution No 175/2013 of the Council of Ministers of 8 October 2013 by Resolution No 77/2016 of the RM of 24 June 2016 and No 106/2018 of the RM of 26 July 2018.

- (28) The second project is the construction of the Museum of Westerplatte and the War of 1939, which is a branch of the Museum of the Second World War in Gdansk<sup>(5)</sup>. The museum will also have an open-air part, focusing on the archaeological works in the Westerplatte peninsula. In addition to its permanent exhibition, various educational activities and temporary exhibitions will also be organised in the museum.
- (29) When comparing the three projects (see Table 1), it appears that the cost per m<sup>2</sup> of the construction of the new headquarters of the Museum of Polish History, as well as the costs of the two design phases, are always lower or similar to the costs per m<sup>2</sup> of the respective phases of the other two projects. Furthermore, the share of cost in the investment budget of those three phases is similar or lower to the share of cost in the investment budget of the respective phases of the other two projects.
- (30) According to the Polish authorities, the only major discrepancy between the investment costs of the Museum of Polish History and the investment costs of the other two museums is in the funds allocated for the establishment of the permanent exhibition. In particular, the cost per m<sup>2</sup> of the establishment of the permanent exhibition of the Museum of Polish History is approximately twice as high as the respective costs of the other two museums. However, the Polish authorities explain that this is due to some fundamental differences between the two projects. While the Museum of Józef Piłsudski and the Museum of Westerplatte and the War of 1939 are focused on the presentation of objects in their natural surroundings (historic buildings linked to Józef Piłsudski and archaeological works in the Westerplatte peninsula, respectively), the Museum of Polish History has as its objective to establish an exhibition depicting the entire history of the Polish nation and the Polish State, using state of the art technology. This naturally leads to higher costs, considering also the large number of items that will be on display.

**Table 1: Costs comparison of the Museum of Polish History with two similar projects.**

<b>Project</b>	<b>Cost (PLN)</b>	<b>Cost per m<sup>2</sup> (PLN)</b>	<b>Share of cost in the investment budget</b>
<b>Construction of the building</b>			
Museum of Polish History	765 438 000.00	17 086.00	63 %
Museum complex Józef Piłsudski	181 260 802.21	25 973.47	79 %
Museum of Westerplatte and the War of 1939	330 676 890.00	25 070.22	70 %
<b>Design of the building</b>			
Museum of Polish History	33 870 000.00	756.00	2.8 %

<sup>(5)</sup> The financing of this project has been established by the Law on Investments for the Construction of the Museum of Westerplatte and the War of 1939 – a branch of the Museum of the Second World War in Gdańsk, adopted on 19 July 2019.

Museum complex Józef Piłsudski	11 486 318.03	1 645.91	5 %
Museum of Westerplatte and the War of 1939	16 704 630.00	1 266.46	3.5 %
<b>Design of the permanent exhibition</b>			
Museum of Polish History	9 884 000.00	1 061.00	1 %
Museum complex Józef Piłsudski	3 860 724.00	1 515.15	1.5 %
Museum of Westerplatte and the War of 1939	4 551 000.00	1 224.70	1 %
<b>Establishment of the permanent exhibition</b>			
Museum of Polish History	266 890 000.00	36 560.27	22 %
Museum complex Józef Piłsudski	36 699 510.00	14 402.81	16 %
Museum of Westerplatte and the War of 1939	68 269 920.00	18 371.88	14.5 %

### 3. ASSESSMENT OF THE MEASURE

#### 3.1. Existence of State aid

- (31) Pursuant to Article 107(1) TFEU, “*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*”.

##### 3.1.1. Presence of State resources and imputability

- (32) According to Article 107(1) TFEU, in order for a measure to be qualified as State aid, it has to be granted out of state resources and be imputable to the state.
- (33) The measure is imputable to the State because it is implemented through a government resolution. The financing of the design and the construction of the permanent headquarters and the permanent exhibition of the museum comes directly from the State budget and therefore the measure is financed through State resources.

##### 3.1.2. Economic advantage

- (34) Furthermore, in order to qualify as State aid the measure should confer a financial advantage to its recipients. An advantage is conferred to an undertaking if it receives an economic benefit that would not have been obtained under normal

market conditions. <sup>(6)</sup> Whenever the financial situation of the undertaking is improved as a result of a State intervention, an advantage is present.

- (35) The measure confers an economic advantage to the beneficiary since, without State support, the Museum of Polish History would have to bear the costs for the design and construction of its permanent headquarters and permanent exhibition.

