



Brussels, 15.04.2016
C(2016) 2144 final

**Subject: State Aid SA.43484 (2015/N) – Poland.
Evaluation plan for the aid scheme "Support for the development of
broadband infrastructure under the Operational Programme Digital
Poland for 2014-2020"**

Sir,

1. PROCEDURE

- (1) By electronic notification of 4 November 2015, Poland submitted a summary information sheet pursuant to Article 11(a) of the Commission Regulation (EU) No. 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty¹ (hereinafter "GBER") on the aid scheme "Support for the development of broadband infrastructure under the Operational Programme Digital Poland for 2014-2020" (hereinafter: "the aid scheme"), stating it plans to implement such scheme until the end of 2020. This submission was registered as SA.43484 (2015/X).
- (2) The aid scheme was put into effect on 9 October 2015 pursuant to Articles 1(1)(i) and 1(2)(a) (concerning the scope of application of the GBER) and Chapter III, Section 10 (concerning aid for broadband infrastructure).
- (3) The aid scheme, with an average annual budget exceeding EUR 150 million constitutes a large scheme within the meaning of Article 1(2)(a) of the GBER. Under this provision, aid schemes are exempted only for a period of six months after their entry into force, unless a longer period of exemption is authorised by the Commission following the assessment of an evaluation plan for the scheme to be notified by the Member State concerned.

¹ OJ L 187, 26.6.2014, p. 1.

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- (4) In order to obtain that prolongation, Poland notified an evaluation plan for the scheme on 5 November 2015 which was registered by the Commission on the same day (2015/109317) under SA. 43484 (2015/N). By emails of 2 February 2016 (2016/013444) and 29 February 2016 (2016/020895) the Commission asked for supplementary information. By emails of 19 February 2016 (2016/020893), 4 March 2016 (2016/023473) and 8 March 2016 (2016/024905), Poland provided the requested information.
- (5) By letter dated 16 February 2016 (2016/016378), Poland agreed to waive the rights conferred upon it by Article 342 TFEU and Article 3 of the Regulation (EC) No 1/1958² and to have the present decision adopted in the English language.

2. DETAILED DESCRIPTION OF THE KEY ELEMENTS OF THE NOTIFIED EVALUATION PLAN

- (6) As required by Article (2)(16) of the GBER and in line with best practices established in the Commission Staff Working Document on Common methodology for State aid evaluation³ (hereinafter: "Staff Working Document"), the notified evaluation plan contains the description of the following main 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 of the evaluation.

2.1. Objectives of the aid scheme to be evaluated

- (7) The average annual budget of the aid scheme is approximately EUR 170 million. The duration of the aid scheme is 09/10/2015 – 31/12/2020. Conditions and procedures for granting aid are specified in the Regulation of the Minister of Administration and Digitization of 16 September 2015⁴.
- (8) According to Poland, the aid scheme will support projects intended to ensure the widest possible access to broadband Internet with high bandwidth (at least 30 Mb/s) in areas where market failures occur, resulting in inequalities in Internet access. As a result of the support provided on the basis of the aid scheme, at least 726,517 households should benefit from high speed Internet access.
- (9) Increasing the percentage of coverage with next generation access (NGA) infrastructure should also result, according to Poland, in a popularisation of services based on Internet access.
- (10) Eligible costs under the aid scheme will be those covered by GBER Art. 52(2), notably costs for the deployment of a passive broadband infrastructure; costs of broadband-related civil engineering works; and costs for the deployment of the NGA networks. In addition, Poland intends to make use of Commission Regulation No 1407/2013 (the *de*

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

⁴ Journal of Laws 24 September 2015, item 1466.

minimis aid Regulation) for complementary expenditures which are not eligible under the GBER.

- (11) The aid scheme is co-financed by the EU Structural and Investment Funds in the framework of the Operational Programme "Digital Poland for 2014-2020", approved by the Commission on 5 December 2014. Funding will take the form of non-repayable support (grants).
- (12) According to Poland, aid beneficiaries will be selected on the basis of open, transparent and non-discriminatory competitive selection processes taking into account formal criteria and merit-based criteria and respecting the principle of technology neutrality.

