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**Subject: State Aid SA.55940 (2021/N) - Poland
Offshore Wind scheme**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 12 April 2021, the Polish authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (the “TFEU”), an offshore wind scheme (“the scheme”). In response to the Commission's requests for information of 15, 20 and 21 April 2021, Poland provided additional information on 20 and 22 April 2021 and submitted the final evaluation plan of the scheme on 21 April 2021.
- (2) By letter dated 13 April 2021, the Polish authorities agreed to waive their rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958¹, and to have this decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE SCHEME

2.1. Background and objectives

- (3) The “Polish support scheme for renewable energy sources and relief for energy-intensive users” (Ustawa o odnawialnych źródłach energii – aukcyjny system wsparcia OZE oraz ulgi w opłacie OZE dla przedsiębiorstw energochłonnych) is an existing aid scheme in Poland which supports electricity produced from

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

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renewable energy sources (“general RES support scheme”), which aims at facilitating the deployment of RES in Poland. This general RES support scheme was approved by the Commission in 2017².

- (4) This general RES support scheme includes the possibility of supporting offshore wind installations competing in the same basket as hydropower and geothermal. Support under the general RES support scheme may be granted in the auctions that can be organized no later than 31 December 2021. Nevertheless, as of today, no offshore wind installation was granted support under this scheme due to the higher levelised cost of electricity production (“LCOE”) for offshore wind installations; not a single offshore wind project has been developed so far in Poland.
- (5) In the Energy Policy of Poland until 2040, Poland has set a goal of at least 23% RES share in gross final energy consumption largely based on electricity produced from offshore wind; around 5.9 GW and 11 GW of offshore wind capacity is planned to be in operation by 2030 and 2040, respectively.
- (6) In order to achieve this RES target and to ensure contribution towards European objectives set in the 2030 framework and beyond, Poland has notified the scheme, which would operate from 2021 until 2030 to support renewable energy production from offshore wind installations in Poland in compliance with the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG)³.
- (7) Poland justified the introduction of a separate dedicated scheme for offshore wind installations on the basis of the longer-term potential of offshore wind and the need to achieve diversification. This is necessary in view of the differences in the LCOE between offshore wind installations and other RES installations and of the need to deploy massively the offshore wind installations in order to reach the 2030 Polish RES target.
- (8) Poland estimated, i.a. on the basis of a detailed study⁴ carried out by the consultant Ernst&Young, the LCOE for offshore wind technology in Poland, including grid connection costs, at 319.60 PLN/MWh. In comparison, the LCOE for onshore wind technology⁵ and for photovoltaic (“PV”) technology⁶ are much lower. Poland identified two reasons for this projected price disparity:
 - Onshore wind and PV are well-established in Poland, comprising almost 6.4 GW of installed capacity for onshore wind and almost 4 GW of installed capacity for PV⁷.

² In its decision in case SA.43697 (2015/N) of 13 December 2017.

³ Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C200 of 28.6.2014, p.1).

⁴ This report reference and others are included in the explanatory note to the draft regulation (pp. 3-4): <https://legislacja.rcl.gov.pl/docs//574/12343601/12766466/12766467/dokument490626.docx>

⁵ Average auction bid for onshore wind in 2019 was 208 PLN/MWh - level of Contract for Difference with electricity price included; as is the case for calculation concerning offshore wind.

⁶ Average auction bid for PV in 2019 was 317 PLN/MWh - level of Contract for Difference with electricity price included; as is the case for calculation concerning offshore wind). However, the PV installations are mostly small scale projects which render PV and offshore technology costs not fully comparable.

⁷ Data as of December 2020.

- Offshore wind technology is effectively unproven in Poland at contemporary commercial scale. There are no commercial offshore windfarms in Poland and even no small scale demonstration offshore project as typically developed elsewhere in Europe. The required supply chains, port infrastructure and relevant experience therefore does not yet exist at all in Poland and will be essential for financing, developing, operating and maintaining offshore projects in Poland.
- (9) The Polish authorities also explained that the LCOE for offshore wind installations in Poland are higher than the ones observed in other EU countries (as in the UK, the Netherlands...) where the offshore technology is mature. In the case of Poland there is a need to build the whole offshore industry, including inter alia supporting infrastructures. The level of support in Poland will be additionally influenced by the higher cost of capital in Poland compared to most Member States and the higher currency risk.
- (10) Poland explained that this price disparity is expected to shrink in future. Project risk premiums and costs of capital are expected to reduce as industry develops the necessary supply chains and becomes assured of public policy consistency in the areas of consenting, grid development and route to market and as the global offshore wind sector continues to mature and develop, it has been characterised by continued LCOE reductions. This trend is expected to continue, driven in part by continued increases in turbine size and capacity factors.
- (11) Putting different technologies (referring to the most developed RES technologies in Poland: onshore wind and PV) in direct competition with offshore wind would bring suboptimal results. Due to lower LCOE, PV and onshore wind would be given an opportunity to bid at maximum admissible price (reference price) in the general RES support scheme. In such case, offshore wind would not be granted support at all or, in the best case, implementation of offshore projects would be still very low (due to the 80% rule described in recital 69 of the decision SA.43697⁸). In addition, PV and offshore wind farms have entirely different, though complementary, generation profiles. Their simultaneous operation in the Power System, if properly balanced, contributes to the stability of the grid. Thus, putting these technologies in direct competition would be suboptimal for secure operation of the Power System.
- (12) Poland has identified the following other reasons to support offshore wind in Poland:
- Offshore wind projects generally have considerably greater public acceptability than cheaper onshore wind projects. Therefore a dedicated scheme for offshore wind reduces the risk that significant capacity won by onshore wind projects is ultimately delayed or cancelled as a result of public opposition.

⁸ “Pursuant to the proposed amendments to the RES Act, for annual auctions to be held from 2017 onwards (excluding the auctions which were organized in June 2017) the Polish authorities will introduce an additional cap, where no more than 80 % of volume (in MWh) of RES electricity submitted to the auction can receive support. If 80 % of the volume of electricity submitted will exceed the allocation stemming from the volume determined in the regulation, this volume will constitute a binding constraint. The 80 % cap will also be applied in case the volume of electricity submitted does not exhaust the allocation stemming from the volume regulation (hence, the cap allows granting aid to no more than 80 % of the volume of electricity submitted via bids to the auctions).”

- Providing separate support for offshore wind will ensure a certain degree of energy diversification, even after allowing for energy production correlation with onshore wind as offshore typically delivers in more periods than onshore wind. Diversification reduces curtailment and increases energy security, two factors that cannot be completely internalised to projected strike prices.
- Specific support for offshore wind is expected to support the development of supply chains, infrastructure and experience necessary to develop future renewable marine technologies such as floating solar and wind, which may play a significant role in the longer term.

2.2. National legal basis

- (13) The Polish authorities indicated as national legal basis for the notified scheme the act of 17 December 2020 on the promotion of generation of electricity in offshore wind farms (“the Offshore Wind Act”).
- (14) The Offshore Wind Act was adopted by the Polish Parliament on 17 December 2020 and entered into force on 18 February 2021⁹. This Act sets out the rules and regulations that will apply to the development of offshore wind in Polish exclusive economic zone. It covers all the issues relevant for investors such as support scheme¹⁰, grid connection, obligations of the electricity generator, as well as regulations concerning construction and operation. The legislation also streamlines the permitting procedures for offshore wind farms to encourage investors and accelerate the industry.
- (15) Moreover, the Polish authorities indicated a list of implementing regulations, among others:
- regulation¹¹ of the Minister of Climate and Environment on the maximum price of electricity generated in an offshore wind farm and fed into the grid in PLN per 1 MWh, being the basis for the settlement of the right to cover the negative balance - with respect to projects which will be awarded aid directly;
 - regulation¹² of the Minister of Climate and Environment on the maximum price of electricity from offshore wind farms with respect to projects which will be awarded aid in auctions;
 - regulation¹³ of the Council of Ministers specifying the date of the auction addressed to the offshore wind farms and the volume of capacity that can be granted support, other than those specified in the Offshore Wind Act.
- (16) In addition, the Polish authorities indicated as national legal basis for the method of financing of the scheme (calculation of the RES surcharge) the Act of 20 February 2015 on Renewable Energy¹⁴ (“the RES Act”) with further amendments thereto.

⁹ <https://www.dziennikustaw.gov.pl/DU/rok/2021/pozycja/234>

¹⁰ However the Polish authorities committed to comply with 108(3) TFUE by not putting the notified scheme into effect until this procedure has resulted in a final decision.

¹¹ See Article 25(2) of the Offshore Wind Act.

¹² See Article 31(11) of the Offshore Wind Act.

¹³ See Article 29(6) of the Offshore Wind Act.

¹⁴ Consolidated text: Journal of Laws 2020, item 261, as amended.

2.3. Beneficiaries

2.3.1. Offshore wind installations

- (17) The beneficiaries are producers of electricity from offshore wind, which is a RES within the meaning of the Directive 2009/28/EC of the European Parliament and of the Council (“RES Directive”)¹⁵. All the supported offshore wind projects will include the offshore wind installations and the grid connections to the shore. In Poland the producer is obliged to develop the grid connection comprising offshore substation, export cables and onshore substation with onshore cables. Grid connection costs may constitute as much as 20% of the total investment expenditure.
- (18) According to the current Polish law, there are two cumulative prerequisites to apply for support:
- possess a location permit and
 - possess a grid connection agreement or grid connection conditions.
- (19) These formal requirements were introduced to ensure that sufficiently developed projects would submit application and thus to avoid low project realisation rate due to participation in the scheme of purely virtual projects.

2.3.2. Location permit

- (20) Obtaining of a location permit (domain concession) is regulated by the Act on Maritime Areas¹⁶. This Act was amended on 26/05/2011 to introduce the possibility to obtain location permit for the Baltic Sea area. 12 location permits have been granted so far and 15 locations are pending since the allocation process is suspended until the adoption of the Maritime Spatial Plan (to be adopted by 31/03/2021, at the latest¹⁷).
- (21) According to the Polish authorities, the permit granting process is considered as open and competitive since all interested parties were free to conduct studies of the Polish exclusive economic zone in order to identify the most advantageous sites for offshore projects and to apply for location permits. In addition, applicants who were not awarded location permits and considered that their interests had been manifestly violated could refer the case back to Minister of Maritime Economy and Inland Waterway Transport (“MoME”) and, if MoME did not change its decision, to refer the case to the administrative Court. Until now, none of the applicants referred the case back to MoME or appealed an awarding procedure before the administrative court based on the above mentioned provisions.

