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Subject: State aid SA.48093 (2017/N) – Poland – Aid for the implementation of intermodal transport projects under the Operational Program Infrastructure and Environment for the years 2014-2020

Sir,

1. PROCEDURE

- (1) By electronic notification dated 26 April 2017, the Polish authorities notified to the European Commission a measure concerning aid for the implementation of intermodal transport projects under the Operational Program Infrastructure and Environment for the years 2014-2020¹ ("OPIE 2014-2020 "). By a letter of 26 June 2017, the Commission requested further information. By a letter of 24 July 2017, Poland asked for an extension of the period for providing additional information. The requested information was provided by Poland by a letter of 31 August 2017.

¹ The Infrastructure and Environment Operational Programme is one of the operational programmes which constitute a basic instrument to achieve objectives laid down in the National Strategic Reference Framework (NSRF) by using funds from the Cohesion Fund and the European Regional Development Fund.

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2. DESCRIPTION OF THE MEASURE

- (2) The measure provides for the construction, modernisation or extension of existing intermodal terminals and the associated access infrastructure, including intermodal terminals located in logistics centres and seaports. The measure also provides for the purchase of telematic and satellite systems which will be deployed to provide users with real-time information about the current location of freight. This will optimise and control transport processes which should reduce delivery times and mitigate a risk of damage to freight.
- (3) In addition, the measure provides for the purchase of specialised equipment required for the transshipment of loading units as well the purchase and modernization of specialized rolling stock (by transport and rolling stock leasing companies). This equipment will be used exclusively for the provision of intermodal transport.

2.1. Objective of the aid scheme

- (4) The aim of the notified measure is to develop intermodal transport as an alternative to road transport and improve the competitiveness of intermodal transport services in Poland.
- (5) The Polish authorities explained that the objective of the aid scheme is in line with objectives enshrined in both the EU and national policies.²

2.2. The previously authorised scheme concerning intermodal transport

- (6) The previous aid scheme concerning intermodal transport in Poland was authorised by the Commission on 13 July 2009 and was in place for the period 2009-2015 (the "Previous Scheme").³ The scheme was later modified on 31 May 2013.⁴ The modification concerned an increase in the budget of the previously authorised scheme.
- (7) The Polish authorities explained that the notified scheme largely corresponds to the Previous Scheme.

2.3. Arguments supporting the introduction of a new aid scheme provided by the Polish authorities

- (8) The Polish authorities explained that, despite the fact that share of intermodal transport in Poland is dynamically increasing, intermodal transport still remains less developed than in most Member States. Intermodal transport in Poland relies on 32 terminals. The density of container terminals relative to the area

² See e.g. White Paper – Roadmap to a Single European Transport Area – Towards a competitive and efficient transport system; Communication from the Commission: Ports: an engine for growth (COM (2013) 295) and Polish Transport Development Strategy for 2020 (looking forward to 2030) prepared by the Ministry of Transport, Construction and Marine Economy.

³ N 546/2008 – Poland – Investment aid for the development of intermodal transport under Infrastructure and Environment Operational Programme, OJ C 203, 28.08.2009.

⁴ SA.36485 – Poland – Modification of the scheme N546/2008 – Investment aid for the development of intermodal transport under Infrastructure and Environment Operational Programme, OJ C 204 18.07.2013.

of the country (1 terminal per 10 000 sq. km) is significantly lower than in other EU Member States where intermodal transport is the key sector of the rail market (e.g. the Netherlands, Germany and Belgium, where the average density is 4.2 terminals per 10 000 sq. km). Furthermore, rail intermodal terminals are to a large extent equipped with an insufficient number of transshipment facilities and lack adequate track infrastructure that would improve the availability of this type of service.

- (9) According to the Polish authorities, an insufficient quantity of specialised equipment for terminals and rolling stock is another problem, as it restricts the industry's ability to meet an increasing demand for the transportation of goods in containers. Rolling stock used for intermodal transport in Poland is very worn out. According to the data of the Office of Rail Transport, the average age of locomotives used by intermodal operators was 34.6 years in 2013, 35.6 years in 2014 and 36.1 years at the end of the third quarter of 2015⁵. Over the period in question, the average age of wagons was 30 years. An analysis of data on operators' rolling stock in 2013-2014 and at the end of the third quarter of 2015 shows a fall in the number of locomotives and wagons. The low profitability of intermodal operations (with a long payback period of 20-30 years), coupled with the high capital expenditure needed to start and expand such operations, is a significant barrier to the development of intermodal transport in Poland.
- (10) High investment costs of transshipment infrastructure, as well as the cost of access to infrastructure discourage private investors from taking the risks associated with investments in this sector, especially when faced with strong competition from road transport operators offering lower-cost services. This is reflected in a relatively low share of intermodal transport compared to other EU countries.
- (11) Therefore, the Polish authorities deem it necessary to continue supporting projects which aim at the development of new intermodal infrastructure and the modernization of existing one as well as at the purchase/modernisation of the specialized rolling stock. State aid to those investments is necessary to ensure a modal shift to more environmentally-friendly modes of transport.

