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**Subject: State Aid SA.109407 (2023/N) – Poland
Aid for social protection of employees in relation to the closure of
lignite mining activities and of power plants using lignite or coal**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 19 September 2023, the Polish authorities notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), a scheme aimed at mitigating the social impacts associated with the transformation of the sectors of lignite mining and electricity generated from lignite or coal in Poland by providing social protection for certain employees in those sectors (the “scheme”).
- (2) The Commission sent to the Polish authorities requests for information on 24 October 2023 and on 22 December 2023. The Polish authorities submitted their replies on 15 November 2023 and on 24 January 2024.
- (3) Poland exceptionally waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958 to have the decision adopted and notified in Polish and agreed that the decision be adopted and notified in English.

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background and objective of the measure

- (4) The Polish authorities indicate that Energy Policy of Poland until 2040 ('PEP2040')¹ expresses the Polish government's objectives for the energy sector and the directions for the evolution of the national energy mix. In particular, the PEP2040 points to the gradual phase-out of electricity generation in carbon-intensive electricity generation (such as coal-fired generation, which includes generation based on hard coal and lignite) while developing low-carbon and carbon-free electricity sources. The Polish authorities indicate that the PEP2040 takes into account the scale of the changes to the Polish economy that are linked to the European Union's wider energy and climate policy and is intended to achieve Poland's objectives stemming from its international commitments to reduce CO₂ emissions, while ensuring energy security. In March 2022 the Council of Ministers of Poland agreed on directions for an update of the PEP2040, the aim of which was to address the risks associated with the Russia's aggression against Ukraine, as well as to protect consumers against excessive energy price increases and against the deepening of the energy poverty. Works on the update of the PEP2040 have not been yet completed.
- (5) As of the end of 2022, the installed capacity in the national power system was around 60.5 gigawatt ("GW")². 38.9 GW of the installed capacity consisted in thermal power plants, including 24.9 GW powered by hard coal and 8.3 GW by lignite (i.e.: 41.2% and 13.7% share in the system, respectively). A smaller part of the capacity installed in the national power system is based on gas (3.3 MWGW, i.e., 5.4%) and hydro energy (2.4 GW, i.e., 4.0%). Renewable energy sources represent 21.6 GW of the installed capacity in Poland. Over the last 10 years, there has been a significant increase in the share of energy production from wind and other renewable energy sources. The installed capacity of renewable energy increased from 9.1 GW in 2019 to 21.6 GW at the end of 2022. Additionally, in accordance with the Energy Regulatory Office Report of 2023³, a study of the investment plans of electricity producers for the years 2022-2036 shows that energy producers plan to decommission thermal units for a capacity of approximately 20 GW. Mainly units powered by hard coal and brown coal will cease operations due to lack of economic efficiency and the end of the technological lifetime.
- (6) Poland is committed to perform the necessary transition to lower carbon emitting technologies in Poland, which often operate at low marginal costs and face lower or no costs in terms of CO₂ allowances, thus phasing out coal-based energy generation in Poland.

(¹) Announcement of the Minister of Climate and Environment of 2 March 2021 on the State energy policy until 2040 (M.P. 2021 item 264), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20210000264>.

(²) Based on data published by the Polish transmission system operator: <https://www.pse.pl/dane-systemowe/funkcjonowanie-kse/raporty-roczne-z-funkcjonowania-kse-za-rok/raporty-za-rok-2022#top>

(³) See page 11 of the document: "Warunki podejmowania i wykonywania działalności gospodarczej oraz realizacja przez operatorów systemu elektroenergetycznego i gazowego planów rozwoju" published on: <https://bip.ure.gov.pl/bip/o-urzedzie/zadania-prezesa-ure/raport-z-art-23-ust-2a/4119,Warunki-podejmowania-i-wykonywania-dzialalnosci-gospodarczej-oraz-realizacja-prz.html>

- (7) The Polish authorities also note that in the case of lignite, due to its characteristics and low energy density, it cannot be transported in an economically viable way over long distances. For this reason, lignite is used to produce energy in installations located near the extraction site and, therefore, lignite mining is subordinate to certain electricity or heat production. Due to these factual circumstances, the shutdown of lignite-fired generation units automatically entails the need to reduce the level of extraction in the nearby lignite mine, as the excess extraction cannot be sold at competitive price to other customers.
- (8) Against this background, in the context of the energy transformation envisaged by the PEP2040, representatives of the government, mining and energy companies and trade union organisations concluded a social agreement on 22 December 2022 concerning the sectors of electricity generated from lignite or coal and of lignite mining (the “Social Agreement”). The Social Agreement is aimed at mitigating the social impacts associated with the gradual phase-out of coal-fired electricity generation and lignite mining in Poland.
- (9) In view of this Social Agreement, Poland adopted a law that provides benefits to workers in order to incentivise them to accept the social consequences of the closure of lignite mining activities, coal-fired and lignite-fired electricity generation in Poland (the “eligible activities”). This law is the Act of 17 August 2023⁴ on social protection for employees in the electricity and lignite mining sectors (the “Act”), which amends the Act of 20 April 2004 on the promotion of employment and labour market institutions. Under certain circumstances (as described below) when an eligible activity closes and workers are to be dismissed, the payment of benefits to workers by the Polish State will alleviate the employer of certain charges that he would bear absent the Act. For employers, this implies an additional incentive to close operations. By fostering the social acceptance of closing coal- and lignite activities, the Polish authorities consider that this measure provides environmental benefits and is conducive to the green transition, which are however not ex-ante quantifiable as this law does not define specific closure dates for the activities covered by it.
- (10) More specifically, the Act introduces a scheme that makes severance payments available to dismissed workers in the eligible activities upon their choice, which can substitute the severance payments provided for in collective agreements. It is for the dismissed worker to decide whether to receive the severance payment under the Act or the one stipulated by the collective agreement. If the dismissed worker opts for the payment under the Act, the employer is relieved from the severance payment obligation under the collective agreement (see recitals (30) to (34) below). The Polish authorities notified this support to the employer as the measure (the “measure”).
- (11) The Polish authorities notified also, for reasons of legal certainty, a paid leave regulated under the same Act, which provides a certain group of workers to be dismissed with a paid leave of up to four years until they reach their statutory retirement age (the “paid leave”). In contrast to the measure, the Polish authorities consider that the paid leave does not provide an advantage to the employer because this paid leave does not relieve the concerned employer of any obligations.

(⁴) Official Journal of the Republic of Poland, 30 August 2023 Item 1737.

- (12) The measure is described in further detail in section 2.4 below and the paid leave in section 2.5.