¹⁵ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16–62).

¹⁶ Ustawa z dnia 21 marca 1991 r. o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej (Dz.U. 1991 nr 32 poz. 131 as amended).

¹⁷ The obligation to adopt Maritime Spatial Plan stems from the Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135). Pursuant to Article 15(3) of the Directive 2014/89/EU the maritime spatial plans shall be established as soon as possible and at the latest by 31 March 2021.

2.3.3. *Grid connection agreement and conditions*

- (22) The Grid Connection Agreement (“GCA”) is concluded between the investor and the distribution system operators (“DSO”) or the Transmission System Operator (“TSO”)¹⁸ and defines the characteristics of the prospective generating unit and establishes schedule and scope of necessary investments to be made by both parties in order to successfully integrate the generating unit with the grid.
- (23) The Polish authorities committed to have the grid finished and ready in order to successfully integrate within the grid any generating unit benefiting from the scheme. In particular, the “*Development plan to meet the current and future demand for electricity for a period 2021-2030*” was approved by the President of the Energy Regulatory Office (“ERO”) in June 2020. It includes necessary investments in order to successfully integrate prospective offshore projects with the Polish Power System.
- (24) From the investor’s perspective, the GCA constitutes an assurance that once the generating unit is put into operation, it will be technically feasible to connect it to the grid. The GCA is thus concluded irrespective of whether the generating unit is a RES or a conventional plant and irrespective of whether the unit is to benefit from any support scheme. In fact, no new investment in generating units is proceeded without having at least Grid Connection Conditions (“GCC”). The GCC precede the conclusion of the GCA since it is not possible to prepare pre-feasibility study without knowledge of grid connection point and generating unit requirements provided in the GCC.
- (25) The offshore wind farms will include both the wind farm itself and the grid connection. It follows from EU law¹⁹ that in case a third party submits a credible request to connect to the export cable, it is necessary to transfer ownership or assure other legal title as well as operation of the cable to an independent transmission system operator, assuming that such connection is technically feasible and not economically disproportionate. In this respect, the Polish government has made the commitment to assure by end of 2023 that in such situations, legal title to the cable and operation of the cable will be granted to the TSO in order to guarantee third party access in accordance with applicable EU law. The Polish authorities will keep the scheme under review in case this ownership model results in any form of market abuse or manipulation.

2.3.4. *Environmental permit*

- (26) Environmental permit is an administrative decision required in all cases where the prospective investment has a significant impact on the environment. Any investor is obliged to submit extensive environmental impact assessment report, which can be prepared only after very detailed and long lasting environmental surveys have been conducted. Following the submission of an application for environmental permit, the relevant authority releases to public consultation the environmental impact assessment report prepared by an investor. The environmental permit

¹⁸ With respect to offshore projects, the GCA is concluded with the TSO.

¹⁹ Article 6 Directive (EU) 2019/944, read together with Chapter VI of the same Directive.

defines conditions under which the investment must be made in order to minimize its negative impact on the environment.

- (27) According to the Polish authorities, the obligation to obtain the environmental permit (and subsequently the construction permit) critically impacts the investment schedule. The Offshore Wind Act introduces a number of reforms to accelerate permitting process for offshore wind farms. In line with Article 76 of the Offshore Wind Act, environmental permits for offshore wind farms and power evacuation infrastructure are issued no later than following 90 days from the submission of a complete application and are subject to immediate execution. Moreover, cases regarding appeals to those permits are dealt in accelerated proceedings, both by administrative bodies and administrative courts.
- (28) The Polish authorities expose that in line with article 35 (1)(1)(b) of the Act of 7 July 1994²⁰ – Construction Law acquisition of the environmental permit is an obligation to obtain the construction permit for any offshore wind farm. All the projects in both phases will thus have to acquire the environmental decision before building of the wind farm.

2.3.5. *Other eligibility rules*

- (29) To ensure that only viable applications are submitted, the project developers will be obliged to provide collateral corresponding with the installed capacity of the installation. In addition, the Polish authorities have committed to ensure that firms having the status of firm in difficulty as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²¹ will not be eligible to receive support under the scheme in line with point (16) of the EEAG.
- (30) The Polish authorities have also committed to suspend any payment of aid under the notified scheme to a beneficiary which has benefitted from an earlier unlawful aid that was declared incompatible by a Commission decision, until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
- (31) Subsidies will be available only to new installations. It is required that the devices for generating electricity mounted in these installations have been manufactured no later than 72 months before the date of generation electricity in the plant for the first time (cf. Article 12 of the Offshore Wind Act).
- (32) The offshore scheme will only be open to projects physically located in the Polish exclusive economic zone. In order to alleviate any concern regarding compliance with Article 30 and 110 TFEU, Poland committed to continue to effectively incentivise the openness of the general RES support scheme in line with the decisions in cases SA.43697²² and SA.37345²³ and in particular, to continue announcements concerning respective auctions addressed to new RES installations which will be open to RES located outside the Polish territory and

²⁰ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940890414/U/D19940414Lj.pdf>

²¹ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.07.2014, p.1.

²² See recital 258 of decision SA.43697 (2015/N), OJ C 127, 22.02.2018.

²³ See recital 44 of the decision SA.37345 (2015/NN) Polish certificates of origin system OJ C 471, 16.12.2016.

outside the Polish exclusive economic zone. Pursuant to Article 73 (9) of the RES Act with further amendments thereto, “*The amount and value of electricity generated in RES installations located outside the territory of the Republic of Poland and outside the Polish exclusive economic zone, which may be sold by auction in the next calendar year is 5% of the amount and value of electricity intended for sale by auction in the preceding year, in the installations referred to in Article 71 (1)(2)*”.

(33) In recent years amount and value of electricity from foreign RES installations to be procured in auctions have been indicated by the President of the ERO in the announcements concerning respective auctions addressed to new installations.

(34) Here are references submitted by the Polish authorities as example of announcements:

(a) for auctions held in 2019:

- <https://www.ure.gov.pl/pl/oze/aukcje-oze/ogloszenia-i-wyniki-auk/8495.Ogloszenie-aukcja-na-sprzedaz-energii-elektrycznej-z-odnawialnych-zrodel-energii.html>
- <https://www.ure.gov.pl/pl/oze/aukcje-oze/ogloszenia-i-wyniki-auk/8498.Ogloszenie-aukcja-na-sprzedaz-energii-elektrycznej-z-odnawialnych-zrodel-energii.html>

(b) for auctions held in 2020:

- <https://www.ure.gov.pl/pl/oze/aukcje-oze/ogloszenia-i-wyniki-auk/9062.Ogloszenie-aukcja-zwykla-na-sprzedaz-energii-elektrycznej-z-odnawialnych-zrodel-.html>
- <https://www.ure.gov.pl/pl/oze/aukcje-oze/ogloszenia-i-wyniki-auk/9063.Ogloszenie-aukcja-zwykla-na-sprzedaz-energii-elektrycznej-z-odnawialnych-zrodel-.html>

(35) The Polish authorities submitted the following data suggesting that the setting up of the RES surcharge did not negatively impact cross-border trade of electricity in Poland (source: Eurostat):

	2017	2018	2019
<u>Electricity import (MWh)</u>	13 271,0	13 815,8	17 867,0
<u>Net electricity import (import-export) (MWh)</u>	2 287,0	5 694,5	10 621,0
<u>Total electricity consumption (MWh)</u>	172 752,4	175 734,0	174 571,0
<u>Electricity import compared to total electricity consumption</u>	7,7%	7,9%	10,2%
<u>Net electricity import compared to total electricity consumption</u>	1,3%	3,2%	6,1%

(36) The scheme introduces a maximum period of 84 months to complete the projects, aiming at ensuring that project leaders will implement their projects within a reasonable time-horizon, allowing Poland to meet its RES targets and to ensure the contribution towards objectives set in the 2030 Framework. This period reflects the duration of the investment process (with a reasonable margin).

(37) There will be no requirement for any benefitting project to include local content – i.e. materials sourced from within Poland – and the use of any such local content will not affect the selection of projects in the scheme. The Polish authorities

committed to avoid any preference to investors or projects with a higher share of local materials or services content. Nevertheless, in order to assess the impact of the support scheme on the economy, the Polish authorities will monitor supply chain of materials and services of each offshore project. To this end, the beneficiaries will be obliged to submit supply chain plans (in compliance with the Chapter 6, Articles 42 to 46, of the Offshore Wind Act) and the Polish authorities will monitor the reported realisation of the plans in order to ensure that the development of offshore wind sector in Poland goes on smoothly. The realisation of the supply chain plan is thus subject to reporting and monitoring, however, the declarations made in the plan (in particular as regards expected share of local content) do not have a binding character and do not impact the investor's right to support. No preference is given to investors who declare higher share of local materials or services.

- (38) According to the Offshore Wind Act, the notified support system for offshore wind installations is based on auctions except for the first 5.9 GW; this capacity will be effectively supported in the first phase of the scheme to reach by 2030 the 5.9 GW target, approved by the Polish government in the "Energy Policy of Poland until 2040". The aid in this first phase will be granted directly.
- (39) The Polish authorities demonstrated that in order to be capable of delivering the targeted GW of installed capacity for 2030, 5.9 GW are necessary at the stage of the granting of the aid under national law for the first phase of the scheme. Indeed the actual area available to develop the offshore projects will be reduced compared to the area defined in their location permit. This is due to the following factors:
- the obligation to establish a security zone (around the artificial islands, structures and facilities) affecting the total area available;
 - the obligation to secure corridors for birds' migrations;
 - the obligation to keep required distance from Natura 2000 areas;
 - projected wake loss effects;
 - constraints posed by soil (seabed) conditions.
- (40) Based on experience of other countries, Poland has also observed that the maximum capacity defined in the initial permits is subsequently reduced at the construction stage by around 20%.
- (41) Although the scheme generally aims to allow the market to determine the most cost effective way to support offshore wind installations, Poland justified the introduction of a first phase without auction in the allocation process by the need to deploy timely and massively the offshore wind installations in order to reach the Polish RES target by 2030. In view of expected adoption of the Maritime Spatial Plan (to be adopted by 31/03/2021 at the latest), the granting of necessary location permits is suspended since February 2017. This suspension has negative consequences on the possibility to organise open competitive tenders in view of granting aid. Indeed an insufficient number of projects will fulfil the prerequisites to participate to such process. For the first offshore wind projects during the first phase, the Polish authorities justify thus the use of the exception to the auction requirement under point 126(a) of the EEAG by the existence of a very limited

number of projects and their long lead times. The Polish authorities expose that this first phase is a necessary step in view of the necessary time to put a tender process in place for the offshore projects and commit to organise auctions for all the future projects after the closure of this first phase.