2.4. National legal basis

- (12) The aid scheme is based on:
- (a) The Act of 11 July 2014 on the rules for implementing cohesion policy programmes to be financed under the 2014-2020 financial perspective⁶;
 - (b) Operational Programme Infrastructure and Environment 2014-2020⁷;
 - (c) Detailed description of the priority axes of the Operational Programme Infrastructure and Environment 2014-2020⁸;

⁵ *Analysis of intermodal rail transport in Poland*, February 2016 – <https://utk.gov.pl/pl/aktualnosci/6936,Analiza-kolejowych-przewozow-intermodalnych-w-Polsce.html>

⁶ Journal of Laws of 2016, item 217 (<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000217>).

⁷ <http://www.pois.gov.pl/strony/o-programie/dokumenty/program-operacyjny-infrastruktura-i-srodowisko-2014-2020>.

- (d) The Regulation of the Minister of Development and Finance on State aid for the implementation of intermodal transport projects under the Operational Program Infrastructure and Environment 2014-2020⁹.

2.5. Budget and duration

- (13) The estimated overall budget of the proposed scheme amounts to PLN 1 billion (approximately EUR 238 million¹⁰), which will be financed from the Cohesion Fund.¹¹
- (14) The scheme will be implemented following adoption of this decision and will last until 31 December 2023.

2.6. Type of aid and intensity

- (15) The aid will take the form of a direct grant.
- (16) The maximum aid intensity is 50% of the eligible costs.
- (17) The aid cannot be greater than necessary to make the project sufficiently profitable for the company to be interested in pursuing it. In order to determine the maximum allowable amount of aid, it is assumed that the project's profitability, determined by the financial rate of return on national capital (FRR/K) calculated for the project, may not be higher than the typical rate of return on intermodal transport projects.

2.7. Eligible costs

- (18) The following costs are eligible for aid under the scheme:
- construction, modernisation or extension of existing intermodal terminals and the associated access infrastructure (dedicated road infrastructure, sidings or rail lines for connecting intermodal terminals to the road network or rail network);
 - construction of new intermodal terminals and the purchase of the equipment necessary for their operation (lifting and transshipment equipment, as well as telematics and satellite systems providing users with real-time information about the current location of the freight);

⁸ <http://www.pois.gov.pl/strony/o-programie/dokumenty/szczegolowy-opis-osi-priorytetowych-programu-operacyjnego-infrastruktura-i-srodowisko-2014-2020>.

⁹ Submitted as a draft to the Commission, pending Commission decision.

¹⁰ Exchange rate used: EUR 1 = PLN 4.20.

¹¹ The Cohesion Fund funding is provided as a part of the OPIE for development of the TEN-T road network and multimodal transport in Poland. The main aim of the funding available under the operational programme is to increase Poland's transport accessibility and improve interregional connections by developing the road and air TEN-T network and also development and integration of particular elements of the transport system: intermodal, maritime and inland water route transport.

- purchase or modernisation of the rolling stock: shunting and traction locomotives and wagons adapted for the carriage of freight in intermodal loading units, semi-trailers or for the carriage of whole trucks, excluding containers (if a beneficiary is a rolling stock leasing company, purchased rolling stock must be new);
- purchase of land and immovable property (cannot exceed more than 10% of all eligible costs);
- purchase of intangible assets, such as patents, licences, know-how or unpatented technical knowledge;
- purchase of works related to the preparation of the project.