2.2. Legal basis, duration and budget

- (13) The legal basis of the measure is the Act (i.e., the Act of 17 August 2023 on social protection for employees in the electricity and lignite mining sectors, which amends the Act of 20 April 2004 on the promotion of employment and labour market institutions).
- (14) While Article 19(2) of the Act provides that the measure can be disbursed until 31 December 2049⁽⁵⁾, the Polish authorities have notified the measure for a duration of 10 years from the date of adoption of this decision. The Polish authorities confirmed that until now no aid to employers has been granted under the measure. The Polish authorities submitted that they envisage to notify a prolongation of the measure after that period of 10 years to ensure that the scheme under the Act remains aligned with the Social Agreement. Article 20 of the Act provides that Poland needs to notify the measure to the Commission under State aid rules.
- (15) The measure is entirely financed through the State budget. The Polish authorities note that, while it is not possible to determine precisely the number of employees that will be covered by the measure due to its long-term application and the voluntary character of the benefits, the Act is based on the assumption of an overall reduction in employment of around 28 000 employees by 2049. Over the notified period, i.e. the next 10 years, the Polish authorities estimated the expenditures under the Act would amount to approximately at PLN 1.3 billion (approximately EUR 300 million⁽⁶⁾).

2.3. Beneficiaries

- (16) Article 3 of the Act provides that the following entities (the “employers”) are eligible under the scheme as beneficiaries:
- (a) Undertakings, or their power plants with the status of employer, which generate electricity by operating coal-fired or lignite-fired power units connected to the electricity transmission network, at least one of which has a generation capacity of not less than 150 MW, as well as subsidiaries of such undertakings (“the energy employers”).
 - (b) Undertakings, or their lignite mines with the status of employer, which carry out lignite extraction, closure, or post-closure activities⁽⁷⁾, as well as subsidiaries of such undertakings (the “mining employers”).

⁽⁵⁾ Additionally, pursuant to Article 19 of the Act, the benefits granted under the measure can be paid out until 31 December 2049.

⁽⁶⁾ ECB Rate of 31/01/24, EUR 1 = PLN 4.333

⁽⁷⁾ This also includes liquidation of a lignite mining plant, post-closure activities on lignite mining sites, or protection of the lignite mine against water, gas and fire risks after the closure of the mine.

- (17) Poland confirmed that the lignite mining activities covered by the present scheme (referred to in recital (16)(b) above) do not fall within the scope of ‘coal’, as defined in Article 1(a) of Council Decision 2010/787/EU⁸.
- (18) Poland will verify at the time of closure of an eligible activity of an undertaking referred to in recital (16) whether it is profitable, i.e., whether profits could be expected in a realistic counterfactual scenario. If this is not the case, the activity is considered uncompetitive.
- (19) Article 4 of the Act provides that employers will receive aid to provide social benefits to their employees who fulfil the following conditions:
- (a) They are not recruited after the date of entry into force of the Act.
 - (b) They do not fulfil the conditions for entitlement to a retirement pension.
 - (c) They are employed in positions that are intended to be reduced or discontinued due to a systemic decrease in the eligible economic activity at the concerned employer due to the closure of the lignite mining activities (for mining employers) or of the lignite or coal firing production units (for energy employers).
- (20) Article 4 of the Act also provides that, in case of energy employers, entitlements will be obtained by the employees:
- (a) of a coal-fired or lignite-fired power plant in which a generating unit is closed down, or
 - (b) of an undertaking which includes the above-mentioned power plant, and of the subsidiaries of such undertakings, provided that their employees carry out work in connection with the production of electricity generated from lignite or coal in units under decommissioning.
- (21) Article 4 of the Act also provides that, in case of mining employers, the entitlements will be awarded to employees:
- (a) in the lignite mine from the beginning of a systemic reduction in lignite mining directly linked to the decommissioning of at least one generation unit of an energy employer, or
 - (b) where a mining employer restricts or terminates lignite mining in one or more mines, the entitlements will be awarded by employers of lignite mines, undertakings (which own them) and subsidiaries of undertakings, provided that their employees carry out work in connection with the extraction of lignite in the affected mines.
- (22) The Polish authorities state that the provisions of the Act apply to the definitive closure of eligible activities (hereafter referred to as “the closure”), which means the decommissioning, the systemic reduction of activity or full closures, as referred

⁽⁸⁾ Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines, OJ L 336, 21.12.2010, p. 24.

to in recitals (20) and (21). The actions shall be irreversible decisions linked to the implementation of the transformation activities of the sector.

- (23) To prove that the conditions described in recital (20) have been fulfilled, the employer must show that the contract for the provision of energy transmission or distribution services has been terminated or reduced to the extent that at least one generation unit in the concerned power plant is excluded.
- (24) To prove that the conditions described in recital (21) have been fulfilled, the employer must provide an adopted resolution of its board of directors which instructs either the start of a systemic reduction in lignite extraction linked to the exclusion of generation units, or the systemic reduction or termination of lignite extraction in a mine.
- (25) The Polish authorities confirm that the support granted under the measure is not awarded to:
 - (a) Undertakings in difficulty as defined by the Commission Guidelines on State aid for Rescuing and restructuring non-financial undertakings in difficulty⁹.
 - (b) Undertakings with outstanding claims for recovery against them on the basis of a decision of the European Commission declaring aid to be unlawful and incompatible with the European internal market.

2.4. Form of support and costs covered by the measure

- (26) Aid under the measure can be granted to the employer of a worker to be dismissed who shall, in this case, make a one-off severance payment, provided the worker meets the conditions described in recital (19) and the employment contract is terminated in agreement with the employer due to the circumstances described in recitals (20) or (21). That agreement shall contain information showing the link between the termination of the employment contract and the conditions described in recitals (20) or (21). It is the voluntary choice of the employee to take up the one-off severance payment, which allows the employer to receive aid under the measure.
- (27) The one-off severance payment is available to the worker if, on the date of termination of their employment by agreement, she or he is not eligible for paid leaves (see Section 2.5) and has at least 5 years of service with the employer concerned.
- (28) The one-off severance payment granted under the scheme equals 12 times the employee's monthly salary and is payable to the employee on the day in which the employment contract is terminated.
- (29) An employee is required to reimburse the employer the one-off severance payment if, within 24 months from the date of termination of the employment contract, the employee enters paid employment with an employer referred to in recital (16) The

⁽⁹⁾ [OJ C 249, 31.7.2014, p. 1.](#)

employer shall then transfer the amount of the one-off severance payment to an account specified by the Ministry of State assets.

