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**Subject: State Aid SA.111121 (2023/N) – Poland
Reinsurance of transport insurance on the territory of Ukraine**

Excellency,

1. PROCEDURE

- (1) Following prenotification contacts, Poland electronically notified in accordance with Article 108(3) TFEU on 5 February 2025 a scheme to reinsure transport insurance against losses stemming from war-related events incurred on the territory of Ukraine with the objective to provide transport undertakings carrying out activities in Poland with the necessary insurance enabling them to provide their services on the territory of Ukraine (the “measure”, the “notified measure” or the “scheme”).
- (2) Poland exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 ⁽¹⁾ and to have this Decision adopted and notified in English.

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

Jego Ekscelencja
Radosław Sikorski
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
00 - 580 Warszawa
POLSKA/POLAND

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Context

- (3) The unprovoked and unjustified aggression against Ukraine by Russia that broke out in February 2022 and is continuing, has had economic repercussions on the entire internal market. Various undertakings in the EU have been affected in multiple ways, both directly and indirectly ⁽²⁾. As a consequence of the ongoing military aggression, Ukraine's natural trade routes through the Black Sea have been severely disrupted. The EU-Ukraine Solidarity Lanes initiative ⁽³⁾ and the Road Transport Agreement between the EU and Ukraine ⁽⁴⁾ have facilitated the development of stronger trade flows between Ukraine and Poland, as a neighbouring country with a long land border, and beyond. However, hurdles to trade flows exist on these routes that need to be further addressed.
- (4) One of the major causes of the disrupted trade flows between Poland and Ukraine are difficulties encountered in transporting goods by freight operators – undertakings involved in transport of goods on road and by railway carry out their activities in Poland either as undertakings registered in Poland and authorised to carry out freight transport activities for hire or reward or as such undertakings from other Member States with an established branch registered in Poland (the “eligible transport undertakings”) ⁽⁵⁾. The eligible transport undertakings are largely unable ⁽⁶⁾ to conduct their operations on the Ukrainian territory, since standard transport insurance available on the market does not provide protection for war-like events (as defined further below in recital (9)) to undertakings delivering goods to war zones. Furthermore, leasing companies, which are leasing the transport vehicles used by the eligible transport undertakings in most of the cases ⁽⁷⁾, do not allow for the use of leased vehicles in Ukraine under the current circumstances without the appropriate insurance coverage, including the coverage for war risk. Despite a rising Ukrainian demand for goods coming from the territory of Poland, and thus for the associated transport services, the transport undertakings in most cases cannot go further than the Polish-Ukrainian border,

⁽²⁾ For a comprehensive policy response addressing the consequences of the aggression on the EU economy, see Communication from the Commission on the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended.

⁽³⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine's agricultural export and bilateral trade with the EU. COM/2022/217 final.

⁽⁴⁾ Agreement between the European Union and Ukraine amending the Agreement between the European Union and Ukraine on the Carriage of Freight by Road of 29 June 2022.

⁽⁵⁾ Foreign transport undertakings from Member States other than Poland are invited to participate in the measure, as long as they exercise their freedom of establishment by setting up and registering a branch on the territory of Poland. Moreover, many of the transport undertakings registered in Poland that are eligible for the scheme are subsidiaries of foreign transport undertakings.

⁽⁶⁾ Notwithstanding the small amount of Polish transport undertakings carrying goods to Ukraine at their own risk without insurance covering war-like events that is still ongoing mostly on short routes and is of local character. However, this does not diminish the necessity of the measure.

⁽⁷⁾ I.e., the fleet of the eligible transport undertakings consist mostly of the leased vehicles.

where they must stop and reload freight to Ukrainian carriers that carry out the final road haulage leg. According to the Polish authorities, this creates administrative inefficiencies connected with the unnecessary reloading of the carried freight and related additional paperwork involved slows down the deliveries, and significantly hampers the trade.

- (5) Because demand for risk insurance covering war-like events is currently not satisfied by available insurance coverage on the market, the Polish authorities have proposed to introduce a State supported reinsurance measure to enable the provision of such insurance, which will allow eligible transport undertakings to carry out their transport activities on the Ukrainian territory.
- (6) Poland has a system of export support in place, which is run by the Export Credit Insurance Corporation KUKI, S.A. ("KUKI"). KUKI is incorporated as a joint stock company under Polish law ⁽⁸⁾. KUKI will provide the reinsurance measure that constitutes the scheme, and with respect to the reinsurance it will become a contracting party to the insurance undertakings that are providing the insurance to the eligible transport undertakings.

2.2. Objective of the measure

- (7) The measure aims to provide participating insurance undertakings (as defined further below) the opportunity to enter into reinsurance contracts with KUKI to offset the substantial risk of offering insurance for eligible transport undertakings covering damages resulting from war-like events on the territory of Ukraine as described in recitals (9) to (11). Without the measure in place, the participating insurance undertakings refuse to provide this type of insurance coverage. All insurance undertakings authorised to provide insurance services in Poland, including branches of insurance undertakings registered in other Member States, will be eligible for aid under the scheme (the "participating insurance undertakings") ⁽⁹⁾. Thus, the measure will enable that the eligible transport undertakings can obtain the necessary insurance to be able to provide their transport services and undertake their activities on the territory of Ukraine during the ongoing Russian military aggression.