- (42) There is indeed a very limited number of offshore projects, which have been in the consenting and grid application process for a number of years. As mentioned in recital (4) above, none of these projects has been capable of earning support under the general RES support scheme, but they have been identified as being sufficiently advanced to be eligible to continue their development while the new rules are developed and to potentially participate in the first phase of the scheme.
- (43) Such limitation of the number of projects would not allow to ensure competitiveness of an auction and the freezing of those first projects until enough capacity is available to ensure for a competitive auction would not allow Poland to reach its 2030 target for offshore electricity generation.
- (44) The Polish authorities explained that once new rules are in place the potential project pipeline of offshore wind to participate in auctions would be around 13-16 GW as of 2025. Therefore the Polish authorities believe that there will be enough projects available to participate in the first auction (planned for 2025).
- (45) The very long-term intention of the Polish authorities, after the second phase of this scheme, is even to put in place a system of site-specific auctions for which all legal and administrative aspects would be cleared before the auctions.
- (46) In both phases, the scheme aims to subsidise the unprofitable component of the projects, without which the beneficiary would not have an incentive to realise the projects.

2.3.6. *First phase without auction process*

- (47) State aid will be granted directly, as operating aid to boost investment, to the first offshore wind projects. This first phase will be open to projects with location permits that will conclude grid connection agreement or will acquire grid connection conditions before 31 March 2021 and that can credibly come on stream by 2030. The Polish authorities exposed that few projects would be in a position to fill in those cumulative prerequisites.
- (48) Those projects might potentially be awarded aid until 30 June 2021 under national law; by means of administrative decisions the President of the ERO will grant support in the amount stemming from the implementing regulation adopted by the Polish Minister of Climate and Environment.
- (49) Here is an overview table of the potential projects in the first phase:

	Potential project	Potential project developer
1	Bałyk Środkowy (Bałyk III/Bałyk II)	Polenergia/Equinor JV
2	Baltica 2/Baltica 3	PGE/Orsted JV
3	Baltic Power	Orlen/Northland Power JV
4	BTI	RWE
5	B-Wind/ C-Wind	OW Offshore (EDPR and Engie)

- (50) For the projects in the first phase, as described more in detail in section 2.4.1 the Commission will assess individually (by adopting individual State aid decisions) the specific level of operating aid based on the respective detailed LCOE included in the individual business plan of each project, in line with EEAG guidelines and in particular with point 131 EEAG. After the project receives its environmental permit, the investor will be required to submit its detailed business plan for the purpose of those individual notifications. The Commission will assess the specific level of operating of aid granted to beneficiaries in the first phase according to the State aid regulations in force on the day of issuance of the decision by the President of ERO on granting the aid (pursuant to Article 16 of the Offshore Wind Act), that is on the day of granting right to support pursuant to national law.
- (51) As mentioned above, the Polish authorities requested to rely on the exception from the general requirement to grant aid in competitive bidding process stemming from Point 126 (a) EEAG since they demonstrated that the very limited number of eligible projects spread over the period between now and 30 June 2021 renders the organization of any competitive bidding process impossible during this period.
- (52) This first phase of direct aid award will enable the necessary quick-off before 2022 of the offshore wind technology, which is still at an initial development stage in Poland. This first phase of the scheme will allow Poland to achieve the renewable energy targets set by the EU as part of its 2030 strategy, ensuring the contribution towards the 23% goal, stipulated in the adopted “Energy Policy of Poland until 2040”. The first phase of the scheme will allow Poland to reduce its greenhouse gas and CO₂ emissions by at least 19 million tCO₂ annually (which translates to over 480 million tCO₂ over 25-year period of operation).
- (53) The support will also result in reduction of risks and will contribute to decreasing the costs of technology. The investors will also contribute to develop significant knowledge on the full development process of offshore projects in Poland.
- (54) Direct award of aid in the first phase will also allow for a more balanced in time deployment of significant RES capacity. This is important to avoid cumulation of works on the sea and achieve smooth deployment of works. More balanced in time deployment of offshore projects will allow for the creation of a supply-chain.

2.3.7. Second phase with auction process

- (55) After the adoption of the Maritime Spatial Plan, the suspended location permits allocations will be in progress again and by doing so it will unlock the pool of projects ready for auction processes. All offshore projects in the second phase will be subject to a competitive bidding process. All generators producing electricity from offshore wind will be able to bid for a Contract for Difference (“CfD”) on non-discriminatory basis. To ensure that there is effective competition, the available budget will be limited to such extent that not all projects participating to the competition can obtain a contract.
- (56) The Polish authorities will organise competitive offshore technology-specific auctions on the basis of clear transparent and non-discriminatory criteria, on a project versus project basis, where the level of support will constitute the only awarding criterion on a pay as bid basis.

- (57) Producers intending to participate in an auction will be subject to formal evaluation carried out by the President of ERO on the basis of documents constituting annexes to required application documentation (the list of required documents is stipulated in Article 26(5) of the Offshore Wind Act).
- (58) Auctions are to be announced, organised and conducted well in advance by the President of ERO (cf. Article 29 (1) of the Offshore Wind Act) to provide predictability. Information on a prospective auction will be published at least six months in advance (cf. Article 30 (1) of the Offshore Wind Act). The Polish authorities intend to award support to 2.5 GW in 2025 and 2.5 GW in 2027 (on top of the capacity that will be awarded in the first phase). The volume for 2028 will be determined after the auction in 2027 will be closed and only in case the capacity scheduled to be procured in that auction will not be contracted. However, auction in 2028 will be conducted only if the remaining capacity reaches 500 MW.
- (59) The auctions are based on price: the winning bids will be those offering the lowest purchase prices (cf. Article 33 (1) (1) of the Offshore Wind Act). Submitted bids are not subject to negotiation. The applicants are ranked by bid price; starting with the cheapest bid until the maximum capacity volume is reached. Offers are accepted until the capacity volume resulting from the announcement of the auction is exhausted. The level of support for operators is determined on a "pay-as-bid" basis, noting that the bid cannot exceed the maximum price.
- (60) When several bidders offer the same price of electricity, and the total offered capacity volume exceeds the volume specified in the announcement of the auction, the order of submitted bids decides which bidders will be selected.
- (61) The Polish authorities introduce an additional cap, where no more than 90 % of volume (in MW) of RES capacity submitted to the auction can receive support. If 90 % of the capacity submitted will exceed the allocation stemming from the volume determined in the regulation, this volume will constitute a binding constraint²⁴. The 90 % cap will also be applied in case the volume of electricity submitted does not exhaust the allocation stemming from the volume regulation (hence, the cap allows granting aid to no more than 90 % of the volume of electricity submitted via bids to the auctions).²⁵
- (62) An auction can be cancelled if all offers have been rejected, or if the auction could not be performed due to technical reasons (cf. Article 34 (3) of the Offshore Wind Act). Furthermore, an auction can be held only if no less than three valid bids meeting the requirements are submitted (cf. Article 30 (6) of the Offshore Wind Act)
- (63) As aid will be granted in a competitive bidding process in this second phase of the scheme, the waiver for individual notification applies for those projects.

²⁴ See Article 33 (-1) (2) of the Offshore Wind Act The only derogation from the 90% rule applies in case referred to in Article 33(4) of the Offshore Wind Act.

²⁵ According to the EEAG a competitive bidding process must lead to a situation where not all bidders can receive aid (see the definition of the competitive bidding process in the EEAG, point 19(43)); the Polish authorities introduced this safeguard to cap the number of participants who can receive aid in an auction.

- (64) The second phase of the scheme will allow Poland to reduce its greenhouse gas and CO₂ emissions by at least 19 million tCO₂ annually (which translates to over 480 million tCO₂ over 25-year period of operation).

2.4. Form of aid and level of support

- (65) Aid will be paid for the period of 25 years. The Polish authorities demonstrated that the depreciation period of the offshore windfarms is minimum 25 years according to the accounting principles and that the aid will not be granted beyond the depreciation period.
- (66) Aid will be limited to a volume of generated electricity of 100 000 full load hours multiplied by installed capacity of the installation which translates to annual load factor of 4 000 MWh/MW. This total supported volume constitutes a maximum ceiling.
- (67) There are thus two applicable thresholds which are cumulative: support is paid over 25 years but only up to 100 000 full load hours per MW of installed capacity. These arrangements are the same for all offshore projects, regardless of their size. As an example, a project with an average annual production of 4 196 hours (= 8 760 hours x load factor of 0,479) will exhaust the limit of 100 000 hours in less than 24 years.
- (68) Poland confirmed that the applicants for aid will have to pass through an application process.
- (69) The support will be granted as operating aid for the projects (offshore farm including grid connection), based on a two-sided CfD in the form of a variable premium calculated as the difference payment between the “**strike price**” (defined below according to the respective phase involved) and the wholesale electricity **market price**. It will thus constitute a variable market premium on top of the market price which allows for retaining the commercial incentives on the operators to sell their electricity on the market, subject to competitive pressure from other market participants. Generators sell their electricity on the market as usual but when the average wholesale price of electricity is below the strike price, generators receive a top-up for the difference. When the average wholesale price of electricity exceeds the strike price, the CfD mechanism requires the generator to pay the difference to the CfD counterparty.
- (70) The operators will be obliged to sell contracted volume of electricity on the market. The settlement body (Zarządca Rozliczeń S.A., a 100 % State-owned company) will pay out support calculated as the difference between the strike price and the wholesale electricity price. The settlement will be arranged on a monthly basis. In case the wholesale electricity price exceeds the strike price, the surplus will be settled in the following months, and if such settlement will be impossible the surplus will be paid back to the settlement body after the end of the calendar year (cf. Article 40 (11) - (12) of the Offshore Wind Act).

2.4.1. Form of aid during the first phase, without auction process

- (71) As mentioned above, the support will be granted as operating aid, based on a two-sided CfD in the form of a variable premium calculated as the difference payment

between the strike price of the project and a measure of the market price for electricity (the wholesale electricity price).