- (30) For the employer, the measure also entails a benefit. In case a worker chooses to be covered by the severance payment as described above, the employer is freed from its obligation to make the severance payment as agreed in the applicable collective agreement after the termination of the employment contract under the Collective Redundancies Act¹⁰.
- (31) The Polish authorities note that the employee's rights to statutory severance pay under general Polish labour law (which is distinct from the collective agreements) in the event of dismissals is not affected by the Act (Article 4(8) of the Act).
- (32) The Polish authorities consider that the provision of the severance payment under the notified measure constitutes State aid to the undertaking that employs the worker to be dismissed, in the case that, as outlined in recital (26), an employee chooses to benefit from the severance payment under the measure and therefore the employer is freed from its obligation under the collective agreement. In such a case, the employer derives an advantage. The Polish authorities consider that this benefit falls under point 1(c) of Annex 2 to the Climate, Energy and Environmental Aid Guidelines CEEAG⁽¹¹⁾.
- (33) In the event that the worker to be dismissed does not opt for the severance payment under the Act, she or he remains entitled to receive from its employer the severance payment as provided in the applicable collective agreement.
- (34) The Polish authorities note that such an advantage only arises if the severance payment provided for in the Act is more favourable than the benefits provided for in the collective agreement applicable to the employer, since an employee will not, in all likelihood, waive her or his entitlement under the collective agreement when the benefits under this measure are less favourable.
- (35) The Polish authorities point out that since the measure is activated and granted to the undertaking by the choice of an employee to achieve social acceptance of the closure of coal and lignite activities, a competitive bidding process to minimise the advantage to the employer is not adequate.
- (36) The Polish authorities state that they have not identified provisions or general principles of Union law which would be violated by the measure under examination.

2.5. Paid leave

- (37) Chapter 2 of the Act provides for paid leave under the following circumstances.

⁽¹⁰⁾ Official Journal of the Republic of Poland, 2018 item 1969 as amended: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20030900844>

⁽¹¹⁾ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1

- (38) Paid leave to a worker to be dismissed by an energy employer (“energy leave”) shall be disbursed by the energy employer for up to four years.⁽¹²⁾ On top of the conditions described in recital (20), the following three categories of employees are eligible to receive energy leaves from their energy employers:
- (a) Those performing work under special conditions or of a specific nature¹³, provided that the entitlement to a bridging pension is acquired within four years from the start of the energy leave.
 - (b) Those employed at least at 50% of a full time in a production or renovation area involved in the process of generating electricity¹⁴, provided that the entitlement to a retirement pension other than a bridging pension is acquired within four years from the start of the energy leave.
 - (c) Those that are exempted from work (for their term of office in the management board of a trade union organisation) if, immediately prior to the date of exemption, they were employed in one of the categories (a) or (b) above for at least five years and provided that the entitlement to a relevant pension is acquired within four years.
- (39) Paid leave for an employee in the mining sector (“mining leave”) will be disbursed by the mining employer for up to four years.⁽¹⁵⁾ On top of the conditions described in recital (21), the following four categories of employees are eligible to receive mining leaves from their mining employers:
- (a) Those who are entitled to a mining pension within four years. from the start of the paid leave.
 - (b) Those who carry out mining work under specific conditions or of a specific nature¹⁶, provided that the entitlement to a bridging pension is acquired within four years from the start of the mining leave.
 - (c) Those employed at least at 50% of a full time in a production area or renovation area directly linked to the participation in the lignite mining process¹⁷, provided that the entitlement to a retirement pension other than a mining or a bridging pension is acquired within four years from the start of the mining leave.
 - (d) Those that are exempted from work (due to their term of office in the management board of a trade union organisation) if, immediately prior to the date of exemption, they were employed in one of the categories (a), (b) or (c) above for at least five years and provided that the entitlement to the

⁽¹²⁾ See Article 1)b), 10) and 11) of the Act

⁽¹³⁾ Within the scope of the types of work defined in Annex 1 to the Act.

⁽¹⁴⁾ Within the scope of the types of work defined in Annex 1 to the Act.

⁽¹⁵⁾ See Article 1)b), 10) and 11) of the Act

⁽¹⁶⁾ Within the scope of the types of work defined in Annex 2 to the Act.

⁽¹⁷⁾ Within the scope of the types of work defined in Annex 2 to the Act

related pension will be acquired within four years the start of the mining leave.

- (40) During the energy and mining leaves, the employee shall be exempted from work and will receive from the employers a social benefit equal to 80 of its monthly salary¹⁸. The take-up of energy and mining leaves is voluntary and subject to the agreement of the employee.
- (41) The employee ceases to be entitled to paid leave on the date in which he or she becomes entitled to a retirement pension, or if the employee enters into paid employment in an entity referred to in recital (16) or in an entity providing them services.
- (42) The Polish authorities are of the view that the provision of paid leave does not constitute aid within the meaning of Article 107(1) TFEU but include it in the notification for legal certainty. Poland submits that it does not entail an advantage for the employers, as it does not relieve the employers from any obligation arising from statutory provisions or collective agreements.

2.6. Administration of the measure

- (43) Benefits under the measure are granted on the basis of an agreement between the Minister of State Assets and the relevant employer referred to in recital (16). The grant is awarded to employers, which shall specify the number of employees entitled to benefits under the Act by entity and by type of benefit. The employer shall also specify the size and type of benefits per staff member, as well as how the benefits are to be determined by individual employee.
- (44) The Polish authorities confirm that the grants received under the measure will be shown in the profit-and-loss accounts of the employer as a separate item of revenue distinct from turnover. Where the employer continues trading or operating after closing down the relevant energy or coal activities, it will keep precise and separate accounts for those activities.
- (45) The grants are provided by the Minister for State Assets and paid in advance in monthly instalments to a separate bank account established by the employer. Each monthly tranche of the grant shall be transferred upon submission to the Minister of State Assets of an application for payment indicating the number of employees, their social security numbers, their posts, the title of the benefit, and the amount of the necessary funds.
- (46) Employers that have received a grant are required to provide information to the Minister of State Assets on a monthly and annual basis on the use made of the grant. Payment of the grant awarded shall be temporarily suspended if an employer fails to submit the monthly statement by the deadline and the suspension shall continue until the monthly statement is submitted.
- (47) Funds unused by the employer by the end of the financial year or misused shall be returned to an account indicated by the Minister for State Assets.