2.3. Other elements of the measure

Scope of reinsured risk

- (8) KUKI will conclude reinsurance contracts with participating insurance undertakings. The reinsurance contract that constitutes the measure will have a duration of 12 months and will have an automatic renewal for a successive period of 12 months, as long as the underlying insurance contracts are in place. At latest, the reinsurance contract will cease to be valid by the date of the expiry of the scheme (see recital (25)).

⁽⁸⁾ For more details on the organisation of KUKI, its division into private and public activities, see Commission decision of 20 December 2011 in State aid case SA.33422 (OJ C 71, 9.03.2012, p. 3).

⁽⁹⁾ Foreign insurance undertakings from Member States other than Poland are invited to participate in the measure, as long as they exercise their freedom of establishment by setting up and registering a branch office on the territory of Poland. A part of the budget envisaged for the measure in the amount of PLN 136 million is allocated to the new entrants among participating insurance undertakings.

- (9) The scheme reinsures risk (the “reinsured risk”) related to losses ⁽¹⁰⁾ of the participating insurance undertakings amounting to the damage resulting from the following events (the “reinsured events” or the “war-like events”) that occurred during the course of the pursuit of transport activities by the eligible transport undertakings on the territory of Ukraine:
- war, invasion, forced entry, hostile acts of a foreign country, acts of war (irrespective of whether war was declared or not), civil war, rebellion, revolt, revolutions, uprisings, riots, strikes, lockouts, social unrest, acts of sabotage, abandoned mines, torpedoes, bombs or other abandoned military weapons, detonated military weapons functioning on the basis of atomic or nuclear fission and/or thermonuclear fusion reactions or a reaction of a similar nature, internal disturbances, military or civil coup d’etat, military take-over, attempts to seize power, social unrest, and blockades;
 - acts of terrorism that will be understood as activities intended to create chaos, intimidate the population or disorganise public life to achieve specific economic and political consequences;
 - organised activities or actions with malicious intent of persons acting on behalf of or in conjunction with political organisations;
 - confiscation, nationalisation, requisition, seizure, restraints, misappropriation, destruction, damage or retention of property by authorised state bodies, even as a result of their actions without any legal basis; and
 - emission, release or dispersion of chemical or biological substances related to military operations.
- (10) The following insurance classes (the “reinsured subjects”) as listed in chapter II of the annex to the Insurance Act (as defined in recital (22)) are covered by the reinsurance contract that governs the subject of the measure:
- Class 3: Casco full comprehensive insurance of land vehicles, with the exception of railway vehicles, including damage caused to motor vehicles and land vehicles that are not self-propelled;
 - Class 4: Casco full comprehensive insurance of railway vehicles, including damage caused to railway vehicles;
 - Class 7: Goods in transit insurance, including damage caused to items while they are being delivered, regardless of the means of transport used each time;
 - Class 10: All civil liability insurance resulting from the possession and use of self-propelled land vehicles, including carrier liability insurance;
 - Class 13: Civil liability insurance (general liability) other than those referred to in classes 10–12.

⁽¹⁰⁾ Subject to limitations and exclusions as explained further below.

- (11) The following cases are excluded from the scope of the reinsurance contract that constitutes the measure:
- insurance agreements concluded with foreign insurers ⁽¹¹⁾ carrying out their activities within the framework of a consortium with Polish insurance undertakings;
 - personal injury;
 - liability relating to or resulting from a breach of any economic or trade sanctions resulting from the provisions of international law, the laws of the European Union or the laws of the Republic of Poland.

Calculation of risk assumed by the State and risk retained by participating insurance undertakings

- (12) The scheme covers losses of the participating insurance undertakings from the reinsured events on the reinsured subjects in the amount of 80% of reinsured risk, i.e., under the scheme, KUKÉ reinsures and bears 80% of the liabilities of the participating insurance undertakings resulting from losses from the reinsured events on the reinsured subjects.
- (13) The maximum amount of risk borne by KUKÉ with respect to a single participating insurance undertaking for all insurance cases covered by reinsurance is limited to the pro rata share of the scheme's budget according to the market share of that participating insurance undertaking on the overall Polish insurance market in 2022 ⁽¹²⁾ (groups 3 and 10, section II of the Polish Act on insurance and reinsurance activity) according to the Annual Bulletin of the Polish Financial Supervision Authority. It may be unilaterally revised by KUKÉ. Any new participating insurance undertakings will be able to participate to the extent of the specifically allocated quota of PLN 136 million (approximately EUR 32.4 million ⁽¹³⁾).
- (14) The participating insurance undertaking retains the remaining 20% of the reinsured risk.