- (72) The strike price of each project in the first phase will be administratively fixed based on the respective LCOE of each individual offshore wind project. The level of support for operators, during the first phase, is thus predetermined initially on an administrative basis and will be fixed based on the respective full individual business plan (update of the respective LCOE as mentioned in recital 77).
- (73) Nevertheless, the strike price of each respective project will always be fixed below or equal to the pre-fixed absolute maximum price per MWh (called the “maximum price”) reflecting the LCOE of the offshore technology in Poland at this point in time.
- (74) This “maximum price” is set at 319.60 PLN per MWh and is applicable during the entire first phase. The method used to establish this maximum price is based on the LCOE of offshore wind technology in Poland, using standard LCOE methodology for 25-years period and with 6,03% Weighted Average Cost of Capital (“WACC”) (real pre-tax) used as discount rate. The Polish authorities submitted a detailed report on the offshore technology costs in Poland and explained that this maximum price is justified firstly by the fact that investments in this technology requires high upfront investment expenditures and secondly this technology is still in the development phase in Poland.
- (75) The Commission will however assess individually (by adopting individual State aid decisions) the specific level of operating aid based on the respective detailed LCOE included in the individual business plan of each project, in line with EEAG guidelines and in particular with point 131 EEAG. The individual assessment will ensure proportionality based on detailed post-tax calculation of the projected internal rate of return (“IRR”) of the project.
- (76) The respective individual notification (with the business plan) for the projects in the first phase will be submitted only after the project at hand has been granted environmental permit. Information included in the environmental permit (i.e. tip height and rotor diameter) is indeed necessary to determine the technical characteristics of the project (in particular the size of turbines) and the financial characteristics of the project (as its capital expenditure (“CAPEX”) and operating expenditure (“OPEX”)) with high accuracy. At that stage, all the necessary data will be available to submit a reliable business plan.
- (77) The strike price for each project in phase I will be based on the respective detailed information contained in the individual business plan of the investor reflecting the specific metrics of each project after the fixing of all the technical features (like the total capacity, the site location, the distance to shore...). The business plan of the project (dynamic model) based on the investor respective due diligence studies will include:
- (a) the installed capacity in MW;
 - (b) the average annual energy yield (P50) predicted for the project over its life time, in TWh;
 - (c) the detailed investments costs in EUR;

- (d) the detailed operating costs (maintenance, decommissioning, taxes) in EUR;
 - (e) WACC in %;
 - (f) the projected profit and losses accounts over the lifetime of the project and taking into account revenues at a proposed strike price for the project as well as projected revenues from the sales of remaining electricity in the wholesale market in EUR;
 - (g) the post-tax calculation of the internal rate of return (IRR) of the project in %;
 - (h) the calculation of the investments costs in EUR/MWh;
 - (i) the calculation of the operating costs in EUR/MWh;
 - (j) the calculation of the total LCOE of the project in EUR/MWh and which may include a normal return on capital;
 - (k) the calculation of the market price in EUR/MWh;
 - (l) the calculation of the aid per unit of energy in EUR/MWh.
- (78) In addition, after the adoption of the individual State aid decision by the Commission, the Polish authorities will take steps to ensure that the level of the CfD remains proportionate in case of substantial changes to the project made between the individual State aid decision and until the Final Investment Decision²⁶. In the event that such substantial changes occur the Polish authorities undertake to reduce the level of the CfD awarded to the project in order to maintain the IRR at the level defined in the individual State aid decision (allowing 1 p.p. flexibility compared to this level). “Substantial change” is defined as such a change in the project’s assumptions that:
- (a) impacts the financial and the technical characteristics and
 - (b) results in an increase of initially assumed project IRR (post-tax) by more than 0,5 p.p.

2.4.2. *Form of aid during the Second phase with Auction process*

- (79) As mentioned above, the support will be granted as operating aid, based on a **two-sided** CfD in the form of a variable premium calculated as the difference payment between **strike price** and a measure of the **market price** for electricity (the wholesale electricity price).
- (80) The **strike price of each project in the second phase** will be fixed at its **bid price**, with an administratively pre-fixed absolute maximum price per MWh (called the “maximum price”). The level of support for operators is thus determined on a "pay-as-bid" basis, noting that the bid cannot exceed the maximum price.
- (81) The “maximum price” is defined as the maximum price in PLN per MWh applicable in a particular auction. The maximum price will be determined by the minister responsible for climate in the regulation issued in accordance with art 31

²⁶ The Final Investment Decision is defined Article 20(2) of the Offshore Wind Act by reference to the ‘start of works’ notion of point 19(44) EEAG.

(11) of the Offshore Wind Act well ahead of the auctions to give the investors necessary time to estimate their bids.

- (82) The Polish authorities confirmed that the maximum prices will be *de facto* determined based on the same method as the one used to fix the maximum price in the first phase but taking into account the evolution over the years. This method is based on the LCOE of offshore wind technology in Poland, using standard LCOE methodology for 25-years period and with an appropriate WACC (real pre-tax) used as discount rate.

2.4.3. *Lack of support in periods of negative prices*

- (83) Support will not be granted in the periods in which there were negative electricity prices. According to Article 40 (1)-(3), (5) and (9) of the Offshore Wind Act, the support will not be paid with respect to the amount of electricity that has been generated in the imbalance settlement periods²⁷ for which single day-ahead coupling clearing prices for the Polish bidding zone were lower than zero PLN per 1 MWh.
- (84) In case the single day-ahead coupling process is settled hourly for the Polish bidding zone, the reference price for a given imbalance settlement period is set as an hourly price for an hour covering the given imbalance settlement period.
- (85) Nominated Electricity Market Operators (NEMOs)²⁸ who offer trading services in the Polish bidding zone as part of single day-ahead coupling will publish on their websites information about clearing prices of single day-ahead coupling for the Polish bidding zone for each imbalance settlement period (or hour, whichever applicable), including information on negative prices, so that developers can take this information into account in their application for support submitted to the settlement body (Zarządca Rozliczeń S.A.).

2.4.4. *Balancing responsibilities*

- (86) The Polish authorities have confirmed that all aid beneficiaries will be subject to standard balancing responsibilities.

2.5. **Duration of the support**

- (87) The scheme will enter into force in 2021, after the notification of the European Commission's State aid approval decision for the scheme, and will run until 31 December 2029. The Polish authorities will organize first rounds of auctions in 2025. The table below summarises the auction planning:
- (a) In 2025: 2.5GW
 - (b) In 2027: 2.5GW
 - (c) In 2028: if the auction of 2027 did not reach the full capacity of 2.5 GW, additional auction in 2028 will be held provided that the remaining capacity amounts to at least 500 MW.

²⁷ As defined in art. 2 (10) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ L 312, 28.11.2017, p. 6–53).

²⁸ As defined in art. 2 (23) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24–72).

- (88) Support under the first phase of this scheme will be granted for a period not longer than 25 years. As the support is paid as of the date of the introduction of electricity to the grid for the first time, the support will be paid out approximatively from 2025 until 2054, depending on the lead time of individual projects.
- (89) Support under the second phase of this scheme will be granted via auctions that can be organized no later than 31 December 2029 (the day of settlement of the auction is decisive in this respect). Successful bidders will be entitled to receive support for a period not longer than 25 years. As the support is paid as of the date of the introduction of electricity to the grid for the first time after the conclusion of the auction, the support will be paid out approximatively from 2030 until 2060, depending on the date of settlement of the auctions and lead time of individual projects.

2.6. Transparency and cumulation

- (90) Poland confirmed that all transparency requirements set out in points 104 - 106 of the EEAG will be complied with. The information concerned by these requirements will be published on the website of the Polish competition authority (UOKiK) (<https://sudop.uokik.gov.pl>).
- (91) Any investment aid or any other support previously received or granted to any beneficiary, be it in the first or the second phase of the scheme, will be deducted from the support under the CfD scheme.
- (92) For the second phase of the scheme, the Polish authorities also explained that the cumulation rules ensure that investment aid is deducted from operating aid (determined in an auction bid) and consequently that all operators will be able to compete in auctions on equal footing (all operators will have to bid as though they have never received investment aid). The amount of investment aid will be discounted; therefore its amount will be calculated for the day of submission of the auction bid. Declaration regarding investment aid will need to be attached to the application for granting the license to conduct business activity involving generation of electricity in an offshore wind farm or to an application for amendment of such concession with respect to the installed electric capacity of an offshore wind farm (such application is submitted to the President of ERO). This declaration is made under penalty of criminal liability for making false statements. The President of ERO has the right to conduct an audit to verify the submitted statements and has access to the System of Scheduling, Registration and Monitoring of State Aid (Polish central register of State aid).

2.7. Financing and budget

- (93) The support will be financed from proceeds from the existing RES surcharge on electricity consumption collected by DSO or TSO from the entities listed in Article 95 (3) of the RES Act, namely (i) final consumers connected directly to the distribution network of the RES fee payer; (ii) power utilities conducting business activity in the area of transmission or distribution of electricity, not being a RES fee payer, connected directly to the distribution network of the RES fee payer and (iii) power utility producing electricity, connected to the distribution network of a RES fee payer, selling electricity to at least one final consumer or power utility providing electricity transmission or distribution

services not being a RES fee payer, connected to the devices, installations or networks of this power utility producing electricity.

- (94) The rate of RES surcharge is determined annually by the President of ERO in accordance with the formula laid down in Articles 98 - 99 of the RES Act, which is published on the website of ERO. The DSO and the TSO calculate the RES surcharge by multiplying the rate determined by the President of ERO and the amount of electricity consumed by end-consumers. The proceeds from RES surcharge are transferred to the settlement body (Zarządca Rozliczeń S.A., a public entity). The settlement body manages these proceeds in accordance with rules established by the State. In accordance with the provisions of the RES Act and the Energy Law²⁹, the DSO and the TSO pass on the entirety of the costs related to the RES surcharge on end-consumers by including an additional item in the electricity bills. Therefore, although the financial flows partially take place between private parties, they have to be considered as involving State resources because the Polish State controls and manages them.
- (95) The budget for offshore wind installations is allocated for the period 2021-2030. Based on estimates, the total payments in all years for projects supported both phases will amount to ca. 22.5 billion EUR, which translates to annual amount of actually paid support within the range of 780-990 million EUR (for years when all projects will be in operation).
- (96) The above amounts refer solely to the forecasted amount of feed-in premium (actual support) which has been calculated as the difference between maximum price and forecasted electricity market price. Thus, the estimated amounts are maximum payments since the real payments will result from adjusted strike prices approved by the Commission (first phase) and auction bids that will be lower than maximum prices (second phase).
- (97) The budgeted aid amounts awarded in consecutive years are estimated as follows:
- (a) in year 2021: 7.597 billion EUR will be awarded in the first phase;
 - (b) by year 2025: 6.771 billion EUR will be awarded in auctions and
 - (c) after 2025: 8.166 billion EUR will be awarded in auctions.