⁽¹⁸⁾ As detail within Article 15.2 of the Act

- (48) The Polish administration will establish an account manager for this measure, which will verify and monitor the implementation of employees' entitlement to benefits and will determine the related need in terms of budgetary resources. In addition, the account manager monitors changes in the employment of the employee receiving the grants. The account manager will have access to a national electronic system allowing for the collection of data on:
- (a) the current number of staff employed,
 - (b) workers entitled to energy and mining leave, as well as a one-off severance payment (type and amount of entitlement granted, period of payment of benefits),
 - (c) employees who have acquired entitlements to either a paid leave or to severance payment in connection with the start of the shutdown period of generation units or the systemic reduction or termination of lignite mining.
- (49) Article 20 of the Act provides that the implementation of the measure is subject to prior approval by the Commissions under State aid rules.

2.7. Cumulation

- (50) The Polish authorities confirmed that support under the measure cannot be cumulated with aid or de minimis aid received from other local, regional, or national aid to cover the same eligible costs.

2.8. Transparency

- (51) The Polish authorities undertake to publish, on the national websites <https://sudop.uokik.gov.pl/home>, the following information: the full text of the aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority; the identity of the employers; the support instrument and the amount of support granted to each employer; the objective of the support, the date of granting, the type of undertaking (for example SME, large company); the Commission's measure reference number; the region where the beneficiaries are located (at NUTS level 2) and the principal economic sector of the beneficiaries (at NACE group level).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid in the sense of Article 107(1) TFEU

- (52) Article 107(1) TFEU states that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market'. Therefore, in order for a measure to constitute State aid within the meaning of Article 107(1) TFEU, it has to fulfil four cumulative conditions. First, the aid must be imputable to the State and financed through State resources. Second, the measure must confer a selective advantage to certain undertakings or the production of certain goods. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

- (53) The support under the measure is financed from Poland's budget (recital (15)) and will therefore be financed through State resources. The measure is based on national law (recital (13)). Therefore, the measure is imputable to the State.
- (54) Employers will receive non-refundable grants to finance social protection benefits in favour of eligible employees (recital (43)). Grants are paid to a separate bank account established by the employer (recital (45)), the grants received will be shown in the profit-and-loss accounts of the employer as a separate item of revenue distinct from turnover and, if the employer continues trading or operating after closing down the relevant coal activities, it will keep precise and separate accounts for those activities (recital (44)). The use of the grants by the employer is monitored on a monthly and annual basis (recital (46)), and grants that are misused or unused shall be returned to the granting authority (recital (47)).
- (55) Employees benefitting from the severance payments under this measure will lose their entitlements to a severance compensation provided under the collective agreements and borne by the employer (recital (30)). Thus, a contract termination of an employee in line with recitals (26)-(27) would, in the absence of the measure, entail that eligible employers incur costs in the form of a severance payment. Those costs are not incurred by the employer when the employee decides to access the benefits provided by the severance payment measure instead of retaining his/her rights to a severance payment under collective agreements. Therefore, the measure confers an advantage on the employer as beneficiary of the scheme.
- (56) The advantage is selective because it is limited to undertakings in a specific sector, namely lignite mining and power generation using coal and lignite. Therefore, the measure relating to the severance payments confers a selective advantage on the employer when closing its activity.
- (57) In contrast, in the case of paid leave, the employees benefitting from it do not lose any entitlement for a severance payment and the employer is not relieved from any obligation arising from statutory provisions or collective agreements (see recital (42)). Therefore, the paid leave does not provide any advantage to the undertaking of the concerned employee and cannot be considered as State aid.
- (58) Electricity is widely traded between Member States and with the EEA. Hard coal is also tradable. As transporting lignite over long distances is not economical, however, there are direct economic and functional links between lignite mines and lignite-fired power plants (see recital (7)). Therefore, the lignite mining is an integral part of the traded electricity generated from it. Therefore, the advantage provided by the measure to undertakings that close operations in lignite mining and coal-based electricity production may affect trade between Member States and distort competition.
- (59) Therefore, the Commission concludes that the measure, i.e., the relief on collectively agreed severance payments, constitutes State aid within the meaning of Article 107(1) TFEU in favour of the beneficiaries. The Commission also concludes that the paid leave does not constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (60) By notifying the measure before putting it into effect (recitals (14) and (49)), the Polish authorities have respected the stand-still obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Applicable rules

- (61) Based on Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition). The CEEAG provide guidance on how the Commission assesses the compatibility of aid measures in furtherance of environmental protection, including climate protection and energy aid measures, which are subject to the notification requirement under Article 108 TFEU.
- (62) Section 4.12 CEEAG contains specific provisions regarding aid for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction. More specifically, Section 4.12.1 deals with aid for the early closure of profitable coal, peat and oil shale activities, and Section 4.12.2 CEEAG covers aids for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities.
- (63) In the present case, the scheme provides support to lignite mines and power plants generating electricity by using coal or lignite (recital (16)). The notified measure will be available irrespective of whether the activity is profitable at the time of closure or whether it is uncompetitive. The Polish authorities committed they will verify for an eligible activity at the time of its closure whether it is profitable (see recital (18)).
- (64) Moreover, point 439 CEEAG provides that Section 4.12.2 applies to the extent that the measure is not covered by Council Decision 2010/787/EU.
- (65) In the present case, Poland committed that, regarding the closure of lignite mining beneficiaries, the scheme would only apply to lignite that falls outside the scope of Council Decision 2010/787/EU (i.e. that it does not apply to “high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe”¹⁹) (see recital (17)) Therefore, the scheme is not covered by Council Decision 2010/787/EU and Section 4.12 CEEAG is applicable.
- (66) The Commission has therefore assessed the scheme under the general compatibility provisions in Section 3 CEEAG, as well as the specific compatibility criteria for aid for the coverage of exceptional costs due to the closure of uncompetitive coal, peat, and oil shale activities (set out in Section 4.12.2 CEEAG) and for aid for the

⁽¹⁹⁾ International system for the codification of medium-grade and high-grade coal (1998), International classification of coal in seam (1998) and International system of codification for low-grade coal (1999).

early closure of profitable coal, peat and oil shale activities (set out in Section 4.12.1 CEEAG).