2.8. Beneficiaries

- (19) The aid will be accessible to the undertakings established in one of the Member States of the European Union or of the European Free Trade Association ("EFTA"), which carry out or intend to carry out intermodal transport activities in the territory of the Republic of Poland, including intermodal terminal operators and rail infrastructure managers providing direct access to intermodal terminals.
- (20) Beneficiaries may include also rolling stock leasing companies, which, however, will not be able to provide transport services. The purpose of rolling stock leasing companies would be to acquire rolling stock and then make it available, for example through leasing, to the interested carriers for intermodal rail transport uses. Carriers would be responsible for the ongoing maintenance of rolling stock during the term of the lease, and upon its expiry would return the rolling stock to the rolling stock company, which would then be responsible for its renovation/modernisation.
- (21) The object of the project will have to be located or used within the territory of Poland. This means that the aided rolling stock will have to be used exclusively for the carriage of goods originating from or destined for or passing through the territory of the Republic of Poland.
- (22) Aid cannot be granted to undertakings in financial difficulties¹² and undertakings from which the Commission has ordered the recovery of aid, so long as the aid has not been fully recovered.

2.9. Procedure

- (23) The granting authority is the Centre for EU Transport Projects ("CEUTP"), as the Intermediate Body for the transport sector under the OPIE 2014-2020.
- (24) The selection procedure will consist of two stages. The first stage will comprise a preliminary assessment of the applications, submitted by the

¹² According to criteria which have been set out in points 9-11 of the *Community guidelines on State aid for rescuing and restructuring firms in difficulty*, OJ C 244, 1.10.2004.

potential beneficiaries, in terms of eligibility for the aid, to be carried out by the CEUTP.

- (25) At the second stage, the projects will be selected through a call for proposal among the projects positively verified in the first stage, i.e. from those meeting the eligibility criteria. Accepted proposals will result in the conclusion of a grant agreement. The selection procedure follows the standard procedure under the Operational Programme Infrastructure and Environment 2014-2020.

2.10. Cumulation

- (26) The aid can be cumulated with other national or EU grants for the same eligible expenses, but without exceeding the established maximum aid intensity. Beneficiaries will have to inform the granting authority, the CEUTP, of any public aid received in connection with the same project.

2.11. Other conditions of granting the aid

- (27) The beneficiary must provide equal access for all interested entities to the infrastructure (terminals, logistic centres, equipment and also transport networks leading to such terminals and the associated access infrastructure) created under the scheme as well as, if the beneficiary is a rolling stock leasing company, to the rolling stock purchased on equal and non-discriminatory terms.
- (28) During the lifetime of the project, compliance with the condition for granting aid will be monitored on the basis of an operator's annual activity reports verified by a statutory auditor.
- (29) The Polish authorities committed to carry out an evaluation report on the implementation of the scheme after the period the scheme is planned for. This report will have been submitted to the Commission by 31 December 2024.

3. ASSESSMENT OF THE AID SCHEME

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

- (30) Article 107(1) of the Treaty of European Union Functioning ("TFEU") states that *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (31) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure constitutes State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. Specifically, the financial support should:
- a) be granted by the State or through State resources;
 - b) confer an advantage on the beneficiary undertakings;

- c) favour certain undertakings or the production of certain goods (the selectivity criterion);
 - d) distort or threatens to distort competition, and affect trade between Member States.
- (32) The examined measure:
- involves State resources given that the Cohesion Fund which are transferred to the national budget before being paid to beneficiaries are considered to be at the disposal of the Polish State;
 - confers an economic advantage as it relieves the direct beneficiaries of a part of the investment costs which they would normally have to bear;
 - is selective in nature because it is confined to certain segments of the transportation services market, i.e. rail and combined freight transport; and
 - can potentially distort competition and affect trade between Member States since it concerns freight markets which have been liberalised.

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

3.2. Legality of the measure

- (33) The Commission notes that, in compliance with the requirements of Article 108(3) TFEU, as stated in recital (14), the aid might be granted only after the Commission has authorised the scheme. Therefore, Poland has complied with the obligation laid down in Article 108(3) TFEU.

3.3. Legal basis for compatibility assessment

- (34) Article 93 of the TFEU provides that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*". The concept of "coordination of transport" used in that provision has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest.
- (35) As described in recital (4) above, the objective of the aid scheme is to develop intermodal transport as an alternative to road transport and improve the competitiveness of intermodal transport services, thereby shifting freight transport from road to rail.
- (36) The transport sector may experience "coordination" difficulties in the economic sense of the term, for example in the connections between different transport networks. Therefore, development of intermodal transport through the construction of terminals and logistic centres is a recognised objective of

coordination of transport¹³. The same can be concluded for the modernisation/purchased of the specialised equipment, including rolling stock for intermodal transport.