2.8. Evaluation

- (98) Poland notified the scheme until 31 December 2029. Poland has committed to submit the final evaluation report to the Commission by 31 March 2029. In order to keep the Commission updated about the progress of the evaluation in terms of data collection and methodologies (including potential difficulties encountered), an intermediate evaluation report is due six to twelve months after the first tender round (i.e. in the second phase of the scheme), currently foreseen in 2025. Since the aid granted in the first phase of the scheme concerns individual aid, in the form of direct grants to the beneficiaries on the basis of the LCOEs (see details in section 2.4.1. above), no evaluation is foreseen regarding the first phase of the scheme.
- (99) From the Polish State aid schemes currently in place, only the general RES support scheme (SA.43697) has been subject to an ex post evaluation exercise in

²⁹ Consolidated text: Journal of Laws 2020, item 833, as amended.

accordance with Chapter 4 of the EEAG. The evaluation report of the Polish RES support scheme is due in June 2021. As explained in recital (4), the RES support scheme includes the possibility of supporting offshore wind installations competing in the same basket as hydropower and geothermal. Nevertheless, no offshore wind installation was granted support under this scheme due to significantly higher costs (based on the LCOE) for offshore wind installations compared to other RES installations. There is no other predecessor scheme on Polish offshore wind, which could serve as a reference for the current evaluation plan.

- (100) The evaluation plan notified by Poland in the context of its first offshore wind scheme includes 20 evaluation questions in order to assess the scheme's outputs and its direct effects on the beneficiaries (developments in the production of energy from offshore wind installations, installed capacity and investment in offshore wind energy, if possible compared to a counterfactual of no aid), its indirect effects (in particular, its contribution to the reduction of CO₂ emissions and its impact on market concentration), as well as the proportionality of the aid and the appropriateness of the chosen aid instrument. In addition to the general evaluation questions, sub-sets of questions will address technology-specific elements to offshore wind.
- (101) The evaluation will provide general information, in particular, on whether the scheme achieves its objectives, on the number and type of beneficiaries, on the tenders to be organised.
- (102) The evaluation will also provide insights into the impact of the tender design (comparing the Polish offshore wind tender system with offshore wind and more general other RES support schemes in place in other Member States), the number of participants in the tenders, and the height of the bid caps on the tender results and the competitiveness of the tenders.
- (103) Evaluation questions related to the general outputs of the scheme will be primarily answered by providing quantitative evidence, while other questions may require qualitative assessment. To evaluate the direct effects of the scheme, Poland has assessed the possibility of employing counterfactual impact evaluation methods in line with the Commission Staff Working Document on Common methodology for State aid evaluation³⁰. However, since it is expected that the number of bidders in the 2025 and 2027 tender rounds will be limited, the amount of data generated from these tenders will likely be insufficient to conduct a standard counterfactual impact assessment. Nevertheless, even if no counterfactual impact evaluation is possible, Poland will make use of other empirical methodologies in order to assess the impact of the aid scheme (see section 3.3.8 for further details).
- (104) In order to perform the evaluation, Poland has confirmed that the required data can be collected and will be made available to the evaluators, as there will be no confidentiality issues. General energy statistics will also be used, as well as some targeted qualitative information. Moreover and in particular in relation to the tender and bid information, the Polish authorities will provide the independent

³⁰ Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final

evaluator with the necessary data for conducting the evaluation in full respect of data protection rules and while ensuring protection of business secrets and sensitive information.

- (105) The evaluation will be conducted by an external independent evaluator to be selected through an open tender procedure. Poland has committed to duly consider the relevant experience of the tender applicants notably in the field of quantitative evaluation methods.
- (106) The evaluation report will be published on the website of the Polish Ministry of Climate and Environment (<https://www.gov.pl/web/klimat>). Poland committed to take the evaluation results duly into account for future policy-making.

3. ASSESSMENT OF THE SCHEME

3.1. Presence of State Aid

- (107) Under 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, in so far as it affects trade between Member States, is incompatible with the internal market.
- (108) In determining whether a measure constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission has to apply the following criteria: (i) it must be imputable to the State and involve State resources, (ii) the measure must confer an advantage on certain undertakings or certain sectors (selective advantage), (iii) it must distort or threaten to distort competition and (iv) it must be liable to affect trade between Member States.

3.1.1. Existence of State resources and imputability

- (109) The Polish authorities have notified the measure as State aid. The support from the scheme for offshore wind is imputable to the State, as the support has been established by the Law (Offshore Wind Act and implementing regulations of Council of Ministers or of the Minister of Energy – see recitals (13) to (16)) and the Polish Government determines the parameters of this scheme including the eligible technology, the form of the aid (support in the form of a variable premium on top of the market price) and the amount of renewable energy to support.
- (110) The funding mechanism for the scheme for offshore wind is also established in law and requires the costs of the scheme to be recovered from suppliers, and requires consumers to pay their share of the costs (see Section 2.7.). The fund for managing these costs and payments is administered by a public entity (Zarządca Rozliczeń S.A. a 100 % State owned company appointed by the State for the task).
- (111) The Commission notes that the support scheme provides for a mechanism for full compensation of the additional costs incurred by Zarządca Rozliczeń S.A. - the entity on which the obligation to pay variable premiums on top of the market price and feed in tariffs in connection to the support of renewable electricity is imposed.

- (112) As indicated in recitals (93), the scheme will be financed from proceeds from the RES surcharge collected by the DSO or the TSO on electricity consumption³¹.
- (113) The rate of RES surcharge will be determined annually by the President of the ERO in accordance with the formula laid down in Articles 98 - 99 of the RES Act, which is published on the website of the ERO. The DSO and the TSO calculate the RES surcharge by multiplying the rate determined by the President of the ERO and the amount of electricity consumed by end-consumers. The proceeds from RES surcharge are transferred to the settlement body (Zarządca Rozliczeń S.A., a public entity). The settlement body manages these proceeds in accordance with rules established by the State. In accordance with the provisions of the RES Act and the Energy Law³², the DSO and the TSO pass on the entirety of the costs related to the RES surcharge on end-consumers by including an additional item in the electricity bills. Therefore, although the financial flows partially take place between private parties, they have to be considered as involving State resources because the Polish State controls and manages them³³.
- (114) In the light of the above, the Commission considers that the measure is granted through State resources and is imputable to the State within the meaning of Article 107(1) TFEU, a view not disputed by Poland.

3.1.2. Selective economic advantage to certain undertakings or certain sectors

- (115) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention³⁴. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours "*certain undertakings or the production of certain goods*".
- (116) Under the notified scheme, the beneficiaries receive an advantage because they will obtain additional support in the form of a premium on top of the market price for their electricity production. Those payments guarantee the producers of electricity revenues higher than what they would obtain on the market.
- (117) Furthermore, the measure is selective because it favours only generators of electricity from offshore wind and the aid is not accessible to other electricity producers that are in comparable legal and factual situation in that they produce electricity and sell it on the market.
- (118) It follows that the measure at issue confers a selective advantage within the meaning of Article 107(1) TFEU.

³¹ Judgment of 28 March 2019, C-405/16 P, *Germany v Commission*, EU:C:2019:268, paragraphs 57-60 and 70.

³² Consolidated text: Journal of Laws 2020, item 833, as amended.

³³ Judgment of 15 July 2004, *Pearle and Others*, C-345/02, EU:C:2004:448; Judgment of 30 May 2013, *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348.

³⁴ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

3.1.3. *Impact on competition and on trade between Member States*

- (119) In accordance with settled case law³⁵, for a measure to impact competition and trade it is sufficient that the recipients of the aid compete with other undertakings on markets open to competition.
- (120) The electricity market has been liberalised and electricity producers engage in trade between Member States. The electricity generated by the supported offshore wind farms will be sold on the spot market where it will enter in competition with electricity from different sources (such as electricity from other RES, conventional and nuclear sources) and from different Member States.
- (121) Therefore, the advantage granted to the producers of electricity from the offshore wind installations supported by the notified scheme is likely to distort competition and affect trade between Member States.

3.1.4. *Conclusion on the existence of State aid*

- (122) On the basis of the above-mentioned elements, the Commission considers that the notified support scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. **Legality of the aid**

- (123) The measure was notified to the Commission by the Polish authorities on 12 April 2021 and it has not been implemented to date³⁶, thereby fulfilling the notification and standstill obligation of Article 108(3) TFEU.

3.3. **Compatibility of the aid**

- (124) The Commission has assessed the notified aid scheme on the basis of Article 107(3)(c) TFEU and the EEAG. In particular, it has assessed the support to the production of offshore wind electricity under Section 3.3 of the EEAG (Aid to energy from renewable sources). According to point 19(5) EEAG, wind is a renewable energy source.
- (125) Article 107(3)(c) TFEU provides that the Commission may declare compatible “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity. Furthermore, the aid should not distort competition in a way contrary to the common interest.

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

- (126) Under Article 107(3)(c) TFEU, the measure must contribute to the development of certain economic activity³⁷.

³⁵ Judgment of the Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, ECLI:EU:T:1998:77.

³⁶ See footnote 10 of recital (14) above.

³⁷ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paras 20 and 24.

- (127) The notified scheme supports the development of the economic activity of electricity production from offshore wind, aiding in the establishment of offshore wind farms in Poland, which would not otherwise have been established. In so doing, the measure at issue will contribute to the development of the economic activity of electricity production from offshore wind.
- (128) In view of the above, the Commission considers that the notified scheme contributes to the development of an economic activity, as required by Article 107(3)(c) TFEU.