Reinsured risk premium and commission fee

- (15) The commercial risk premium is set by the participating insurance undertaking as a standalone commercial insurance product and is unaffected by the measure. As far as the reinsured risk part of the insurance product is concerned, KUKÉ receives an 80% share of the reinsured risk premium that is set by the participating insurance undertaking at a minimum 25% of the base rate of the premium that the participating insurance undertaking receives for the underlying commercial insurance product. The reinsured risk premium paid to KUKÉ is

⁽¹¹⁾ Foreign insurers: foreign undertakings that rely on the freedom to provide services cross-border and have neither subsidiaries nor branches established in Poland.

⁽¹²⁾ Based on the data from groups 3 and 10, section II of the Polish Act on insurance and reinsurance activity) according to the Annual Bulletin of the Polish Financial Supervision Authority in 2022.

⁽¹³⁾ The exchange rate used in this conversion is: EUR 1 = PLN 4.2 (as at 5 February 2025).

reduced by a commission fee that is normally the subject of negotiations between the reinsurer and the insurance undertaking according to the reinsurance market standards, and which is for the purposes of the measure set at 23% of the reinsured risk premium (see recital (21) for further details).

- (16) The reinsured risk premium was determined on the basis of an overall assessment of the insurance data of the Polish market published by the Polish Financial Supervision Authority ⁽¹⁴⁾ as at the end of 2nd quarter of 2023:

Table 1: Average rates of market insurance policy parameters on the Polish market in 1H 2023 used for benchmarking and calculating reinsurance risk parameters for the purposes of the scheme

Class of insurance	Loss ratio gross	Acquisition costs	Admin. costs
Class 3	66.15%	19.67%	3.80%
Class 4	56.00%	13.67%	2.89%
Class 7	37.39%	22.13%	4.96%
Class 10	76.76%	17.78%	4.85%
	71.6%	18.6%	4.4%

- (17) The average gross loss ratio ⁽¹⁵⁾ for groups of insurance 3, 4, 7 and 10 that constitute the subject of the measure at the end of 2nd quarter 2023 for the Polish insurance market amounted to 71.6 %.
- (18) After taking into account the assumption of loss ratio for the risk of war at the level of 60.0% of the earned premiums, and 23.0% of commission rate, the combined ratio ⁽¹⁶⁾ reaches 83.0% which means that the potential profit to be achieved from this group of insurance products will be 17.0%.
- (19) The participating insurance undertaking is obliged to apply a rate adequate to the risk assumed. Furthermore, according to the template reinsurance agreement drafted by KUKE for the purposes of the scheme that will be concluded with KUKE within the scheme, it is required that the extension of the liability of the participating insurance undertaking to cover war-like events should be offered pursuant to the rate schedule set by the participating insurance undertaking. However, the minimum rate for reinsured risk premium for transport on the territory of Ukraine required by KUKE for the purposes of participation in this scheme amounts to 25% of the base rate laid down in the insurance agreement.
- (20) A commission fee will be deducted from the reinsured risk premium and retained by the participating insurance undertaking. The commission fee is set at 23% of the reinsured risk premium.

⁽¹⁴⁾ Available at [Rynek ubezpieczeniowy - Komisja Nadzoru Finansowego \(knf.gov.pl\)](https://rynek.ubezpieczeniowy.pl/)

⁽¹⁵⁾ Gross loss ratio = (Gross claims paid increased by loss adjustment costs and decreased by recourses with change of technical provision gross)/Premium earned gross.

⁽¹⁶⁾ Being the sum of loss ratio + commission rate.

- (21) The commission fee is remuneration of the participating insurance undertaking for providing the insurance, including settlement. The commission fee was determined based on the existing experience of KUKE with reinsurers and discussions with brokers. It was estimated to cover brokers' commissions (referred to as acquisition costs in Table 1), which are on average about 18.6% of the insurance premiums, and insurance undertakings' standard administrative costs (referred to as admin. costs in Table 1), which are about 4.4% of the insurance premiums for this group of insurance products.

2.4. Legal basis

- (22) The legal basis for the measure is Article 1(2)(6) and 1(4) of the Act on insurance guaranteed by the State Treasury of 7 July 1994 (the "Act") and follows the classification of insurance classes as set out in the Annex to the Polish Act on insurance and reinsurance activity of 11 September 2015, Dz. U. of 2024, pos. 838 (specifically, Chapter II, groups 3, 4, 7, 10, and 13 described therein), table 1 (the "Insurance Act"). The Act includes a standstill clause, and the measure has not yet been implemented. The detailed parameters of the measure are further laid down in the Regulation of the Council of Ministers on the identification of extraordinary risk. The Commission has been presented with the final draft as a part of the notification submissions.

2.5. Administration of the measure

- (23) The measure is implemented through KUKE, the Polish export credit agency.

2.6. Budget and duration of the measure

- (24) The estimated budget of the measure is PLN 6.4 billion (approximately EUR 1.52 billion ⁽¹⁷⁾). The measure is financed from the State budget.
- (25) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 30 June 2027. This means that the covered insurance contracts must be concluded by 30 June 2027 (including) and remain covered until the expiry of the contracts, which can be no longer than one year from the date of conclusion.
- (26) The Polish authorities commit to conduct an annual review of the necessity and parameters of the measure, in close cooperation with the Insurance Guaranteed by the State Treasury Committee ⁽¹⁸⁾, and will inform, if necessary and justified by the outcome of such a review, the Commission about the outcome of the review

⁽¹⁷⁾ The exchange rate used in this conversion is: EUR 1 = PLN 4.2 (as at 5 February 2025).

