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Subject: State Aid SA.64713 (2021/N) – Poland - Prolongation of the support scheme for RES

Excellency,

1. PROCEDURE

- (1) By electronic notification on 15 November 2021, Poland notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), its intention to prolong the duration of the existing aid scheme for supporting electricity production from renewable energy sources (the “RES scheme”¹).
- (2) The RES scheme was previously approved by the Commission in the decision of 13 December 2017 (SA.43697 (2015/N)) for the period from 1 July 2016 to 30 June 2021. In subsequent decision of 17 December 2020 in case SA.59015 (2020/N) an extension of the duration of the RES scheme by six months was approved.
- (3) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Council Regulation (EEC) No 1/1958² and to have this decision adopted and notified in English.

¹ The prolongation concerns only the RES scheme and not the relief for energy-intensive users.

² Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 017, 6.10.1958, p. 385).

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2. DESCRIPTION OF THE MEASURE

- (4) The RES scheme is the main scheme in Poland for supporting investment in renewable energy. It was approved by the Commission in the decision of 13 December 2017 (SA.43697 (2015/N)) for the period from 1 July 2016 to 30 June 2021. The scheme involves competitive processes through which support is allocated to renewable installations. The subsequent decision of 17 December 2020 in case SA.59015 (2020/N) provided an extension of the duration of the RES scheme until 31 December 2021.
- (5) The support is granted in the form of a variable premium on top of the market price within a two-side contract for difference for the maximum period of 15 years. The level of support for operators is determined on a "pay-as-bid" basis, noting that the bid cannot exceed the reference price. The operators are obliged to sell contracted volume of electricity on the market and the settlement body (Zarządca Rozliczeń S.A., a 100 % State-owned company) pays out support calculated as the difference between bidding price (resulting from the submitted bid) and the wholesale electricity price. The level of the feed-in-tariff is the level determined through the competitive bidding processes.
- (6) In the Energy Policy of Poland until 2040, Poland has set a goal of at least 23 % share of renewable energy sources ('RES') in gross final energy consumption. In order to continue to increase the share of RES to achieve that target and to ensure contribution towards European objectives set in the 2030 framework and beyond, Poland has notified the prolongation of the RES scheme, which would operate from 1 January 2022 until 31 December 2027.
- (7) The notified prolongation will enable to continue competitive biddings under the RES scheme. The estimated capacity to be auctioned over the total six-year period of the prolongation amounts to approximatively 9 GW. All aspects of the RES scheme other than its duration, schedule³ and budget remain the same, as approved in the Commissions decisions in cases SA.43697 (2015/N) and SA.59015 (2020/N).
- (8) In particular, Poland has explained that the auction process with its safeguard mechanisms remains identical to the one approved in the State aid decision SA.43697 (2015/N). The safeguard mechanisms, which ensure the competitiveness of the auctions, will thus still apply in the same manner and, in case of an undersubscribed auction, effectively reduce the volumes of electricity awarded aid.
- (9) The legal base will be amended in order to increase policy predictability for investors; the Polish government will set in advance the long-term schedule of maximum volumes of electricity (MWh) to be auctioned covering the whole six years (instead of setting those volumes on an annual basis for the following calendar year⁴). The corresponding values (PLN) of the electricity to be auctioned will be calculated only for transparency reasons. According to the Polish

³ The schedule described in recital (18) of decision SA.43697 (2015/N) is modified for the prolongation period since the schedule setting the maximum amount and value of electricity from RES will be published once for the whole 2022-2027 period.

⁴ As it was foreseen in recital (18) of decision SA.43697 (2015/N)) for the period between 1 July 2016 to 30 June 2021.

authorities, those maximum volumes of electricity might in the future still be subject to an upward revision.

- (10) Poland has notified a maximum possible aid budget of PNL 43,85 billion for this prolongation.
- (11) Poland submitted the evaluation report of the RES scheme on 6 August 2021. The Commission considers that the evaluation report complies with the approved evaluation plan but notes that the report does not apply counterfactual impact evaluation methodologies to assess the direct effects of the aid measure.
- (12) In view of the prolongation of the RES scheme, Poland committed to evaluate the prolonged scheme based on the same evaluation plan. However, Poland will update and improve the plan by including an appropriate counterfactual impact evaluation (hereby comparing the behaviour of the aid beneficiaries with a proper control group of undertakings that did not benefit from the aid) in order to better assess the direct effects of the prolonged scheme. Poland will submit to the Commission an updated evaluation plan within nine months of the date of the present decision.

3. ASSESSMENT OF THE MEASURE

- (13) In its decisions in cases SA.43697 (2015/N) and SA.59015 (2020/N)⁵, the Commission concluded that the RES scheme involves State aid which was compatible with the common market pursuant to Article 107(3)(c) TFEU because it complied with the relevant rules in the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG)⁶. The notified measure concerns only the prolongation of the scheme for the period 2022-2027, the modification of the schedule and the modification of the budget and does not involve any other changes to the RES scheme. The notified measure therefore does not affect the Commission's conclusions on the existence of aid and the compatibility of the aid involved in the RES scheme.
- (14) Apart from the notified amendments, Poland confirms that no further amendments are proposed to the RES scheme and that all other conditions of that scheme remain unaltered.

4. CONCLUSION

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

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<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

⁵ Decision SA.43697 (2015/N) Section 3 and Decision SA.59015 (2020/N) Section 3.

⁶ Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C200 of 28.6.2014, p.1).

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President