2.2. Evaluation questions and result indicators

- (13) The evaluation questions address the aid scheme's outputs, general effects, proportionality, appropriateness and cover also a selection of indirect impacts, including potential effects on competition. The result indicators are linked to the evaluation questions and to the objectives of the aid scheme.
- (14) Several questions in the evaluation plan notified by Poland address the aid scheme's outputs and general effects, notably in terms of number and categories of beneficiaries, total value of the implemented projects, households' and population's coverage, number of access points, length of the broadband network.
- (15) Proportionality of the aid will be examined considering the deployment costs under the aid scheme compared to non-assisted projects in Poland and interventions in similar areas in other countries.
- (16) Appropriateness of the mechanisms implemented under the aid scheme to ensure proportionality and incentive effect of the aid granted to beneficiaries will be assessed in the evaluation by comparing them with mechanisms used in similar schemes, both in Poland and in other EU Member States.
- (17) As concerns indirect impacts, the employment effects will be evaluated by considering the number of jobs created by aid beneficiaries. In addition, the aid scheme's indirect impacts on wholesale services will be evaluated by considering the value and volume of wholesale services provided by the aid beneficiaries using the new infrastructure deployed as a result of the aid scheme.
- (18) Potential effects on competition will be evaluated, firstly, by considering whether specific categories of enterprises (notably in terms of size or age) will mostly benefit from the scheme and, secondly, by considering the level of prices for retail services compared to non-assisted areas.

2.3. Envisaged methodology to conduct the evaluation

- (19) Different methodological approaches will be used according to the specific evaluation questions.
- (20) Trends in result indicators will be analysed using descriptive statistics.
- (21) For the questions on the indirect impact of the aid scheme on employment and on prices of retail services, control groups of comparable non-assisted telecommunication enterprises will be constructed with appropriate statistical techniques controlling for the

enterprises' size and the area of the investments, which should be as close and similar as possible to those where aid beneficiaries' projects will be carried out.

- (22) For the question concerning the deployment costs, a control group will also be established, with similar characteristics to the one referred to in the previous paragraph, but also considering enterprises that implement projects in other EU Member States and beneficiaries of EU Structural Funds in the programming period 2007-2013.

2.4. Data collection requirements

- (23) Data necessary for the evaluation will be collected on a continuous basis and will be submitted by aid beneficiaries, by public bodies implementing the aid scheme or will be retrieved from signed contracts with aid beneficiaries.
- (24) Most of the relevant result indicators will be collected at NUTS3 level.

2.5. Proposed timing of the evaluation, including the date of submission of the final evaluation report

- (25) In the course of 2018, the independent body conducting the evaluation will be selected.
- (26) Poland has committed to transmit an interim evaluation report to the Commission at the latest in June 2019 and the final evaluation report at the latest in June 2020.

2.6. Independent body selection to conduct the evaluation, or criteria for its selection

- (27) Poland has committed for the evaluation to be carried out by a private body, independent from the public administration, to be selected in accordance with Public Procurement rules. Telecommunication enterprises shall be excluded from the procedure. The selection will take into account criteria such as the proven experience of the body in conducting evaluations, suggested research tools for attaining the objectives of the evaluation, human resources necessary for the evaluation and costs of the evaluation.

2.7. Modalities for ensuring the publicity of the evaluation

- (28) Poland has confirmed that the evaluation plan and the final evaluation report scheme will be published on-line (not later than within 3 months from their approval) on the website of the Operational Programme Digital Poland⁵.
- (29) A meeting with relevant stakeholders (public bodies involved in the implementation of the scheme) will be organised and the discussions will be taken into account by the body conducting the evaluation.
- (30) Aggregated and anonymised data used for conducting the evaluation will be published alongside the final evaluation report.
- (31) Results of the evaluation will be taken into account for planning potential subsequent schemes or other national and local programmes.