⁽¹⁸⁾ The "Komitet Ubezpieczeń Gwarantowanych przez Skarb Państwa" was established by Article 7 of the Act of 7 July 1994 on insurance guaranteed by the State Treasury. It is an inter-ministerial body composed of one of each of the following representatives (in the rank of secretary or undersecretary of state) from Minister for state assets, Minister for public finance, Minister for the economy, Minister for the climate, Minister for agricultural markets, and the Minister for foreign affairs who are appointed by the Prime Minister of Poland. Amongst its main tasks is determining the detailed policies of KUKE for guaranteed insurance, determining the terms and conditions for setting the insurance rates and remuneration in respect of granted insurance guarantees, and establishing the scope of KUKE's authorization to take decisions regarding the conclusion of guaranteed insurance.

and the implications for possible adjustments in the parameters of the measure, if there are any. The Polish authorities further commit to adjust the measure even earlier than the yearly review, in view of any relevant changes in the insurance and/or transport sector.

2.7. Beneficiaries

- (27) Direct beneficiaries of the measure⁽¹⁹⁾ are participating insurance undertakings offering commercial insurance to eligible transport undertakings in relation to their transport services on the territory of Ukraine and seeking the reinsurance on the reinsured events.
- (28) Indirect beneficiaries of the measure are eligible transport undertakings that seek insurance including insurance on the reinsured events to provide transport services and carry out their activities on the territory of Ukraine.

2.8. Transparency

- (29) Poland will publish information on the scheme on the website of KUKI both in Polish and English. Poland will also communicate the scheme to the market through media at the time of the launch of the scheme. Finally, Poland will publish 12-month financial summaries on aggregate level concerning data on the use of the scheme.

3. POSITION OF POLAND

- (30) The Polish authorities submit that the measure constitutes State aid and that measure has:
 - (a) as its direct beneficiaries, participating insurance undertakings offering underlying commercial insurance to eligible transport undertakings in relation to their transport services on the territory of Ukraine and seeking the reinsurance on the reinsured events;
 - (b) as its indirect beneficiaries, eligible transport undertakings that seek insurance including insurance on the reinsured events in order to provide transport services and carry out their activities on the territory of Ukraine.

3.1. Necessity and appropriateness

- (31) The Polish authorities note that there is a lack of insurance coverage for risk related to war-like events on the territory of Ukraine during Russian military aggression, which leads to a market gap that can only be addressed through providing reinsurance protection by a state agency. The Polish authorities consider that intervention of the Polish State is needed to address the market failure in the insurance market to provide a demanded and necessary insurance

⁽¹⁹⁾ In line with the Commission's decision-making practice when assessing insurance related State aid measures, see e.g., Commission Decision C(2022) 8963 final of 9.12.2022 in case SA.103238 (2022/N) – Belgium – Travel Insolvency Fund for package travel, linked travel arrangements and travel services, OJ C 052, 10.2.2023, p. 1.

product covering losses from war-like events for transport undertakings seeking to deliver goods to Ukraine, an activity which involves providing their services on the territory of Ukraine currently affected by war-like conditions due to the military aggression by Russia. This intervention in the form of State provided reinsurance is necessary to protect eligible transport undertakings from losses resulting from war-like events in the scope defined more precisely in the proposed measure.

- (32) Having undertaken market surveys among the relevant market participants, both in the insurance and transport sectors, the Polish authorities have demonstrated this necessity by supporting evidence in the form of letter dated 16 August 2024 submitted by the Polish Chamber of Insurance, a statutory organisation of industry self-government, confirming the existence of the market gap on the Polish market related to the offering of private insurance products related to the war in Ukraine.
- (33) The Association of International Road Transport Carriers in Poland, the largest organisation of transport carriers in Poland that unifies around 2 500 undertakings engaged in international road freight transport, in its letter dated 20 September 2024, described the current difficulties in the state of the Polish transport market and resulting impossibility to deliver the transported goods on the territory of Ukraine due to lack of appropriate insurance product covering war-like damages incurred during the transport on the territory of Ukraine. In 2023 only 8% of vehicles crossing the Polish-Ukrainian border were Polish carriers as opposed to 45% in 2022. It also confirmed high demand for such a product on the Polish market from transport undertakings.
- (34) The existing market gap and the necessity for introducing the measure is also evident from the fact that despite ever rising volume of trade between Ukraine and Poland⁽²⁰⁾, the volume of transported goods by Polish undertakings is decreasing⁽²¹⁾.