3.3.2. *Facilitation of an economic activity and incentive effect*

- (129) State aid has an incentive effect, if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid and if the change in behaviour would not occur without the aid³⁸.
- (130) The targeted wind projects would not be executed in the absence of the aid, given the gap between the costs to produce the electricity based on offshore wind technology and the market price for electricity which is generally lower. The Polish authorities demonstrated that State support is needed to change behaviour towards generating investments in offshore wind farms, which are not financially viable in Poland.
- (131) As demonstrated in recitals (4) to (11), the offshore wind technology is still not cost-competitive in Poland. Electricity generated by this technology cannot compete on market terms with electricity generated from existing conventional electricity production in Poland. Without the aid, the offshore wind farm projects would not be financially viable and would not be carried out.
- (132) The Polish authorities explained that despite the falling costs of offshore renewable technology in some Member States, developers would not make sufficient investment in this technology in Poland (since it is still there at an initial stage) to meet Poland's increasingly ambitious renewables targets without support.
- (133) The Commission notes that in the absence of aid offshore wind technology will not be deployed at the required scale and pace, as without the aid such projects would not be financially viable in Poland. The aid has therefore an incentive effect, since it determines the beneficiaries to change their behaviour and invest in offshore wind projects.
- (134) Furthermore, point 50 of the EEAG stipulates that aid does not present an incentive effect in all cases where works on the project started prior to the aid application. The Polish authorities confirmed in line with point 50 of the EEAG that they will verify that works on the projects have not begun before the granting of aid.
- (135) EEAG points 51 and 52 require application forms including counterfactual situations to be submitted by beneficiaries, unless the aid is granted on the basis of a competitive bidding process. Poland confirmed that the applicants for aid will

³⁸ See in that sense points 49 and 144 of the EEAG, as well as Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

have to pass through an application process (see recital (68)). In the first phase of the scheme, counterfactual situations will be submitted by beneficiaries through individual notification of a detailed business plan. In the second phase of the scheme, aid will be granted on the basis of competitive bidding processes.

- (136) The Commission therefore concludes that the aid has an incentive effect and facilitates the development of electricity generation from offshore wind.

3.3.3. *Compliance with other provisions of EU law*

- (137) State aid which contravenes provisions or general principles of EU law cannot be declared compatible³⁹.
- (138) As indicated in point 29 of the EEAG, if a State aid measure or the conditions attached to it (including its financing method when it forms an integral part of it) entail a non-severable violation of Union law, the aid cannot be declared compatible with the internal market. In the field of energy, any levy that has the aim of financing a State aid measure needs to comply in particular with Articles 30 and 110 TFEU.
- (139) As the notified scheme is financed from a charge levied on all electricity consumption in Poland (see section 2.7), the Commission has examined its compliance with TFEU Articles 30 and 110 in accordance with point 29 of EEAG.
- (140) According to the case-law, a charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenue from such a charge is intended to support activities which specifically benefit the taxed domestic products⁴⁰. If the advantages which those products enjoy wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge having equivalent effect to custom duties, contrary to TFEU Article 30. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of TFEU Article 110 and will be contrary to that provision as regards the proportion used to offset the burden borne by the domestic products.
- (141) If domestic electricity production is supported by aid that is financed through a charge on all electricity consumption (including consumption of imported electricity), then the method of financing – which imposes a burden on imported electricity not benefitting from this financing – risks having a discriminatory effect on imported electricity and thereby violating TFEU Article 30 or 110⁴¹. A similar issue would arise between any neighbouring country that has signed a free trade agreement with the European Union containing provisions similar to TFEU Articles 30 and 110.
- (142) Poland has explained that the notified scheme will be financed from the same RES surcharge (a levy on energy consumption) as the general RES support

³⁹ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

⁴⁰ Judgment of 14 April 2005, *AEM*, C-128/03 and C-129/03, EU:C:2005:224; Judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 42.

⁴¹ Judgment of 25 January 1970, *France v Commission*, C-47/69, EU:C:1970:60, paragraph 20.

scheme. Poland considers that the notified scheme in essence constitutes a “spin-out” of the general RES support scheme. In this respect, the Commission notes that:

- (a) the notified scheme is financed through a charge imposed on electricity consumed in Poland, irrespective of whether domestically produced or imported; and
 - (b) the charge is calculated on the amount of electricity consumed (and thereby imposed on the product itself).
- (143) In support of the compliance of the notified scheme with Articles 30 and 110, the Polish authorities highlighted the fact that the general RES support scheme is open to foreign installations and submitted data (see recital (35) above) suggesting that the setting up of the RES surcharge by the general RES support scheme did not negatively impact cross-border trade of electricity in Poland.
- (144) In the decision concerning the general RES support scheme, the Commission assessed whether there could be discriminatory treatment with regard to imported products.⁴² In particular, the Commission found that, in view of the commitments provided under the RES act concerning the opening to RES located outside the Polish territory and outside the Polish exclusive economic zone, the general RES support scheme, including its financing mechanism, complied with Articles 30 and 110 TFEU.
- (145) Support under the notified scheme will be open to domestic operators as well as operators from other Member states for offshore projects physically located in the Polish exclusive economic zone. The Commission notes that Poland committed to continue to effectively incentivise the openness of the general RES support scheme financed by the same levy as the notified scheme. In particular, Poland will continue the announcements mentioned in recitals (32) to (34) above concerning auctions addressed to new RES installations open to RES located outside the Polish territory and outside the Polish exclusive economic zone.
- (146) Therefore, the Commission considers that the financing mechanism of the notified aid measures does not introduce any restrictions that would infringe Article 30 or Article 110 TFEU.
- (147) In addition, as exposed in recital (25), the scheme includes both the wind farms and the grid connection. Since equal and non-discriminatory third party access to the transmission grid in line with EU regulations is ensured, the aid will also help developing additional grid connection available for other electricity producers.
- (148) Poland has further confirmed that the scheme will only be open to projects which obtain a decision on environmental conditions following an Environmental Impact Assessment procedure (where required).⁴³
- (149) In light of the above, the Commission considers that the notified aid measure does not infringe relevant EU law.

⁴² See SA.43697, recitals (257) to (265).

⁴³ As further clarified in recitals (26) to (28) and (37)

3.3.4. *The aid is designed in order to limit its effects on competition and trade*

3.3.4.1. Need for State intervention

- (150) According to subsection 3.2.2 of the EEAG, the Member State needs to demonstrate that there is a need for the State intervention and in particular, that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of the production of electricity from renewable sources, the Commission presumes that a residual market failure remains, which can be addressed through aid for renewable energy, for the reasons set out in point 115 of the EEAG.
- (151) The Polish authorities demonstrated that offshore wind is a technology that requires State intervention in the form of subsidies to be financially viable in Poland.
- (152) As explained in recitals (4) and (8), as of today, no offshore wind installation was granted support under the existing support scheme due to the higher levelised cost of energy production (LCOE) for offshore wind installations compared to onshore wind and photovoltaic installations; not a single offshore wind project has been developed so far in Poland.
- (153) In addition, as explained in recital (9), the LCOE for offshore wind installations in Poland are higher than the ones observed in other EU countries where the offshore technology is mature. In the case of Poland there is a need to build the whole offshore industry, including inter alia supporting infrastructures. The level of support in Poland will be additionally influenced by the higher cost of capital in Poland compared to most Member States and the higher currency risk.
- (154) Therefore, based on the information submitted by the Polish authorities, it is unlikely that, absent the aid, the development of electricity production from offshore wind installations and thus the development of offshore wind technology would occur, or would occur to the same extent.
- (155) Against this background, it is unlikely that, absent the aid, the development of the economic activity of generation of electricity from offshore wind in Poland would occur, or would occur to the same extent. The Commission therefore considers that the notified scheme is necessary.

3.3.4.2. Appropriateness of the aid

- (156) Point 40 of the EEAG explains that aid measures must be appropriate and that an aid measure will not be considered compatible with the internal market if the same outcome is achievable through other less distortive policies or aid instruments.
- (157) Point 116 of the EEAG states that the Commission presumes the appropriateness of aid for renewable energy sources provided all other conditions of section 3.3.2 of the EEAG are met. According to point 107 of the EEAG, under certain conditions State aid for renewable energy sources can be an appropriate instrument to increase renewable electricity production.

- (158) As mentioned in recital (5), the notified scheme aims at significantly increasing the installed capacity of offshore wind energy installations (to 5.9 GW by 2030 and 11 GW by 2040) in order to further reduce CO₂ emissions in the future⁴⁴.
- (159) The notified scheme is therefore deemed appropriate provided that the other compatibility conditions are met. As explained in sections 3.3.1, 3.3.2, 3.3.3, 3.3.4.1 above and as will be shown in the sections below, these other compatibility conditions are met. Therefore, the Commission considers the aid to be appropriate.

3.3.4.3. Proportionality of the aid

- (160) According to point 69 of the EEAG, environmental aid is considered to be proportionate, if the aid amount per beneficiary is limited to the minimum needed to induce the additional investments or activity by the beneficiary.
- (161) The scheme supports electricity production from renewable sources, for which the EEAG include specific rules, in particular in points 124, 126 and 129.

Aid granted as premium and market integration

- (162) In line with point 124 (a) of the EEAG aid will be granted as a premium in addition to the market price whereby the generators sell their electricity directly to the market.
- (163) As mentioned above in recital (71), the support will be granted as operating aid, based on a two-sided CfD in the form of a variable premium calculated as the difference payment between the strike price (defined according to the respective phase involved in sections 2.4.1 and 2.4.2) of the project and a measure of the market price for electricity (the wholesale electricity price). Generators sell their electricity on the market as usual but when the average wholesale price of electricity is below the strike price, generators receive a top-up for the difference. When the average wholesale price of electricity exceeds the strike price, the CfD mechanism requires the generator to pay the difference to the CfD counterparty. In exchange for a certain stability and predictability of their revenues, the beneficiaries will not be able to benefit of very high electricity prices.
- (164) Granting aid in the form of a variable market premium on top of the market price retains the commercial incentives on the operator to sell its electricity on the market in the normal market way, subject to competitive pressures from other market participants. The Commission therefore concludes that the notified aid measure complies with point 124 (a) of the EEAG.
- (165) As described in recital (86), the beneficiaries are subject to standard balancing responsibilities and no aid is granted for covering balancing costs. The Commission therefore concludes that the notified aid measure complies with point 124 (b) of the EEAG.

⁴⁴ Both phases of the scheme will allow Poland to reduce its greenhouse gas and CO₂ emissions by at least 19 million tCO₂ annually (which translates to over 480 million tCO₂ over 25-year period of operation).

- (166) As provided in recital (83), the Polish authorities confirmed that no premium will be paid for production during periods in which there are negative electricity prices.
- (167) As a consequence of the above, the Commission can conclude that no incentives are provided to produce electricity at times of negative prices (when demand is lower than supply). The Commission therefore concludes that the notified aid measure complies with point 124 (c) of the EEAG.