3.3.2. *Assessment of aid granted under the measure to unprofitable activities, under Section 4.12.2 CEEAG*

3.3.2.1. Positive condition: the aid facilitates the development of an economic activity

3.3.2.1.1. Contribution to the development of an economic activity

- (67) 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 an economic activity. In accordance with this, point 23 CEEAG states that, when notifying aid, Member States must identify the economic activities that will be facilitated because of the aid and how the development of those activities is supported. Point 24 CEEAG states that aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned. Point 25 CEEAG requires Member States to describe how the aid will contribute to the objectives of Union climate policy.
- (68) As explained in point 420 CEEAG, the shift away from power generation based on coal, peat and oil shale is one of the most important drivers of decarbonisation in the power sector in the Union. However, the closure of uncompetitive coal, peat and oil shale activities can generate significant social and environmental costs at the level of the power plants and the mining operations and Member States may decide to cover such exceptional costs to mitigate the social and regional consequences of the closure, as explained in point 436 CEEAG.
- (69) Moreover, points 437 and 438 CEEAG respectively provide that measures covered by Section 4.12.2 (Aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities) can facilitate the social, environmental and safety transition of the area concerned.
- (70) In the present case, the notified scheme applies in the entire territory of Poland. Poland explained that lignite mining and electricity production using coal and lignite still represent an important sector of economic activity in Poland (recital (5)).
- (71) As a result of the gradual phasing-out of the mining of and energy production from lignite in Poland, workers in those activities will lose their jobs. In this context, as explained by Poland (recitals (8) and (9)), the notified aid scheme is designed to cover costs that are resulting from the closure of coal-based assets and is aimed at mitigating the negative social and economic consequences of these closure on the affected employees.
- (72) By facilitating the social acceptance of the closure of coal-fired and lignite activities, the present measure will contribute to the objectives of Union climate

policy, in line with point 25 CEEAG. The closure of the coal-fired power plants allows for a shift towards a more sustainable form of energy generation. Therefore, the proposed measure is also compliant with point 24 CEEAG as well as with point 420 CEEAG.

- (73) Given that the notified scheme facilitates the social, environmental and safety transition of the areas concerned by an activity that is uncompetitive (subject to verification by the Polish authorities), point 437 CEEAG is complied with.
- (74) Therefore, the Commission considers that, as regards aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), the measure facilitates the development of certain economic activities as required by Article 107(3)(c) TFEU and Section 3.1.1 CEEAG.

3.3.2.1.2. Incentive effect

- (75) The measure is primarily directed at the employees in an eligible activity that closes and provides support that, when chosen by the employee, is more advantageous than what she or he would have been entitled to receive from the employer. In that case, the employer (the beneficiary of the measure) is relieved from the severance payment it would have to pay at the time of closing that activity in the absence of the measure. This will increase the social acceptance of closure of such activities in the context of the green transition and reduce the closure costs, and therefore facilitate the decision by an undertaking to decommission, reduce or close such an activity and not to delay the closure of an activity that is becoming uncompetitive.
- (76) Moreover, according to point 441 CEEAG, State aid for exceptional costs may only be used to cover the costs resulting from the closure of uncompetitive coal, peat and oil shale activities. As indicated in point 442 CEEAG, the categories of eligible costs are listed in Annex 2 and costs resulting from non-compliance with environmental legislations and costs related to current production are not eligible.
- (77) The measure covers costs related to the payment of severance payment to employees dismissed due to the phasing out of coal and lignite in Poland (see section 2.4). With respect to aid granted under the measure to unprofitable activities, these costs result from the closure of uncompetitive coal activities and are listed among the exceptional costs included in Annex 2, point 1(c), CEEAG. The Commission further notes that, as confirmed by the Polish authorities (recital (36)), the costs covered by the aid do not result from non-compliance with environmental legislation and are not related to current production. The Commission therefore concludes that the measure complies with points 441 and 442 CEEAG.
- (78) Moreover, as the measure, which is aimed at increasing the social acceptance of the phasing out of coal in Poland, is not aimed to cover exceptional environmental costs, points 443 and 444 CEEAG are not applicable to it.
- (79) Therefore, the Commission concludes that, with respect to aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), the notified aid has an incentive effect.

3.3.2.1.3. Absence of breach of any relevant provision of Union law

- (80) State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a non-severable violation of relevant Union law²⁰.
- (81) Poland has not identified provisions or general principles of Union law which would be violated by the measure under examination (see recital (36)). Moreover, the Commission has no indications that the supported activity, the aid measure, or the conditions attached to it entail a non-severable violation of relevant Union law. The Commission therefore concludes that the measure does not entail a breach of any relevant provision of Union law.

3.3.2.1.4. Conclusion

- (82) The Commission therefore concludes that the measure, with respect to aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), fulfils the first (positive) condition of the compatibility assessment, i.e. that the aid facilitates the development of an economic activity.

3.3.2.2. Negative condition: the aid does not unduly affect trading conditions to an extent contrary to the common interest

3.3.2.2.1. Necessity and appropriateness

- (83) According to point 440 CEEAG, the Commission will consider aid to cover exceptional costs necessary and appropriate to the extent that it can help mitigate the social and environmental impact of the closure of uncompetitive coal, peat and oil shale activities in the region and the Member State concerned.
- (84) As found in recital (75), the measure, which is applicable throughout the Member State, helps mitigate, with respect to aid granted under the measure to unprofitable activities the social impact of the closure of uncompetitive coal and lignite activities in the Member State concerned.
- (85) Therefore, the Commission concludes that the notified aid measure, with respect to aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), complies with point 440 of the CEEAG and, is thus necessary and appropriate.

3.3.2.2.2. Proportionality

- (86) As explained in recitals (77) and (78), with respect to aid granted under the measure to unprofitable activities, the measure complies with points 441, 442, and 443 CEEAG..
- (87) Moreover, point 445 CEEAG states that, concerning aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities, the aid amount must be limited to the coverage of exceptional costs of the beneficiary and must not exceed the costs actually incurred. Point 445 CEEAG also foresees that

⁽²⁰⁾ Point 33 of the CEEAG, and Judgment of 22 September 2020, Austria v Commission, C-594/18 P, EU:C:2020:742, paragraph 44.

the Commission will require the Member State to clearly and separately identify the aid amount for each category of eligible costs, as detailed in Annex II CEEAG. Finally, point 445 CEEAG provides that, where the Member State covers such costs on the basis of estimations, before they are actually incurred by the beneficiary, it must carry out an ex post verification of the costs incurred on the basis of detailed statements provided by the beneficiary to the granting authority, including invoices or certificates showing the exceptional costs incurred, and adjust the amounts granted accordingly.

- (88) The advantage awarded to beneficiaries under the scheme is a one-time relief from existing obligations towards their employees under collective agreements. The aid amount is determined at the time of closure of the activity by the terms of the applicable collective agreement and by the employees that opt for coverage by the measure. Therefore, the aid to an undertaking that is closing an activity is not based on an estimation and cannot exceed the obligation that the undertaking had incurred under the collective agreement. The Commission observes that the measure falls under only one category of eligible costs. Therefore, the Commission concludes that the aid complies with point 445 CEEAG.
- (89) With regard to cumulation, point 56 CEEAG provides that “[a]id may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point”. Moreover, point 57 CEEAG explains that “[c]entrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation”.
- (90) As the aid under the notified scheme cannot be cumulated with other State aid in the meaning of Article 107(1) TFEU or with other forms of Union funding to cover the same eligible costs (see recital (50)), the presented measure complies with points 56 and 57 CEEAG.
- (91) Therefore, as regards aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), in view of the above, the Commission concludes that aid granted under the measure is proportionate.