3.2. Proportionality

- (35) The Polish authorities consider that the measure is proportional for the following reasons. First, the measure is to be implemented for a limited period with a clear expiry date set reasonably in a foreseeable future given the uncertainties regarding Russia's military aggression in Ukraine.
- (36) Second, the measure limits KUKA's coverage of reinsured risk to 80% and ensures that, in any case, 20% of the reinsured risk will be retained by private

⁽²⁰⁾ Since the Russian invasion of Ukraine, exports of goods from Poland to Ukraine have increased rapidly. In 2022, by 54%, and in 2023, by 17.5%. If the trend observed in the first four months of 2024 continues, it can be expected that the value of Polish exports to Ukraine will almost double in 2021-2024. Available at: [An increasingly important partner. Poland's exports to and investment in Ukraine | OSW Centre for Eastern Studies](#).

⁽²¹⁾ In 2021 Polish carriers performed 183 000 transports to Ukraine. According to the Ukrainian government, Polish carriers performed just over 132 000 transports to Ukraine in 2023. Available at: [Ukrainian companies carried out 362 thousand shipments to Poland in January-November 2023 \(gmk.center\)](#).

insurance undertakings, thus avoiding any issues of moral hazard and economic inefficiency possibly resulting from State intervention.

- (37) Third, the Polish authorities submit that the commission fee retained by the insurance undertakings corresponds to the long-term evidenced cost coverage of 23% (consisting of a brokers' commission fee of around 18.6% and insurers' standard administrative costs of approximately 4.4% for this type of insurance, in line with standard market practice) and is thus proportionate to the costs incurred by private insurers. Thus, according to the Polish authorities, no above-market rate of return for insurance undertakings ensues as a result of offering and administering the insurance product covering the reinsured risk.
- (38) The Polish authorities argue that as a result of the measures proposed to be implemented in the scheme described above, the proposed scheme is compatible aid on the basis of Article 107(3)(c) TFEU, since the objective is 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.

4. ASSESSMENT

4.1. Existence of State aid

- (39) According to Article 107(1) TFEU, "*save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (40) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an undertaking, (ii) the measure has to be granted through State resources and be imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

4.1.1. Undertaking

- (41) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.
- (42) The Commission considers that the direct beneficiaries of the measure are participating insurance undertakings (recital (7)), since on the basis of the scheme, they enter into a reinsurance agreement with KUKA as a contractual counterparty and thus benefit from being able to provide an underlying commercial insurance product to eligible transport undertakings with additional coverage of the reinsured risk that constitutes the measure, that would have otherwise not be provided by them.
- (43) The direct counterparties of the reinsurance agreements are the participating insurance undertakings - rather than the eligible transport undertakings acquiring the insurance product facilitated by the measure. The measure will reduce the risk

of losses (which, given the exceptional, war-like circumstances in Ukraine, is substantial and is not covered on the market) for the benefitting participating insurance undertakings and allow them to provide war risk insurance to eligible transport undertakings.

- (44) The Commission considers that the eligible transport undertakings will benefit indirectly from the measures by obtaining access to transport insurance including the coverage of war-like events, which is necessary to provide their services on the territory of Ukraine at this moment. Without the measure, the transport undertakings would either be refused insurance cover and be forced to bear currently prohibitively high risks of carrying out transport activities on the territory of Ukraine themselves or cease these transport activities altogether.

4.1.2. State resources and imputability

- (45) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it. The measure will be implemented through KUKA (see recital (6)), the Polish export credit agency, which is a public body funded through State resources. Hence, State resources are involved, and the measure is imputable to the State.

4.1.3. Economic advantage

- (46) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking could not have obtained under normal market conditions, in the absence of State intervention.
- (47) The measure in question confers an advantage on its direct beneficiaries in the form of a reinsurance contract with the Polish State regarding risk insurance covering war-like events. The measure enables the participating insurance undertakings to offer on the market an underlying commercial insurance product tied with coverage of the reinsured risk events. The type of insurance coverage desired by the market is otherwise not provided on the market. Thus, the measure directly confers an economic advantage upon the participating insurance undertakings.
- (48) The measure also benefits the insured subjects – eligible transport undertakings (see recital (4)). The eligible transport undertakings are consequently able to take up the insurance and provide their services on the territory of Ukraine, which they would otherwise not be able to do. The measure thus indirectly confers economic advantage upon them.

4.1.4. Selectivity

- (49) To fall within the scope of Article 107(1) TFEU, a State aid measure must favour “certain undertakings or the production of certain goods”.
- (50) In the case at hand, the measure is selective because direct beneficiaries are those insurance undertakings that fulfil the eligibility conditions under the measure (see recital (6)). Furthermore, the measure is aimed at supporting a specific sector, i.e. transport, by offering support only to those insurance companies which in turn

offer insurance for the transport sector. It follows that the measure confers a selective economic advantage to the direct and indirect beneficiaries.

4.1.5. Distortion of competition and impact on trade

- (51) State measures fall within the scope of Article 107(1) TFEU insofar as they distort or threaten to distort competition and affect trade between Member States. According to the case-law of Union courts, the concept of “effect on trade between Member States” is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that “in particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid” ⁽²²⁾.
- (52) Both direct beneficiaries (insurance undertakings) and indirect beneficiaries (transport undertakings) of the aid operate on a variety of markets (insurance markets, transport services market) where intra-Union trade takes place. The sectors concerned are open to competition at Union level and therefore are sensitive to any measure in favour of certain undertakings in one or more Member States. Therefore, the present measure is liable to distort competition and to affect trade between Member States.