- (37) For the reasons outlined above, the Commission considers that these public actions fall within the concept of measures aimed at coordination of transport. Since the entry into force of Regulation 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road and repealing Regulations 1191/69 and 1107/70¹⁴ the direct use of Article 93 TFEU is no longer precluded (Article 9(2) thereof). The Commission therefore concludes that Article 93 TFEU, rather than Article 107(3)(c) TFEU, is the appropriate legal basis to analyse the compatibility with the common market of the notified measure.
- (38) Hence, the Commission will assess the compatibility of the notified aid scheme with the internal market on the basis Article 93 of the TFEU.
- (39) According to a constant decisional practice, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- a) the aid must contribute to a well-defined objective of common interest;
 - b) the aid must be necessary and provide an incentive effect;
 - c) the aid must be proportionate;
 - d) access to the infrastructure in question must be open to all users on a non-discriminatory basis;
 - e) the aid must not lead to distortions of competition contrary to the common interest.
- (40) The Commission will therefore assess whether these five criteria are met in the present case, for the aid to be considered compatible with the internal market on the basis of Article 93 TFEU.

3.4. Compatibility of the aid scheme with the internal market

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

- (41) The European Union has for some time pursued a policy of achieving a balanced intermodal transport system and the fostering of the competitiveness of intermodal transport vis-à-vis road usage is part of this policy. The aim of the Union's intermodal transport policy is to achieve a modal shift from road freight to other more environmentally-friendly modes of transport.

¹³ See decision of the Commission of 9.11.2011 in case SA.32632 (2011/N) ETGE, OJ C 82, 21.3.2012, p.2.; decision of the Commission of 15.6.2011 in case SA.32224 – Netherlands – Development of the Alblasserdam Container Transferium, C 215, 21.7.2011, p. 22.

¹⁴ OJ L 315, 3.12.2007, p. 1.

- (42) EU instruments such as Council Directive 92/106/EEC of 7 December 1992¹⁵ aim at fostering the development of combined transport. In addition, intermodal transport policy is in line with the conclusions of the European Council of Gothenburg of June 2001 which has declared that measures helping modal shift from road transport to more environmentally-friendly modes are at the heart of the policy for sustainable transport.
- (43) The White Paper on Transport Policy 2011 encourages the use of rail and other environmentally-friendly modes of transport in order to become competitive alternatives to road haulage.¹⁶
- (44) The Commission recognises that it is in the first place the task of market operators to improve intermodal transport within markets, to which access is free and where the rules of free competition and supply and demand prevail. However, in order to fully unleash the potential of intermodal transport, the willingness to take risks inherent in switching from road to the alternative modes may need to be stimulated.
- (45) The construction of intermodal terminals that guarantee equal access to all users is directed at attaining an objective of common interest in that it contributes to enhancing combined transport and encouraging a modal shift from road to rail and inland-waterway transport and thereby to decreasing congestion, accident rates, emissions, noise and the negative impact on the climate stemming from road transport.
- (46) The present measure aims at promoting a modal shift from road to more environmentally-friendly modes of transport, in particular rail, through the improvement of existing intermodal terminals and the associated access infrastructure or their construction, and the purchase of specialised equipment including rolling stock, for intermodal activities.
- (47) The Commission thus concludes that the modified measure contributes to the development of intermodal transport which contributes to reduce air pollution and road congestion and is considered to constitute an objective of common interest.

3.4.2. *Necessity and incentive effect of the aid*

- (48) Aid must be necessary to achieve the objective of common interest, and must have an incentive effect, i.e. aid must change the behaviour of the beneficiary in such a way that it engages in additional activity, which it would not carry out without the aid or would carry out in a restricted or different manner, so that the objective of common interest would not be achieved.
- (49) As stated in recitals (8)-(9), intermodal transport is less developed in Poland than in most EU Member States. The low profitability of intermodal operations (with a

¹⁵ Council directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States as amended, OJ L 368, of 17.12.1992, p. 38.

¹⁶ Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

long payback period of 20-30 years), coupled with the high capital expenditure needed to start and expand such operations, is a significant barrier to the development of intermodal transport in Poland. Therefore, the insufficient number of terminals, the lack of modern equipment and rolling stock make intermodal transport in Poland less competitive than elsewhere.