3.3.2.2.3. Transparency

- (92) The Commission notes that the Polish authorities will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG (see recital (51)).

3.3.2.2.4. Avoidance of undue negative effects on competition and trade

- (93) According to point 446 CEEAG, provided that the aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities is limited to the coverage of exceptional costs incurred by the beneficiary, the Commission

considers that it has limited distortive effects on competition and trade. The Commission observes that, as regards aid granted to unprofitable activities, the aid is limited to the coverage of exceptional costs to be incurred by the beneficiary, namely the payments outside the statutory system who have lost or who lose their jobs and to workers entitled to such payments before the closure, as mentioned in point 1(c) of Annex 2 CEEAG. Therefore, the Commission concludes that the aid complies with point 446 CEEAG.

- (94) According to point 447 CEEAG, aid received for exceptional costs should be shown in the profit-and-loss accounts of the beneficiary as a separate item of revenue distinct from turnover. Where the beneficiary continues trading or operating after closing down the relevant coal, peat and oil shale activities, it must keep precise and separate accounts for those activities. The aid granted must be managed in such a way that there is no possibility of it being transferred to other economic activities of the same undertaking.
- (95) The aid to an eligible activity consists in the cancellation of applicable collective agreement entitlements of those dismissed workers that opt for coverage under this measure. This implies that the aid amount is separate from any other item in the beneficiary's accounts and cannot be transferred. Moreover, the support from the measure to the concerned employee will be paid to the beneficiary undertaking, which will pass it on to the employees in full. For this purpose:
- (a) In its request to the granting authority, the beneficiary shall specify the number of employees entitled to benefits, by entity and by type of benefit. The beneficiary shall also specify the size and type of the benefits per staff member, as well as how the benefits are to be determined by individual employee (recital (43)).
 - (b) The grants are paid in monthly instalments to a dedicated bank account established by the employer, upon submission to the granting authority of an application for payment indicating the number of employees, their social security numbers, their posts, the title of the benefit, and the amount of the necessary funds (recital (45)).
 - (c) The entity that has received a grant is required to provide information to the granting authority on a monthly and annual basis on the use made of the grant. Payment of the grant awarded shall be temporarily suspended if the entity fails to submit the monthly statement by the deadline and the suspension shall continue until the monthly statement is submitted (recital (46)).
 - (d) Grants that are unused by the end of the financial year or that are misused shall be returned to the granting authority (recital (47)).
- (96) Moreover, the measure foresees that an account manager for the measure is appointed to (i) verify and monitor the implementation of employees' entitlement to benefits and (ii) determine the related need in terms of budgetary resources. In addition, the account manager monitors changes in the employment of the employers receiving the grants. To this end, the account manager will use an electronic system allowing for the collection of the relevant data (recital (48)).

- (97) Therefore, the Commission concludes that the aid granted under the measure to unprofitable activities complies with point 447 CEEAG.
- (98) The Commission thus considers that, as regards aid granted under the measure to unprofitable activities (Section 4.12.2 CEEAG), the measure does not have undue negative effects on competition and trade.

3.3.2.2.5. Weighting up the positive and negative effects of the aid

- (99) According to point 71 CEEAG, as a final step, the Commission will balance the identified negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to environmental protection and objectives of energy policy and, more particularly, to transition towards environmentally-sustainable activities and to the achievement of the legally binding targets under the European Climate Law and the Union's 2030 targets for energy and climate. The Commission observes that the aid scheme contributes to the Union's 2030 energy and climate targets because it is related to the closure of activities that either produces lignite or electricity by using coal or lignite.
- (100) According to point 72 CEEAG, in that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852²¹, including the 'do no significant harm' principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission will take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under Union law. The Commission finds that there are no indications that the aid, which consists of facilitating the closure of a heavily polluting activity, would (i) not comply with the 'do no significant harm' principle foreseen by Article 3 of Regulation (EU) 2020/852; and/or (ii) create or aggravate market inefficiencies including in particular externalities that may hinder the achievement of climate objectives set under Union law. To the contrary, the aid contributes to the Union's 2030 energy and climate targets by facilitating the closure of power plants using coal or lignite and lining mining operations.
- (101) According to point 73 CEEAG, the Commission will consider an aid measure compatible with the internal market only where the positive effects outweigh the negative effects. In cases where the proposed aid measure does not address a well-identified market failure in an appropriate and proportionate way, for example due to the transitory nature of the benefit and the long term distortions it entails as set out in point 67 CEEAG, the negative distortive effects on competition will tend to outweigh the positive effects of the measure. The Commission will therefore be likely to conclude that the proposed aid measure is incompatible.

⁽²¹⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

- (102) Firstly, the Commission observes that, as concluded in recital (98), the aid has limited distortive effects on competition and trade. Secondly, the Commission observes that, as shown in recital (100), the aid will contribute to the objectives of Union climate policy, in line with point 25 CEEAG, fostering the social acceptance for a shift away from coal-fired power production to a more sustainable form of energy generation, in line with point 24 CEAAG. Thirdly, the Commission observes that, as shown in recital, the aid facilitates the social and environmental transition in Poland, which is overall still heavily dependent on energy produced from coal, in line with points 437 and 438 CEEAG.
- (103) According to point 74 CEEAG, measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4 CEEAG. The Commission observes that the aid measure is granted to an eligible undertaking at the time of the closure of a polluting activity and therefore does not directly or indirectly involve support to fossil fuels.
- (104) Therefore, as regards aid granted under the measure to unprofitable activities (section 4.12.2 CEEAG), the Commission concludes that the positive effects of the measure outweigh its negative effects on the internal market.

3.3.2.3. Companies in difficulty or subject to outstanding recovery orders

- (105) As explained in recital (25), Poland confirmed that beneficiaries under the scheme cannot be undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. In addition, the beneficiaries under the scheme subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (106) Therefore, the Commission concludes that the measure complies with points 14 and 15 CEAAG.

3.3.2.4. Conclusion on the compatibility of the measure under Section 4.12.2. CEEAG

- (107) In light of the foregoing, the Commission concludes that, as regards aid granted under the measure to unprofitable activities, the measure 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 that, as regards aid granted under the measure to unprofitable activities, the measure compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted under the relevant points of the CEEAG and specifically its section 4.12.2.