4.1.6. Conclusion on the existence of aid

- (53) Considering the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article.

4.2. Lawfulness of aid

- (54) By notifying the measure before putting it into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

4.3. Compatibility of aid

- (55) According to Article 107(3)(c) TFEU, ‘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’ may be considered to be compatible with the internal market. Thus, to be declared compatible, the aid must contribute to the development of certain economic activities or areas (positive condition), and it must not adversely affect trading conditions to an extent contrary to the common interest (negative condition) ⁽²³⁾.

⁽²²⁾ Judgment of the General Court of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T288/97, EU:T:2001:115, para. 41 and Judgement of the Court of Justice of 25 July 2018, *Commission v Spain et al*, C 128/16 P, EU:C:2018:591, para. 85.

⁽²³⁾ Judgment of 22 September 2020, *Austria v Commission (Hinkley Point C)*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

4.3.1. *Positive condition: the aid must facilitate the development of an economic activity*

4.3.1.1. *Facilitation of the development of an economic activity*

- (56) The objective of the measure is to provide reinsurance to the direct beneficiaries to incentivise them to provide insurance to the indirect beneficiaries so that their losses are covered in case of war-like events to eligible transport undertakings. The provision of such insurance will allow eligible transport undertakings to provide their services and carry out activities on the territory of Ukraine during Russian military aggression. The measure will therefore contribute to the development of both the insurance sector and the transport sector in Poland, as well as to promoting and facilitating the trade between Member States (predominantly Poland, but not necessarily exclusively) and Ukraine.

4.3.1.2. *Incentive effect*

- (57) Aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity supported by the aid that it would not have carried out within the same time frame or would only have carried out in a limited or different manner or location, if the aid was not granted. With the notified measure, the Polish authorities expect that participating insurance undertakings will provide insurance coverage related to war-like events to eligible transport undertakings along with the underlying commercial insurance. This will result in additional economic activity of the eligible transport undertakings both on the territory of Ukraine and in Poland that could have not occurred in the absence of sufficient insurance coverage of risk related to war-like events. Likewise, the related part of the underlying commercial insurance product would also not have been provided by the participating insurance undertakings without the notified measure.
- (58) The measure, therefore, facilitates both the development of insurance services as well as the development of transport services aimed at carrying freight and delivering of goods to and on the territory of Ukraine and thereby promoting trade between Member States and Ukraine.
- (59) The measure will thus change the behaviour of potential beneficiaries in such a way that they carry out activities, which they would not carry out without the original measure, as amended, or would carry out in a restricted or different manner (see recitals (3) to (5)). The Commission agrees that the notified measure has an incentive effect, as it induces the beneficiaries to change their behaviour, to engage in additional economic activity, which they would not carry out without the aid.
- (60) The Commission concludes that the measure enables the provision of insurance coverage in an area where no coverage is available in the absence of State intervention.

4.3.1.3. *Compliance with other provisions of Union law*

- (61) The procedure under Article 108 TFEU must never produce a result that is contrary to the specific provisions of the Treaties. Accordingly, a State aid measure which as such or by reason of some of its modalities contravenes

provisions or general principles of EU law cannot be declared compatible with the internal market ⁽²⁴⁾.

- (62) The Commission has not identified any possible breach of Union law that would prevent the measure from being declared compatible with the internal market or of elements suggesting that the original measure, as amended, or the financed activity entails a violation of relevant provisions of Union law.
- (63) The Commission therefore concludes that the measure fulfils the first (positive) condition of the compatibility assessment, i.e., that the aid facilitates the development of an economic activity.

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

4.3.2.1. Positive effects of the aid

- (64) The Commission considers that the measure will establish the possibility of providing insurance coverage of risk of losses stemming from war-like events for eligible transport providers during the ongoing Russian military aggression on the territory of Ukraine by the participating insurance undertakings. This will bring about the positive effects for the development of an economic activity as set out in sub-section 4.3.1.1 above, as well as a material improvement in the availability of transport services in connection with Ukraine, thereby contributing to improving and increasing trade between Member States and Ukraine.
- (65) The measure will thus also contribute towards the achievement of general objectives of the Union towards Ukraine, and more specifically towards achieving the objective pursued by the Association Agreement and its goals of establishing a Deep and Comprehensive Free Trade Area (DCFTA) ⁽²⁵⁾ by removing currently existing impediments to that trade.

4.3.2.2. Necessity of the aid: absence of market delivery due to market failure

- (66) State aid may be deemed necessary where it can bring about a material improvement that the market alone does not deliver. Indeed, State aid measures can, under certain conditions, correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness.
- (67) A market failure exists if markets, left to their own devices, without public intervention fail to deliver an efficient outcome for society. This may arise, for instance, when certain investments are not being undertaken even though the economic benefit for society exceeds their cost.
- (68) The Commission recognises that the core of the insurance business is the quantification of the risks covered and the setting aside of adequate capital

⁽²⁴⁾ Judgment of 23 January 2025, C-490/23 P, *Neos v Ryanair and Commission*, EU:C:2025:32, paragraph 56.