### 3.1.3. *Selectivity*

- (36) A measure should be found selective inasmuch as it favours certain undertakings or the production of certain goods within the meaning of Article 107(1) TFEU. In the present case, ad hoc aid is given to the Museum of Polish History for the design and construction of its permanent headquarters and for the establishment of its permanent exhibition. Given that the present case concerns an individual aid measure, the identification of the economic advantage (see recitals (34) and (35)) is sufficient to support the presumption that the measure is selective <sup>(7)</sup>. The measure is therefore selective by nature.

### 3.1.4. *Distortion of competition and effect on trade*

- (37) According to the Polish authorities, the objectives of the Museum of Polish History, listed in recital (5), do not constitute (profit-making) economic activities. Nevertheless, exposing objects of cultural value in exchange for entrance fees is in principle an economic activity and hence not exempted from the State aid rules as such. <sup>(8)</sup> Moreover, in order to be caught by the prohibition of Article 107(1) TFEU, public support to an undertaking amounts to State aid if it distorts or threatens to distort competition by favouring certain undertakings and if it is liable to affect trade between Member States.
- (38) In this regard, the Court of Justice has consistently held that the fact that a measure strengthens the position of undertakings in comparison to others is sufficient to establish that this criterion is met. <sup>(9)</sup>
- (39) According to the Polish authorities, due to the national scope and dimension of the Museum of Polish History, its visitors will mainly be domestic tourists. Nevertheless, the Polish authorities estimate that around 150 000 foreign tourists will visit the Museum of Polish History each year and they estimate that the relocation to the permanent headquarters will attract more foreign tourists than before. The Polish authorities however argue that it is unlikely that the Museum of Polish History alone will attract foreign tourists to the City of Warsaw. Instead, it is expected that it will be just one of the touristic attractions attended by the visitors of the city.

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<sup>(6)</sup> Case C-173/73, *Italy v Commission*, EU:C:1974:71.

<sup>(7)</sup> See Case C-15/14 P, *Commission v MOL Magyar Olaj-és Gázipari Nyrt*, EU:C:2015:362, paragraph 60; Case C-270/15 P, *Belgium v Commission*, EU:C:2016:489, paragraph 49; Case T-314/15, *Greece v Commission*, EU:T:2017:903, paragraph 79.

<sup>(8)</sup> Furthermore, the Polish authorities agree that some of the ancillary activities of the Museum of Polish History (see recital (6)) could constitute economic activities.

<sup>(9)</sup> Case T-288/97, *Regione Friuli Venezia Giulia v Commission of the European Communities*, EU:T:2001:115, paragraph 41.



- (40) The Commission first notes that there is no evidence of strong competition between the Museum of Polish History and similar museums in the European Union. Such competition would *prima facie* appear unlikely since that would be the first museum depicting the history, culture and heritage of Poland as a whole, and not focusing on regional history or a specific period in time (recital (8)).
- (41) It should be noted that support to small local museums is generally considered to not distort competition and affect trade between Member States.<sup>(10)</sup> However, this is not necessarily the case for museums situated in larger cities.<sup>(11)</sup> In this regard, the Commission observes that the number of expected visitors of the museum per year (approximately 667 000, of which 150 000 would be foreign visitors) is not negligible. Based on the information available, the Museum of Polish History might attract tourists to an extent that could distort competition and would be liable to affect on trade on the internal market.
- (42) Therefore, based on the information available, the funding of the Museum of Polish History is liable to distort competition and affect cross-border trade.

#### 3.1.5. Conclusion

- (43) In the light of the foregoing, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

### 3.2. Lawfulness of the aid

- (44) The Commission notes that the measure has been put into effect since 2016, meaning that it was granted without a prior formal approval by the Commission. Furthermore, the measure does not meet the requirements of a block exemption from the notification obligation.
- (45) Therefore, the Commission concludes that the measure was implemented by Poland in breach of its obligations under Article 108(3) TFEU and constitutes unlawful aid.

### 3.3. Compatibility of the aid

- (46) Since the measure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission has to verify whether any of the derogations provided for in Article 107(3) TFEU could apply, and thus whether the measure may be considered compatible with the internal market.
- (47) Article 107(3)(d) TFEU states that an “*aid to promote culture and heritage conservation may be considered to be compatible with the internal market where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest*”.