3.3.1. *Assessment of aid granted under the measure to profitable activities, under Section 4.12.1 CEEAG*

3.3.1.1. Positive condition: the aid facilitates the development of an economic activity

3.3.1.1.1. Contribution to the development of an economic activity

- (108) 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 an economic activity. In accordance with this, point 23 CEEAG states that, when notifying aid, Member States must identify the economic activities that will be facilitated because of the aid and how the development of those activities is supported. Point 24 CEEAG states that aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned. Point 25 CEEAG requires Member States to describe how the aid will contribute to the objectives of Union climate policy.
- (109) Section 4.12.1 CEEAG sets out the compatibility rules for the early closure of profitable coal, peat and oil shale activities. It notes that Member States may decide to accelerate the market driven transition away from coal activities by prohibiting the generation of power based on these fuels by a certain date, which can result in foregone profits that Member States may wish to compensate (point 424). According to point 425, such compensation may also cover additional costs incurred by the undertakings, for instance relating to additional social costs if these costs are directly caused by the early closure of the profitable activities. Additional costs cannot include costs where they would have also occurred in the counterfactual scenario.
- (110) Point 426 CEEAG notes that measures covered by this Section 4.12.1 CEEAG can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other power generation activities in line with the Green Deal in order to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.
- (111) As a result of the gradual phasing-out of the mining of and energy production from lignite in Poland, workers in those activities will lose their jobs. In this context, as explained by Poland in recitals (8) and (9), the notified aid scheme is designed to cover costs that are resulting from the closure of coal-based assets and is aimed at mitigating the negative social and economic consequences of these closure on the affected employees.
- (112) Therefore, the present measure will contribute to the objectives of Union climate policy, in line with point 25 CEEAG. Moreover, the closure of the coal-fired power

plants allows for a shift towards a more sustainable form of energy generation. Therefore, the proposed measure is also compliant with point 24 CEEAG as well as with point 420 CEEAG.

- (113) The Commission observes that, while under this measure a prohibition of the coal and lignite activities eligible to this measure is not foreseen, it is possible under the measure that the aid is available to activities that are decommissioned, reduced or closing while still being profitable.
- (114) The Commission further observes that the measure does not include a compensation for foregone profits. However, it provides compensation to the eligible undertaking in the amount of its collective agreement obligations to those workers that have opted for coverage by the measure. The compensation to the undertaking is granted by way of cancellation of those workers' entitlements for dismissal under the applicable collective agreement. The undertaking would not have incurred these costs, had it not made the decision to close the profitable activity but, in the counterfactual, continued its operation. These social costs are therefore additional and directly caused by the early closure of the profitable activities.
- (115) Therefore, aid granted under the measure to profitable activities complies with points 425 and 426 CEEAG are complied with.
- (116) As regards aid granted under the measure to profitable activities (Section 4.12.1 CEEAG), the Commission hence considers that the measure facilitates the development of certain economic activities as required by Article 107(3)(c) TFEU and Section 3.1.1 CEEAG.

3.3.1.1.2. Incentive effect

- (117) Point 427 CEEAG requires that the aid for the early closure of profitable coal, peat and oil shale activities needs to trigger a change in the economic behaviour of the operators, which close down their coal, peat and oil shale activities earlier than the end of their economic lifetime. To determine whether this is the case, the Commission will compare the factual with the counterfactual scenario.
- (118) As noted in recital (114), the measure covers social costs that do not occur in the counterfactual of continuing the operation when it is profitable. Therefore, the measure can trigger a change in the economic behaviour of an eligible undertaking, prompting it to close coal and lignite activities earlier than their economic lifetime.
- (119) The measure is social aid granted upon the definitive closure of lignite mining or of a power plant using coal or lignite (see recital (22)). Thus it does not lead to a circumvention of the rules applicable for security of supply.
- (120) Therefore, the Commission considers that aid granted under the measure to profitable activities complies with point 427 of the CEEAG.
- (121) Therefore, with respect to aid granted under the measure to profitable activities (section 4.12.1 CEEAG), the Commission concludes that the notified aid has an incentive effect.

3.3.1.1.3. Absence of breach of any relevant provision of Union law

- (122) State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a non-severable violation of relevant Union law²².
- (123) Poland has not identified provisions or general principles of Union law which would be violated by the measure under examination (see recital (36)). Moreover, the Commission has no indications that the supported activity, the aid measure, or the conditions attached to it entail a non-severable violation of relevant Union law. The Commission therefore concludes that the measure does not entail a breach of any relevant provision of Union law.

3.3.1.1.4. Conclusion

- (124) The Commission therefore concludes that, with respect to aid granted under the measure to profitable activities, the measure fulfils the first (positive) condition of the compatibility assessment under section 4.12.1 CEEAG, i.e. that the aid facilitates the development of an economic activity.

3.3.1.2. Negative condition: the aid does not unduly affect trading conditions to an extent contrary to the common interest

3.3.1.2.1. Necessity and appropriateness

- (125) According to point 428 CEEAG, the Commission considers that there is a need for a measure supporting the early closure of profitable coal, peat and oil shale activities if the Member State can demonstrate that the measure is targeted towards a situation where it can bring about a material improvement that the market alone cannot deliver. For instance, by enabling the phase-out of power generation capacity based on coal, peat and oil shale and thereby contributing to the development of the economic activity of power generation from alternative sources, which would not occur to the same extent without the measure. In this context, the Commission may also consider, *inter alia*, whether the measure contributes significantly to ensure predictability that would not have been there in the absence of the measure, thereby facilitating the green transition.
- (126) According to point 429 CEEAG, the Member State should demonstrate that the measure is an appropriate policy instrument to achieve the intended objective, that is to say there must not be a less distortive policy and aid instrument capable of achieving the same results.
- (127) As found in recital (75), the measure, which is applicable throughout the Member State, helps mitigate the social impact of the closure of coal and lignite activities in the Member State concerned. By virtue of the measure, in case an undertaking were to decide to reduce or close an activity, despite it having the prospect of being profitable, the undertaking would not incur certain payment obligations under collective agreements. As described in recital (118), the incentive provided by the measure can lead to the early closure of coal and lignite activities, which the market

⁽²²⁾ Point 33 of the CEEAG, and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

alone would not have achieved. As the Act complements the Social Agreement (see recitals (9) and (10)), Poland demonstrated that the measure is targeted towards a situation where it can bring about a material improvement that the market alone cannot deliver (in line with point 426 CEEAG). As the measure is limited to compensating for social cost that the employer would otherwise have to bear when closing the activity (see recital (30)), Poland demonstrated that the measure is an appropriate policy instrument to achieve the intended objective, that is to say there must not be a less distortive policy and aid instrument capable of achieving the same results.