⁽²⁵⁾ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. OJ L 161, 29.5.2014, p. 3.

resources to absorb such risks. Given the currently existing, exceptional circumstances in Ukraine due to the ongoing Russian military aggression, there is a lack of adequate (alternative) metrics for quantification of risks of war-like events. As a result, the inability to quantify risk related to war-like events and therefore to size the required amount of economic capital insurers need to protect themselves against such losses, has led to the refusal of the insurance companies to provide appropriate coverage for risk related to war-like events. Consequently, without the reinsured risk coverage, it is not meaningful to offer the underlying commercial insurance coverage on the market, and thus eligible transport undertakings are left without any suitable insurance product and are thus unable to provide their services on the territory of Ukraine.

- (69) Consequently, the lack of availability of sufficient insurance coverage for risk related to war-like events have introduced inefficiencies in the form of transaction costs unnecessarily incurred when transport undertakings are forced to load their goods onto different providers of transport at the Ukrainian border (see recital (4)). In light of the common interest in supporting and facilitating trade with Ukraine, especially under the current exceptional circumstances, these transaction costs form an impediment to trade that is contrary to the common interest and cannot be addressed by the market itself.

4.3.2.3. Appropriateness of the aid as a policy instrument

- (70) The Member State must demonstrate that the aid is appropriate to address the identified market failure and to achieve the objectives pursued by the aid. State aid is not appropriate if the same outcome is achievable through other less distortive measures.
- (71) The Polish authorities explained that there are no less distortive measures capable of making an equally effective contribution to the development of transport services at issue and the underlying insurance services available (see recital (31)).
- (72) In light of the submitted evidence (e.g., see recital (32)) the Commission concurs with the Polish position and considers that alternative instruments do not constitute appropriate and sufficient means to solve the problem of market failure in the intervention areas and that the notified measure is an appropriate policy instrument for addressing the market failure concerning the provision of transport services on the territory of Ukraine currently affected by the Russian military aggression, and the provision of underlying insurance coverage of risks related to war-like events.

4.3.2.4. Proportionality: Aid limited to the minimum necessary

- (73) Aid is considered proportionate if its amount is limited to the minimum necessary and the potential distortions of competition are minimised. A number of conditions are necessary to minimise the State aid involved and the potential distortions of competition.
- (74) The measure is designed in a way to keep market forces working under the safety net provided in the form of the State provided reinsurance. By sharing losses and premiums, it is excluded that the participating insurance undertakings conduct an adverse selection and transfer only bad risks to the State. Furthermore, the participating insurance undertakings will continue to administer the provision of

insurance also for the part for which risks and premiums will be taken over by the State, and for which they will be remunerated in the form of the commission fee (see recitals (15) to (21)).

- (75) The model of sharing risk and return also ensures that the vital function of risk assessment provided by the participating insurance undertakings is upheld. By retaining a significant amount of risk, the participating insurance undertakings still have an incentive to provide an individualised risk assessment of transport undertakings. It therefore appears that the chosen model is well justified as a way that effectively limits the intervention of the State while still providing the desired result that would not be achievable as an outcome of pure market forces alone.
- (76) The measure limits State coverage of reinsured risk to 80% and ensures that, in any case, 20% of the reinsured risk will be retained by the participating insurance undertaking. This design ensures that the private insurer's decision-making process incorporates economic considerations and is not detached from market logic, providing for an overall risk monitoring by private insurers.
- (77) The reinsured risk premiums to be paid by participating insurance undertakings to the State represented by KUKI amount to 80% of the reinsured risk premiums paid by the eligible transport undertakings after having retained the commission fees in the amount of 23% of the reinsured risk premiums.
- (78) The Commission notes that the parts of premiums retained by the participating private insurance undertakings, amounting to 25% of the reinsured risk premiums, are in line with standard market practice and are proportional to the costs incurred by private insurers related to the brokering and administration of insurance contracts. This has been sufficiently evidenced by the Polish authorities (recitals (16) to (21)) on the basis of publicly available market data and benchmarks.
- (79) The pricing of the transport services at issue is not affected by the measure and remains result of market forces under full competition of eligible transport undertakings, whose eligibility criteria represent no additional barriers to entry. Moreover, the transport services at issue, i.e., transport of goods to the territory of Ukraine affected by the Russian military aggression remain subject to competition from Ukrainian providers.
- (80) Therefore, as a result of the measure, no excessive profits for the participating insurance undertakings will ensue, nor will the eligible transport undertakings benefit disproportionately from the measure. The Commission thus concludes that the aid is proportional with the objectives of the scheme.

4.3.2.5. Transparency of the aid

- (81) The Polish authorities will publish in the Commission's transparency award module the full text of this decision and the legal basis of the measure or a link to these documents and full information about the scheme, including its conditions and budget, will be made available at KUKI's website both in English and Polish. In addition, Poland will publish information on the scheme of the website of KUKI (see recital (29)).