- (50) Moreover, as explained in recital (10), high investment costs of transshipment infrastructure, as well as the cost of access to infrastructure discourage private investors from taking the risks associated with investments in this sector. Hence, a modal shift cannot be achieved by market forces alone.
- (51) The Commission considers that in this specific case there is a need for State intervention, since market forces are not willing to provide the necessary intermodal transport infrastructure on a purely commercial basis. The planned aid measure is therefore considered necessary to trigger the investment for the realisation of the envisaged intermodal projects and to foster a modal shift away from road transport to other modes of transport like rail.
- (52) The Commission therefore concludes that aid under the scheme will be necessary to foster a modal shift away from road transport to rail or inland waterway transport, and will provide an incentive to beneficiaries to make additional investment which they would not have made in the absence of aid.

3.4.3. *Proportionality of the aid*

- (53) As indicated in recital (16), the aid intensity under the scheme shall not exceed 50 % of eligible costs.
- (54) The Commission considers the maximum aid intensity of the notified measure to be in line with its previous case practice where aid intensities of 50 % of eligible costs were assessed as proportionate.¹⁷
- (55) As described further in recital (17), the aid cannot be greater than necessary to make the project sufficiently profitable for the company to be interested in pursuing it.
- (56) The Commission also observes that, even though aid under the scheme can be cumulated with any other aid in respect of the same eligible costs, the maximum aid intensity cannot exceed 50% of eligible costs (see recital (27)).
- (57) Consequently, the proposed aid intensity of 50% of eligible costs under the scheme can be considered proportionate to the intended objective of encouraging a modal shift.

¹⁷ See decision of the Commission of 31.1.2001 in Case N 597/2000, Netherlands – *Subsidiering voor bijzondere bedrijfsaansluitingen op vaarwegen*, decision of the Commission of 14.9.2001 in Case N 208/2000, Netherlands – *SOIT*, decision of the Commission of 15.11.2000 in Case N 755/1999, Italy – *Bolzano*, and decision of the Commission of 20.12.2010 in Case N 490/2010, Belgium – *Verlenging van steunregeling N 550/2001 inzake publiek-private samenwerking voor de bouw van laad- en losinstallaties langs de waterwegen in het Vlaams Gewest*.

3.4.4. *Non-discriminatory access*

- (58) As indicated in recital (28), the beneficiary of the aid scheme will be obliged to provide equal access for all interested entities to the infrastructure (terminals, logistic centres, equipment and also transport networks leading to such terminals and logistic centres) created under the scheme as well as, if the beneficiary is a rolling stock leasing company, to the rolling stock purchased, on equal and non-discriminatory terms.

3.4.5. *Distortions of competition*

- (59) The scheme allows the granting of aid for new intermodal infrastructures and for the modernisation of existing ones. Therefore, taking into account that all operators of rail-road intermodal terminals can benefit from the scheme, a distortion of traffic between terminals/logistic centres located in the same area is not expected.
- (60) The potential impact on neighbouring countries will be also limited due to modest competition between logistics centres.
- (61) The scheme is open to all entrepreneurs established in any of the Member States of the EU or of the European Free Trade Association (EFTA), who carry out or intend to carry out intermodal transport activities in the territory of the Republic of Poland (including intermodal terminal operators and railway infrastructure managers providing direct access to intermodal terminals) or to provide access to rolling stock.
- (62) Concerning competition between modes of transports, the development of a network of intermodal terminals and the purchase of rolling stock should result in a shift from road transport to more environmentally friendly modes of transport and thereby to a reduction in traffic, accidents, exhaust emissions, noise emissions and the negative impact of road transport on the climate, which is of common interest within the meaning of Article 93 TFEU.
- (63) Since access to rolling stock is a major constraint for new entrants,¹⁸ the scheme's contribution to setting up a leasing market for rail rolling stock will have a positive impact on the competitiveness of rail transport as well as on the competition within the rail sector.
- (64) The limitation of the planned aid's intensity to 50% of eligible costs will ensure that trading conditions are not affected contrary to the common interest. Terminal owners, operators and rolling stock companies will still have to make a substantial contribution from their own resources or find external financing at market conditions.

¹⁸ A similar conclusion was confirmed also for the passenger sector in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "The fourth railway package – Completing the single European railway area to foster European competitiveness and growth", p.7.

- (65) Since intermodal transport in Poland is less developed, and therefore less competitive, than in most EU countries, the scheme is unlikely to distort competition to an extent contrary to the common interest under Article 93 TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid scheme for the implementation of intermodal transport projects under the Operational Program Infrastructure and Environment for the years 2014 – 2020 on the grounds that it is compatible with the internal market pursuant to Article 93 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 languages on the Internet site:

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Your request should be sent by registered letter or fax to:

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Yours faithfully
For the Commission

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