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<sup>(10)</sup> See for example Commission decision in case N630/2003, OJ C 275, 8.11.2005, p. 3; Commission decision in case SA.36581, OJ C 353, 3.12.2013, p. 4; and Commission decision in case N 377/2007, OJ C 35, 8.2.2008, p. 1.

<sup>(11)</sup> See for example Commission decision in case SA.33241, OJ C 377, 23.12.2011, p. 12; and Commission decision in case SA.33433, OJ C 23, 28.1.2012, p. 8.

- (48) In accordance with the Commission practice, Article 107(3)(d) TFEU must be interpreted restrictively and should be limited to measures for specific projects that are related to the notion of culture. Furthermore, it is considered that the notion of culture must be applied to the content and nature of the cultural projects.
- (49) The measure needs to be assessed directly under Article 107(3)(d) TFEU, in which case the Commission analyses whether the aid is well designed to deliver its objective, whether it is appropriate, necessary and proportional, and whether the distortion of competition and effects on cross-border trade are limited.

#### *3.3.1. Genuine cultural objective*

- (50) As explained in recitals (8) to (12), the objective of the Museum of Polish History is to be an institution raising awareness of Polish culture, traditions and history, which cannot be fully accomplished without adequate facilities and infrastructure. The construction of the permanent headquarters will provide protection and visibility to historical items that are currently not properly cared for or sent to institutions where they cannot be properly presented, due to the limited space of the premises that the Museum of Polish History currently rents.
- (51) Moreover, the establishment of the permanent headquarters will help to increase the number of cultural initiatives undertaken by the Museum of Polish History in order to fully exploit its educational and scientific potential.
- (52) The permanent headquarters of the Museum of Polish History will also help develop cooperation with other museums and cultural and educational centres abroad, with the goal of exchange exhibitions and participating in international projects.
- (53) Furthermore, the establishment of the permanent exhibition of the Museum of Polish History also contributes to the objective of promoting Polish national and cultural heritage, since only a well-designed, well-prepared and tailor-made permanent exhibition can make that objective achievable (recital (10)).
- (54) It is for the above reasons that the Commission considers that the measure aims to promote Polish national and cultural heritage and to build historical awareness. Therefore, the measure has a genuine cultural objective.

#### *3.3.2. Appropriateness*

- (55) In order to be appropriate, the aid has to be well targeted to its objective, i.e., in this case to promote culture and heritage conservation.
- (56) As explained in recitals (50) to (54), the objectives of the Museum of Polish History cannot be fully achieved without adequate facilities and infrastructure, which will allow the Museum to properly exhibit and take care of all the historical items that are part of its collections, to perform educational, promotional and publishing activities, and to organise and to co-organise projects related to Polish history and culture, research on Polish history and promotion of Polish historical heritage abroad.
- (57) Therefore, the Commission accepts that the aid granted in the form of grants for the construction of the new permanent headquarters of the Museum of Polish

History and the establishment of the new permanent exhibition is appropriate to achieve its target, which is to promote culture and heritage conservation.

### 3.3.3. *Necessity and proportionality*

- (58) In order to meet the compatibility criterion of necessity, the aid measure must, in its amount and form, be necessary to achieve its objective. In order to be proportionate, the measure must be of the minimum amount necessary to reach that objective. Moreover, the measure should not entail excessive distortions of competition and excessive effects on the proper functioning of the internal market.
- (59) As explained in recital (12), without State financing the permanent headquarters of the Museum of Polish History would have never been built since the revenues that the Museum generates are insufficient to cover the costs of the project. This is equally true for the establishment of the permanent exhibition, which the Museum of Polish history would not be able to afford without State financing.
- (60) Therefore, the Commission considers that the measure is necessary for the achievement of the goal of promoting the Polish national and cultural heritage.
- (61) As explained in recitals (19) and (20), the total amount of the aid will be PLN 1 214 106 000 (approximately EUR 258.7 million), calculated based on the estimated costs of the project. The Commission considers that amount to be proportionate since it was calculated based on the estimated costs of the project and those costs seem to correspond to the costs of similar projects in Poland.
- (62) In particular, the design phase of the building was preceded by a number of analyses of potential locations and an estimation of the needs of a modern museum facility in line with the expectations of visitors (recital (21)). On that basis, the Polish authorities negotiated a contract with an architectural firm for the implementation of the project, which was selected following a negotiated public procurement procedure, in accordance with public procurement law (recital (21)). The same goes for the contract for the design of the permanent exhibition, which was also awarded following a negotiated public procurement procedure, to a specialised firm, which had won a specialised competition (recital (22)).
- (63) The area of the premises was calculated considering the objectives of the Museum of Polish History (recital (9)), as listed in recital (5). Moreover, the costs related to the construction of the building and to the establishment of the permanent exhibition were determined via a competitive tender procedure, in accordance with public procurement law, which ensures that the aid is limited to the minimum and therefore that there is no overcompensation (recitals (23) and (24)). Regarding the additional funds allocated to the construction of the permanent headquarters, the Polish authorities have demonstrated that, due to the significant impact of the COVID-19 pandemic, which led to delays in the implementation of the project and to price rises of construction materials, as well as the legal dispute between the Museum of Polish History and the contractor (recital (23)), the initially agreed amount following a competitive tender procedure was insufficient to complete the project. Therefore, following a settlement between the parties, the amount was increased to PLN 765 430 000 (recital (23)).