⁵ Currently <http://www.polskacyfrowa.gov.pl>

3. ASSESSMENT OF THE EVALUATION PLAN

- (32) The correct application of the GBER is the responsibility of the Member State. The present decision on the evaluation plan does not assess whether the aid scheme to be evaluated was put into effect by the Member State in full respect of all applicable provisions of the GBER. It does therefore neither create legitimate expectations, nor does it prejudge the position the Commission might take regarding the conformity of the aid scheme with the GBER when monitoring it, or assessing complaints against individual aid granted under it.
- (33) Pursuant to Article 1(2)(a) GBER, certain aid schemes⁶ in the meaning of Article 2(15) GBER, if their average annual State aid budget exceeds EUR 150 million, should be made subject to evaluation. The Commission notes that the annual average budget of the aid scheme concerned (i.e. approximately EUR 170 million) exceeds EUR 150 million as set in Article 1(2)(a) GBER. Chapter I and section 10 of Chapter III of the GBER constitute the legal basis for the aid scheme to benefit from the exemption from notification provided for in Article 108(3) of the TFEU.
- (34) As the Commission explained in recital 8 of the GBER, the evaluation of large schemes is required "*[I]n view of the greater potential impact of large schemes on trade and competition*". The required "*[E]valuation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade.*" State aid evaluation should in particular allow the direct incentive effect of the aid on the beneficiary to be assessed (i.e. whether the aid has caused the beneficiary to take a different course of action, and how significant the impact of the aid has been). It should also provide an indication of the general positive and negative effects of the aid scheme on the attainment of the desired policy objective and on competition and trade, and could examine the proportionality and appropriateness of the chosen aid instrument.⁷
- (35) In the light of these considerations, Article 2(16) of the GBER defines as evaluation plan "a document containing at least the following minimum 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 of the evaluation".
- (36) The Commission considers that, as described in section 2 of this decision, the notified evaluation plan contains these minimum elements outlined in Article 2(16) of the GBER.

⁶ Schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44), and 10 of Chapter III of this Regulation (Article 1(2)(a) GBER). 'Aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount (Article 2(15) GBER).

⁷ See the Staff Working Document cited in footnote 3 above (footnote 3, section 2, second paragraph).

- (37) The evaluation plan gives a concise description of the key objectives of the scheme concerned and provides sufficient information to understand the underlying "intervention logic". The scope of the evaluation is defined in an appropriate way. The Commission notes that the evaluation plan also describes possible constraints and risks that might affect the scheme's objectives and hence the expected effects.
- (38) The evaluation questions are designed in a way as to assess the outputs, direct effects, proportionality, appropriateness and a selection of potential indirect impacts of the aid scheme.
- (39) The evaluation plan identifies and justifies result indicators that integrate the evaluation questions for the aid scheme concerned, and explains the data collection requirements and availabilities necessary in this context. The data sources to be used for the evaluation are clearly described.
- (40) The evaluation plan sets out and explains the main methods that will be used in order to identify the impacts of the aid scheme, and discusses why these methods are likely to be appropriate for the aid scheme concerned.
- (41) The proposed timing of the evaluation is reasonable in view of the characteristics of the aid scheme and the relevant implementation periods for projects supported under the aid scheme.
- (42) The proposed criteria for the selection of the evaluation body on the basis of an open tender meet the independence and skills criteria.
- (43) The proposed modalities for the publication of the evaluation results are appropriate and ensure transparency. In particular, the Commission takes note of the commitment to discuss the evaluation's findings with relevant stakeholders and for the results of the evaluation to be taken into account for planning potential subsequent schemes.
- (44) In view of the above, the Commission considers that the evaluation plan meets all requirements laid down in the GBER, is established in line with the common methodology proposed in the Staff Working Document, and is suitable given the specificities of the aid scheme to be evaluated.
- (45) The Commission notes the commitment made by Poland to conduct the evaluation according to the plan described in the present decision and to inform the Commission of any element that might seriously compromise the implementation of the plan. The Commission also notes the commitment by Poland to fulfil the obligation to submit the final evaluation report at the latest by 30 June 2020.
- (46) Therefore, pursuant to Article 1(2)(a) of the GBER, the Commission decides that the exemption for the aid scheme for which the evaluation plan was submitted is hereby prolonged beyond the initial six months until 31 December 2020.
- (47) Alterations to this scheme, other than modifications which cannot affect the compatibility of the scheme under the GBER or cannot significantly affect the content of the approved evaluation plan, are, pursuant to Article 1(2)(b) of the GBER, excluded from the scope of the GBER, and must therefore be notified to the Commission.

4. CONCLUSION

(48) After having assessed the evaluation plan notified by Poland, the Commission has accordingly decided:

- Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty will continue to apply to the aid scheme "Support for the development of broadband infrastructure under the Operational Programme Digital Poland for 2014-2020" from the date of the present decision until 31 December 2020.

- This Decision will be published.

(49) Finally, the Commission notes that Poland agreed to have the present decision adopted in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the English language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Stateaidgreffe@ec.europa.eu

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