Competitive bidding process

- (a) During the first phase of the scheme - Exemption from competitive bidding process

- (168) The Polish authorities requested to rely on the exception from the general requirement to grant aid in competitive bidding process stemming from point 126 (a) EEAG since they demonstrated that the very limited number of eligible projects spread over the coming years renders the organization of any competitive bidding process impossible during this period.
- (169) As described in section 2.3.6, for the limited number of projects in the first phase of the scheme, the Commission will approve (by adopting individual State aid decisions) the specific level of operating aid based on the respective detailed LCOE included in the individual business plan of each project, in line with EEAG guidelines and in particular with point 131 EEAG. After the project receives its environmental permit, the investor will be obliged to submit its detailed business plan for the purpose of its individual notification.
- (170) In addition, as described in recital (78), after the adoption of the individual State aid decision by the Commission, the Polish authorities will take steps to ensure that the level of the CfD remains proportionate in case of substantial changes to the project made between the individual State aid decision and the Final Investment Decision. In the event that such substantial changes occur the Polish authorities undertake to reduce the level of the CfD awarded to the project in order to maintain the IRR at the level defined in the individual State aid decision (allowing 1 p.p. flexibility compared to this level).
- (171) This first phase of direct aid award will enable the necessary quick-off of the offshore wind technology, which is still at an initial development stage in Poland. This first phase of the scheme will help Poland to contribute to the renewable energy targets set by the EU as part of its 2030 strategy⁴⁵, ensuring the contribution towards the 23% RES national target by 2030, and to implement its National Renewable Energy Action Plan. The first phase of the scheme will allow Poland to reduce its greenhouse gas and CO₂ emissions by at least 19 million tCO₂ annually (which translates to over 480 million tCO₂ over 25-year period of

⁴⁵ Directive (EU) 2018/2001 establishes a binding renewable energy target for the EU for 2030 of 32% (RED II) and the European Council European Council of 11 December 2020 endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990, <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>

operation). The Commission notes that the notified scheme is in line with the Green Deal Communication⁴⁶.

(172) In view of the above and of the fact that in the second phase of the scheme aid will be granted by means of a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the Commission concludes that the exception from the general requirement to grant aid in competitive bidding processes during the first phase of the scheme can be considered compatible with the requirements of EEAG point 126 (a).

(b) During the second phase of the scheme - competitive bidding processes

(173) Point 126 of the EEAG provides that from 1 January 2017 onwards, all aid to renewable installations should in principle be granted by means of a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. Additionally, when such competitive bidding process is open to all generators producing electricity from RES on a non-discriminatory basis, the proportionality of the aid will be presumed. In line with point 110 of the EEAG, technology specific tenders can be carried out by Member States, under certain circumstances such as longer term potential of a given new and innovative technology, the need to achieve diversification, network constraints and grid stability and system integration costs.

(174) The Commission considers that Member States are entitled to impose restrictions in the tender specifications aimed at ensuring that the aid is granted to certain technologies, when justified⁴⁷. However, when such restrictions are imposed, it is important to ensure they are clear and transparent.

(175) The Commission notes that during the second phase of the scheme aid is granted via open auction processes dedicated to offshore wind installations, based on criteria clearly indicated in the national legislation. The Commission considers that the auction criteria, as notified to the Commission, are clear, transparent and non-discriminatory.

(176) The Polish authorities provided information justifying the need for a dedicated offshore wind bidding process:

- (a) existence of a need for greater diversification of RES technologies; the previous general RES support system allowed only for the development of a few, cheaper technologies, in particular biomass and onshore wind installations);
- (b) offshore wind is effectively unproven in Poland at contemporary commercial scale. There are no commercial offshore windfarms in Poland. The required supply chains, port infrastructure and relevant experience

⁴⁶ Section 2.1.1. Increasing the EU's climate ambition for 2030 and 2050 of the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM/2019/640 final.

⁴⁷ The Commission has accepted in the past auctions for baskets of technologies with additional caps, or dedicated budgets for certain technologies, see for example the Commission's decision in case State aid SA.36196 (2014/N) – United Kingdom – Electricity Market Reform - Contract for Difference for Renewables, C(2014) 5079 final, JOCE C/393/2014.

therefore does not yet exist in Poland and will be essential for financing, developing, operating and maintaining the projects Poland aims to see developed in future.

- (c) long-term potential of the offshore wind technology in Poland, which is estimated to be available in large quantities but is currently not used to produce electricity, mainly due to its higher costs. This technology should play a key role in the development of the RES in Poland.
- (177) The bidding price paid will be established via competitive bidding process, and cannot in any event exceed the maximum price. The Polish authorities confirmed that the maximum price does not exceed the LCOE and demonstrated that the levelised costs are above the electricity market price. The Polish authorities provided detailed information about the methodology for the calculation of LCOE (with WACC real pre-tax used as discount rate).
- (178) The Polish authorities confirmed that the budget will remain a binding constraint in the future because the budget will be calculated annually and the calculation will take into account the likely number of projects that will come forward (including by reviewing the planning consent pipeline) so that the budget can be set to limit the risk that all potential projects in a single auction could receive support.
- (179) In addition, the Commission notes that the Polish authorities have taken measures to ensure that all auctions will be competitive: in particular the Polish authorities will limit the number of successful bidders in an auction by introducing a cap which allows granting aid to no more than 90 % of the capacity submitted via bids to the auctions (see recital 0). Moreover, as explained above, the bids in auctions are capped by maximum prices, reflecting the LCOE of the offshore wind technology, which will ensure that there will be no overcompensation.
- (180) The Commission concludes that the specific auctions for offshore wind can be considered compatible with the requirements of EEAG point 126.

No aid beyond depreciation period

- (181) As explained from recital (65) to (67), there are two thresholds which are cumulative:
- aid will be paid for the period of 25 years and
 - aid will be limited to a volume of generated electricity of 100 000 full load hours multiplied by installed capacity of the installation which translates to annual load factor of 4 000MWh/MW. This total supported volume constitutes a maximum ceiling.
- (182) The Polish authorities confirmed that the depreciation period of the offshore windfarms is minimum 25 years according to the accounting principles and that the aid will not be granted beyond the depreciation period.
- (183) The Commission therefore concludes that the notified scheme complies with point 129 of the EEAG.

Conclusion on proportionality

- (184) Based on the information in this section 3.3.4.3, the Commission concludes that the aid is proportionate.

3.3.5. Cumulation

- (185) As explained in Section 2.6, any investment aid or any other support previously received or granted to any beneficiary, be it in the first or the second phase of the scheme, will be deducted from the support under the CfD scheme.
- (186) For the second phase of the scheme, the Polish authorities also confirmed that the cumulation rules ensure that investment aid is deducted from operating aid and consequently that all operators will be able to compete in auctions on equal footing (see recital (92)).

3.3.6. Distortion of competition and balancing test

- (187) The negative effects of the measure on competition and trade must be sufficiently limited, so that the overall balance of the measure is positive. The Court has clarified that in order to assess whether a measure adversely affects trading conditions to an extent contrary to the common interest. This assessment entails weighing up the positive effects of the planned aid for the development of the activities that aid is intended to support and the negative effects that the aid may have on the internal market⁴⁸.

3.3.6.1. Positive effects

- (188) On the positive side of the balance, the Commission notes that the scheme can be expected to have a range of positive effects because the eligible activities contribute directly to renewable energy production from offshore wind in Poland, and indirectly to environmental protection. The aid will induce positive indirect effects in terms of environmental gains as reduction in emissions of greenhouse gases.
- (189) On 24 October 2014, the European Council endorsed a binding EU target of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990⁴⁹. The climate ambitions of the Commission⁵⁰ were reinforced in 2019 with the European Green Deal Communication, setting an objective of no net emissions of greenhouse gases in 2050⁵¹. This objective was endorsed by the European Council in its conclusions of December 2019⁵². Finally, the European Council has in December 2020 adopted the net 55% target for 2030, which sets the ground for the “fit for 55” legislative proposals scheduled for June 2021⁵³.

⁴⁸ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 101.

⁴⁹ EUCO 169/14, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf.

⁵⁰ The objective of net zero GHG emissions by 2050 was initially proposed under Commission Communication “[A Clean Planet for All](#)” in November 2018 already.

⁵¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, 11 December 2019, COM 2019 (640).

⁵² <https://www.consilium.europa.eu/media/41768/12-euco-final-conclusions-en.pdf>

⁵³ EUCO 22/20, <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>

- (190) The renewable energy generation technology eligible for support under the notified scheme meets the EEAG definition of ‘renewable energy sources’ (see point 19(5) of the EEAG).
- (191) In this regard, the Commission notes that promotion of the development of renewable energy is one of the aims of the Union’s policy on energy pursuant to Article 194 TFEU. Moreover, point 30 of the EEAG recognises that an increased level of environmental protection may be attained through a shift to a low carbon economy with a significant share of variable energy from RES.
- (192) Therefore, the Commission welcomes the fact that, as explained in recitals (5) and (6), the scheme will contribute to meeting Poland's national target of 23% of its energy consumption from RES by 2030. The scheme will also contribute to achieving the EU target of at least 32% share of RES on the energy consumption in 2030⁵⁴ and climate neutrality by 2050. It is consistent with the Polish National Energy and Climate Plan (NECP)⁵⁵ aiming at increasing the share of renewables in the national energy mix at low cost for the electricity consumer. Moreover, the measure will contribute to the Poland's long-term goal to reduce its greenhouse gases (see recitals (52) and (64)). The Commission notes that the notified measure is in line with the Green Deal Communication⁵⁶.
- (193) As explained in recital (4), the auctions organised under the current general RES support scheme resulted in no offshore wind installation being granted support under this scheme due to the higher LCOE for offshore wind installations; not a single offshore wind project has been developed so far in Poland. The cost of electricity produced from offshore wind is higher than electricity produced from onshore wind and PV installations. At the same time, the Polish authorities demonstrated that in order to be capable of delivering the targeted GW of installed RES capacity by 2030, it is necessary to deploy timely and massively offshore wind installations.
- (194) In addition, as exposed in recital (25), equal and non-discriminatory third party access to the transmission grid in line with EU regulations will be ensured.
- (195) As explained in recital (12), supporting offshore wind in Poland has other positive effects as :
- ensuring a certain degree of energy diversification which can help reducing curtailment and increases energy security and
 - supporting the development of supply chains, infrastructures and experience necessary to develop future renewable marine technologies such as floating solar and wind, which may play a significant role in the longer term.
- (196) The Commission therefore concludes that the notified scheme supporting electricity generation from offshore wind will not only contribute to that

⁵⁴ Directive (EU) 2018/2001 establishes a binding renewable energy target for the EU for 2030 of 32% (RED II).

⁵⁵ Available online at:

https://ec.europa.eu/energy/sites/ener/files/documents/dk_final_necp_main_en.pdf.