- (128) Therefore, the Commission concludes that, with respect to aid granted under the measure to profitable activities (section 4.12.1 CEEAG), the notified aid measure complies with points 428 and 429 of the CEEAG and, is thus necessary and appropriate.

3.3.1.2.2. Proportionality

- (129) According to point 430 CEEAG, aid for the early closure of profitable coal, peat and oil shale activities must in principle be granted through a competitive bidding process in line with section 3.2.1.3 CEEAG. This requirement does not apply where the Member State demonstrates that a bidding process is unlikely to be competitive for objective reasons.
- (130) The aid scheme is available for lignite mining activities and coal- or lignite-fired power generation in Poland. As described in recital (26), following a decision by an eligible undertaking to close an activity, the aid to the undertakings is determined by the choice of the dismissed workers whether they wish to be covered by the measure. Therefore, the Commission concurs with the submission by the Polish authorities (see recital (35)) that a competitive bidding process among eligible undertakings is objectively not feasible. The Commission therefore considers that the measure is in line with point 430 CEEAG.
- (131) According to point 432 CEEAG, in the absence of a competitive bidding process, the Commission will assess proportionality on a case-by-case basis to verify that aid is limited to the minimum necessary. In this context, the Commission will analyse in detail the assumptions used by the Member State to determine the foregone profits and additional costs on the basis of which the compensation for early closure is calculated.
- (132) Firstly, the Commission notes that the notified aid scheme does not include a compensation of foregone profits. Secondly, the aid consists of a one-off relief to the eligible undertaking, granted at the time of closure of an activity, determined by the existing obligations under a collective agreement (see recital (30)) and subject to the voluntary choice of workers whether to be covered by the scheme (see recital (26)). If, in the counterfactual, the undertaking decides not to close the activity, that one-off relief will not be available to it. Therefore, the Commission considers that the aid is kept to the minimum and point 432 CEEAG is complied with.
- (133) Point 433 CEEAG requires a review mechanism where the closure of eligible profitable activities occurs more than three years after the compensation has been awarded. Under the present scheme, the closure of the activity occurs at the same

time as the granting of the aid to an eligible undertaking. The aid amount is determined at the time of closure of an activity when the concerned employees opt for the measure in place of their entitlements under the collective agreement. The collective agreement entitlements are due at the time of dismissal, i.e. the related closure occurs at the same time. Therefore, in line with point 433 CEEAG a review mechanism is not required.

- (134) With regard to cumulation, point 56 CEEAG provides that “[a]id may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point”. Moreover, point 57 CEEAG explains that “[c]entrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation”.
- (135) As the aid under the notified scheme cannot be cumulated with other State aid in the meaning of Article 107(1) TFEU or with other forms of Union funding to cover the same eligible costs (see recital (50)), the presented measure complies with points 56 and 57 CEEAG.
- (136) As regards aid granted under the measure to profitable activities (section 4.12.1 CEEAG), in view of the above, the Commission concludes that aid granted under the measure is proportionate.

3.3.1.2.3. Transparency

- (137) The Commission notes that the Polish authorities will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG (see recital (51)).

3.3.1.2.4. Avoidance of undue negative effects on competition and trade

- (138) Point 434 CEEAG requires that the Member State must identify and quantify the expected environmental benefits of the measure. The Commission observes that the law on which this measure is based does not foresee specific exit dates for the closure of activities. However, the measure’s aim is to foster social acceptance of the coal exit altogether and such acceptance is capable of contributing to a smooth green transition with environmental benefits. In view of the fact that this measure covers only social cost whenever activities close earlier than their expected economic lifetime, the Commission agrees with Poland’s argument that the environmental benefits are not quantifiable ex-ante (see recital (9)). The Commission therefore considers that point 434 CEEAG is not applicable in this specific case.
- (139) According to point 435 CEEAG, it is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market. In absence of a competitive bidding process, the Commission will assess

the aid's effects on competition and trade based on the design of the measure and its effect on the relevant market.

- (140) The measure, which is available throughout Poland, is designed to facilitate the green transition by raising social acceptance of the decommissioning, reduction or closure of coal and lignite activities in Poland. The aid to the eligible undertakings is available only if additional benefits to the workers exist by virtue of the measure. As noted in recital (114), it provides compensation to the eligible undertaking in the amount of its collective agreement obligations to those workers that have opted for coverage by the measure. The compensation to the undertaking is granted by way of cancellation of those workers' entitlements. The undertaking would not have incurred these costs, had it not made the decision to close the profitable activity but, in the counterfactual, continued its operation. In terms of social costs, the aid to the undertaking merely compensates for the additional cost of dismissals in case of early closure. The Commission also notes that the eligible costs do not exceed what would be available if the closing activity were uncompetitive, namely the social costs as in point 1(c) of Annex 2 to the CEEAG, thus the Commission refers to its considerations in recital (93). Therefore, with regard to point 435 CEEAG, the Commission concludes that the aid has only a limited impact on competition and trade and a limited effect in the relevant market.
- (141) Therefore, as regards aid granted under the measure to profitable activities (section 4.12.1), the Commission considers that the aid does not have undue negative effects on competition and trade.

3.3.1.3. Weighting up the positive and negative effects of the aid

- (142) The Commission refers to its assessment in recitals (99) to (103), which does not depend on whether an activity is profitable or not, and is thus equally applicable to aid granted under the measure to profitable activities.
- (143) Therefore, as regards aid granted under the measure to profitable activities (Section 4.12.1 CEEAG), the Commission concludes that the positive effects of the measure outweigh its negative effects on the internal market.

3.3.2. *Companies in difficulty or subject to outstanding recovery orders*

- (144) As explained in recital (25), Poland confirmed that beneficiaries under the scheme cannot be undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. In addition, the beneficiaries under the scheme subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (145) Therefore, the Commission concludes that the measure complies with points 14 and 15 CEEAG.

3.3.2.1. Conclusion on the compatibility of the measure under Section 4.12.1 of the CEEAG

- (146) In light of the foregoing, the Commission concludes that, as regards aid granted under the measure to profitable activities, the measure 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 that aid granted under the measure to profitable activities is compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted under the relevant points of the CEEAG and specifically its section 4.12.1.

4. CONCLUSION

With regard to the measure, the Commission has accordingly decided not to raise objections to the aid on the grounds that this is compatible with the internal market pursuant to Article 107(3) of the Treaty on the Functioning of the European Union.

With regard to the paid leave, the Commission has found that it does not constitute State aid within the meaning of Article 107(1) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President