- (64) In addition, as explained in recitals (27) to (30), the estimated costs of the project seem to correspond to the costs of similar projects, which have been implemented, or are in the process of being implemented in Poland. From Table 1 it appears that the costs per m<sup>2</sup> of the construction and the design of the building of the Museum of Polish History, as well as the share of cost in the investment budget of the project, are significantly lower than the costs per m<sup>2</sup> of two other museum projects in Poland, namely the Museum of Józef Piłsudski and the Museum of Westerplatte and the War of 1939.
- (65) As regards the permanent exhibition, the cost per m<sup>2</sup> of its design appears to be similar to the average cost of the other two museum projects. The sole component of the project for which the estimated cost per m<sup>2</sup> exceeds the average cost of the other two projects is the establishment of the permanent exhibition. As explained in recital (30), the Polish authorities justify that higher cost because of the scope of the permanent exhibition of the Museum of Polish History. While the Museum of Józef Piłsudski and the Museum of Westerplatte and the War of 1939 are focused on the presentation of objects in their natural surroundings, the Museum of Polish History has as its objective to establish an exhibition depicting the entire history of the Polish nation and the Polish State, using state of the art technology and displaying a large amount of museum items, which naturally leads to higher costs.
- (66) Furthermore, the Commission considers the measure to be proportionate because the Polish authorities have introduced safeguards ensuring that payments have been made and will be made only on the basis of expenditure actually incurred in accordance with submitted invoices, the amount of aid will not go beyond the total costs of the project (maximum 100% aid intensity), and the existence of a claw-back mechanism ensuring that any unused funds allocated to the project must be returned to the Polish State (recital (25)).
- (67) Therefore, in light of the above, the Commission considers the measure to be proportionate.

#### 3.3.4. *Avoidance of undue negative effects on competition and trade*

- (68) As explained in recital (42), it cannot be excluded that the measure might distort competition and affect trade between Member States.
- (69) Nevertheless, the Commission considers that, in light of the non-profit status of the Museum of Polish History, those negative effects are limited to the minimum.
- (70) As explained in recital (41), it is estimated that 150 000 of the 667 000 expected annual visitors of the Museum of Polish History may be foreign tourists. However, it would appear that a very limited amount of those foreign tourists will visit the city of Warsaw with the sole and specific purpose of visiting the Museum of Polish History. On the contrary, for the majority, the Museum will be just one of the attractions that the city of Warsaw and the rest of Poland offer.
- (71) In addition, there is no strong evidence that Museum of Polish History is in competition with similar museums in Poland and across the European Union since it will be the only museum dedicated to Polish history and culture in its entirety, without focusing on a particular period in time or on a particular topic.

- (72) Furthermore, the Commission notes that compliance with procurement rules and the fact that the financing will be only used for specific construction and design related costs is a good indication that the measure does not affect trading conditions to an extent that is contrary to the common interest since the aid is limited to the minimum (recitals (62) to (66)).
- (73) Finally, the Commission notes that the fact that the aid is necessary and appropriate for the fulfilment of the objective of promotion Polish national and cultural heritage is also an indication that the measure does not affect trading conditions to an extent that is contrary to the common interest (recitals (55) to (60)).
- (74) Therefore, the Commission considers that the measure does not affect adversely the trading conditions and competition in the EU to an extent contrary to the common interest.

#### *3.3.5. Conclusion on compatibility*

- (75) In view of the above, the Commission concludes that the aid granted on the basis of the measure in question is compatible with the internal market on the basis of Article 107(3)(d) TFEU.

#### 4. CONCLUSION

The Commission regrets that Poland put the measure into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

Nevertheless, 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)(d) 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>.

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](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President