4.3.2.6. *Avoidance of undue negative effects on competition and trade*

- (82) Article 107(3)(c) TFEU requires the assessment of any negative effects on competition and on trade in the relevant markets, that is, in this case, (i) in the market of insurance services providing insurance coverage for risks related to war-like events as well as the underlying commercial insurance among the participating insurance undertakings and (ii) in the market of transport services on the territory of Ukraine during the Russian military aggression.
- (83) The negative effects of the measure on the internal market are likely to be limited for the following reasons.
- (84) Firstly, the measure is open to all insurance undertakings legally authorised to operate in Poland under the same conditions (see recital (6)). The aid does not constitute a barrier to the operation of the internal market for insurance services. In particular, the aid should not be limited to insurance provided by a single insurance company or group of companies nor be made conditional on the insurance contract being taken out with a company established in the Member State concerned. The Polish authorities have confirmed that the aid is not limited to insurance provided by a single insurance company or group of companies and that the aid is not conditional on the insurance contract being concluded with a company established in Poland only.
- (85) The measure is therefore non-discriminatory with respect to insurance undertakings and should have no significant effect on the market position of all potential beneficiaries. Therefore, it can be concluded that distortions on competition among insurance undertakings is sufficiently minimised. The Commission notes that original allocation of the budget of the measure to participating insurance undertakings based on their market shares on the Polish market is a reasonable and acceptable way to administer the scheme given the uncertainty concerning their interest in the take-up of the funds allocated for the measure. The Commission also notes that the participation of potential new entrants among participating insurance undertakings in the scheme is sufficiently ensured even without their prior activity on the Polish market, and there exist no unusual administrative barriers to entry for the new entrants, if they wish to participate in the scheme.
- (86) Secondly, the measure is also open to all transport services legally authorised to operate in Poland under the same conditions (see recital (4)). The aid does not constitute a barrier to the operation of the internal market for transport services. In particular, the aid should not be limited to transport services provided by a single transport undertaking or group of companies nor be made conditional on the insurance contract being concluded with a transport undertaking established in the Member State concerned. The Polish authorities have confirmed that the measure is not limited to transport services provided by a single transport company or group of companies and that the aid is not conditional on the insurance contract being concluded with a transport undertaking established in Poland only. The measure is therefore also non-discriminatory with respect to transport undertakings and is unlikely to have any significant effect on the market position of all potential beneficiaries.

- (87) Thirdly, the measure's relatively short duration further limits any distortions of competition, as the measure is aimed at addressing the specifically difficult period with a fixed duration until 30 June 2027 (see recital (25)).
- (88) The Commission further notes that, based on information provided by the Polish authorities, transport activities to and from Ukraine made up less than 2% of international transport operations performed by eligible transport undertakings in 2020. Given the small share of the affected transport activities in the overall transport operations, it is unlikely that the measure will significantly affect competition and trade at the level of either direct beneficiaries or indirect beneficiaries.
- (89) However, notwithstanding the above considerations and despite having shown the current lack of interest of private insurance undertakings in the coverage of war related risks that constitute the notified measure, and despite the corresponding market failure being properly identified, it cannot be entirely excluded that some private market actors may have been able over time to develop insurance products that would have covered similar war-related risks. Additionally, even though the notified measure is not specifically targeted at beneficiaries likely to be already dominant on the market, for various reasons it cannot be excluded that the take-up of the budget allocated for the measure by KUKI, may be disproportionately greater for participating insurance undertakings with significant market power or a dominant position, thereby potentially affecting the competition dynamics on the Polish market of insurance undertakings.
- (90) The potential for such a risk seems to be much lower in the relevant market of eligible transport undertakings. However, some, even if small, negative effect on trade among Member States consists potentially in the fact that the capacity of the eligible transport undertakings to provide services, which is not unlimited, will be diverted, as a result of the implementation of the notified measure, to transporting goods to and from Ukraine, rather than being put in use on purely market terms for transport services in trade between Poland and other Member States.

4.3.3. Weighing up the positive effects of the aid with the negative effect on the internal market (balancing test)

- (91) A carefully designed State aid scheme should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (92) The notified measure contributes to the development of the economic activities of insurance services and transport services between Member States (predominantly Poland, but not necessarily exclusively) and Ukraine.
- (93) The notified measure is appropriate to address the identified market failure (see under section 4.3.2.2 above) and to achieve its objectives.
- (94) The notified measure is also proportionate (see under section 4.3.2.4 above). Its design ensures that the aid is limited to the minimum necessary and that its negative effects on competition and on trade in the relevant markets are limited.

- (95) The Commission considers that any potential negative effects would not unduly affect trading conditions to the extent contrary to the common interest for the reasons explained at recitals (82) to (90).
- (96) Considering the above, the Commission considers that the positive impact of the measure in developing the economic activities at issue outweighs any potential negative effects on competition and trade. On balance, the measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates development of transport services related to conducting trade in goods between Member States and Ukraine and the underlying insurance services during times when no purely private market solutions are available. Moreover, such aid does not adversely affect competition to an extent contrary to the common interest.

5. CONCLUSION

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Teresa RIBERA
Executive Vice-President