⁵⁶ Section 2.1.1. Increasing the EU’s climate ambition for 2030 and 2050 of the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal COM/2019/640 final.

economic activity, but moreover it will do so in a manner that creates incentives for emissions reductions and therefore it has also positive environmental effects.

3.3.6.2. Negative effects

- (197) On the negative side of the balance, support to the production of renewable electricity in new offshore wind installations can distort competition and trade in the electricity market, as well as between undertakings receiving the support and their competitors in the same sector.
- (198) Point 97 of the EEAG explains that, when assessing the negative effects of an aid measure, the Commission assesses the impact on competition between undertakings in the product markets affected and on the location of economic activity. Point 98 adds that, where aid is proportionate, its negative impact is in principle softened. Point 99 explains that the Commission will place great emphasis on the selection process, which should not exclude companies and projects that may compete to address the environmental or energy objective. The selection process should lead to the selection of beneficiaries that can address the objectives using the least amount of aid or in the most cost effective way.
- (199) In line with point 97 of the EEAG, the aid scheme is well targeted to the market failure it aims to address (see section 3.3.4.1 above), so that the risk that the aid will unduly distort competition is limited.
- (200) In line with point 98 of the EEAG, since the aid is proportionate (see section 3.3.4.3), the negative impact of the aid on competition and trade is softened.
- (201) As explained in section 2.3.7 and in line with point 99 of the EEAG, an important part of the aid is attributed through tenders (all the projects in the second phase of the scheme), which are non-discriminatory, transparent and open. As well as supporting a reduction in the costs of achieving the targeted environmental protection objectives, this approach is appropriate to help to ensure possible distortions to competition are minimised.

3.3.6.3. Conclusions on distortion of competition and balancing test

- (202) In light of the above, the Commission considers that the scheme is in line with the relevant provisions of the EEAG. The Commission considers that the negative effects on competition and trade are limited and are outweighed by the positive effects of the measure in terms of facilitating the development of an economic activity, and having regard also to the environmental benefit that the promotion of offshore wind installations (as a source of renewable energy) brings in comparison with more environmentally-harming technologies in the electricity generation market.
- (203) Therefore, the aid at issue facilitates the development of certain economic activities while not adversely affecting trading conditions to an extent contrary to the common interest, as required by Article 107(3)(c) TFEU.

3.3.7. *Transparency of the aid and firms in difficulty or subject to an outstanding recovery order*

- (204) According to point 104 of the EEAG, Member States must ensure the transparency of aid granted by publishing certain information on a comprehensive State aid website.
- (205) As explained above in section 2.6, the Polish authorities have committed to comply with the transparency requirements in EEAG points 104-106, and indicated that this information is published and can be found on the website⁵⁷ of the Polish competition authority (UOKiK).
- (206) As explained in section 2.3.5., the Polish authorities confirmed that no aid can be granted to undertakings in difficulty and all firms that intend to participate in the tender will have to provide a declaration that they are not a “firm in difficulty”. The Commission therefore considers that the scheme is in line with point 16 of the EEAG.
- (207) The Polish authorities committed that no aid can be granted to undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market. The Commission therefore considers that the scheme is in line with point 17 of the EEAG.

3.3.8. *Evaluation*

- (208) Point 28 and Chapter 4 of the EEAG state that the Commission may require that certain aid schemes be subject to an evaluation, where the potential distortion of competition is particularly high, that is to say when the measure may risk significantly restricting or distorting competition if its implementation is not reviewed in due time. Given its objectives, evaluation only applies for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.
- (209) The present scheme fulfils the criterion of being a scheme with a large aid budget (see section 2.7.); therefore it will be subject to an ex-post evaluation.
- (210) Poland has notified an evaluation plan, setting out the scope and modalities of the ex-post evaluation. The plan is described in section 2.8. above with certain elements being further described in the following paragraphs.
- (211) The Commission considers that the notified evaluation plan contains the necessary elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity and transparency of the evaluation.

⁵⁷ <https://sudop.uokik.gov.pl>

- (212) The Commission notes that the scope of the evaluation is defined in an appropriate way, and adheres to the principles set out in the Commission Staff Working Document on Common methodology for State aid evaluation⁵⁸. It comprises a list of evaluation questions with corresponding result indicators.
- (213) Moreover, data sources are individually defined for each evaluation question. The Polish authorities and the evaluator will have access to (anonymised) bidding data (including data on all submitted - successful and unsuccessful - bids, such as name, location and installed electric capacity of the offshore wind farm, bid price, construction schedule).
- (214) Regarding applied methodologies, the Commission welcomes the general commitment by Poland to apply an empirical (where possible counterfactual) analysis, in order to assess the causal impact of the aid scheme on the behaviour of the beneficiaries. For the assessment of the direct and indirect effects of the aid, both theory-based (“top-down”) and data-based (“bottom-up”) analyses, as well as an analysis of the supply curves of individual tenders, are proposed for the evaluation of the scheme. The Commission generally believes that data-based methodologies are the preferred way forward to assess the impact of the aid scheme, ideally when also containing counterfactual evaluation principles and methodologies to assess the causal effects of aid (such as difference-in-difference methodology and Regression Discontinuity Design (“RDD”)).
- (215) However, the Commission acknowledges that for the evaluation of the scheme in Poland, a proper counterfactual impact evaluation based on the methodologies described above relies on the availability of sufficient data. Since the Polish authorities expect to only have 10 to 20 bids in all tender rounds, data-intensive counterfactual evaluation methodologies likely cannot be used. The Polish authorities therefore foresee other empirical counterfactual evaluation methodologies such as a staggered time approach⁵⁹ and a synthetic control approach⁶⁰. While the Commission welcomes the consideration of alternative counterfactual evaluation methodologies, it is also not clear whether sufficient data will be available for these methodologies and whether the control and treatment groups will be sufficiently comparable. Poland will report on the feasibility of these counterfactual impact evaluation methodologies in the interim evaluation report, after experience has been obtained during the first tender round. If the interim report shows that a data-driven counterfactual analysis cannot be applied for the projects realised, due to the lack of data and/or the impossibility to establish a relevant control group, the evaluation may have to rely on a theory-based approach and a supply curve analysis only.
- (216) In the theory-based analysis, a counterfactual scenario (market result without aid) is compared with an aid scenario (market result with aid) on the basis of a model about how the market works and reacts. This “top-down” approach is a less empirical, model-driven assessment of investment behaviour, based on a stylised multi-period electricity market dispatch model, where the model parameters are

⁵⁸ Staff Working Document on Common methodology for State aid evaluation, SWD(2014) 179 final.

⁵⁹ Groups receiving the aid at time t+1 could be used as controls for beneficiaries that receive the aid at time t.

⁶⁰ The treatment group would be composed of Polish beneficiaries, while the comparison group could be built on the basis of firms operating in other European countries having non-aided offshore wind plants.

updated over time to reflect actual cost and revenue developments. The Commission usually welcomes this second approach as a useful complement to the empirical (data-driven) approach to assess the causal impact of the aid scheme on investment behaviour. Due to the likely lack of data in the case of the scheme, the theory-based analysis will likely be one of the main approaches for the counterfactual evaluation and is therefore welcomed as part of the evaluation plan.

- (217) The Commission also welcomes the use of supply curve analysis. Hereby, the supply curves formed by the bids received in individual tenders will be analysed in more detail on the basis of the tender data. The slope of the constructed supply curve or curves allows a comparative static analysis of price and cost effects of an exogenous change in the tender volume. Such analysis is based on the assumption that bidding behaviour does not depend on tender volume, which appears justified if there is a sufficiently high level of competition and the change in the tender volume considered is not too big. It also assumes that the supply curves are reflective of the underlying cost curves. Subject to these assumptions, supply curves can effectively inform the evaluator on the effectiveness of the aid. They may also be a basis for running simulations of tender results when using different tender designs (to check how supply curves differ by technology, year, geography/location, size of the projects, revenue characteristics, cost characteristics).
- (218) Relevant for the offshore wind projects in particular, the Commission welcomes the fact that Poland will examine in detail the presence of zero-cents bids, the number of the bidders, the height of the bid caps and the competitiveness of the tenders (for instance by analysing the bids in different tender rounds and by comparing the tender results with the results in other Member States). In addition, Poland committed to review the tender design if necessary, based on the outcome of the evaluation.
- (219) The Commission also welcomes the fact that Poland will analyse bids even if only a few bidders have participated in a tender, which is particularly relevant in the case of offshore wind energy.
- (220) The Commission holds the view that the proposed methods are based on established ex-post counterfactual (where possible) or empirical evaluation principles to assess the (where possible causal) effects of aid. In light of the data limitations, with only 10 to 20 participants participating in the two to three tender rounds, the proposed approaches are sufficiently empirical in nature. While the top-down analysis will use aggregate data and compare it to a counterfactual derived from modelling, the supply curve analysis will employ data available at project level for both successful and unsuccessful bids which gives insights into the distribution of outcomes (not only averages).
- (221) In addition, the evaluation will also allow assessing the cost of abatement (in EUR/tCO₂) of the offshore wind subsidies, a highly relevant parameter for assessing the efficiency of the decarbonisation scheme and for the design of future aid schemes.
- (222) The Commission notes that the evaluation will be conducted according to the notified evaluation plan by an independent evaluation body. Moreover, the

envisaged publication of the evaluation plan and its results on a public website are adequate to ensure transparency.

- (223) The Commission also notes that Poland plans to submit the final evaluation report when it becomes available (at the latest by the end of March 2029) and that an interim evaluation report will be provided six to twelve months after the first tender round in 2025, which will update the Commission on the progress with data collection and the progress to apply the targeted methodologies mentioned above. In line with the principle of loyal cooperation, Poland commits to swiftly inform the Commission and jointly agree on a possible solution in case the methodologies foreseen in the evaluation plan cannot be applied (e.g. due to lack of data). No future similar scheme can be approved as long as the evaluation is not carried out, in sufficient quality, and its results taken fully into account in the design of any new scheme with similar objective.
- (224) The Commission therefore considers that the notified evaluation plan meets the requirements in EEAG point 28 and Chapter 4.

3.3.9. Conclusion with regard to the compatibility of the measure

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

4. AUTHENTIC LANGUAGE

- (226) As mentioned in recital (2), the Polish authorities have accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid scheme 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.

The Commission also reminds Poland that the evaluation report must be submitted by 31 March 2029 at the latest and that this decision is valid until 31 December 2029.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President