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**Subject: State Aid SA.43594 (2015/N) – Poland  
Polish rescue and restructuring aid scheme for SMEs**

Sir,

## **1. PROCEDURE**

- (1) On 12 November 2015, Poland notified a rescue and restructuring aid scheme for SMEs ("the scheme").
- (2) By letters dated 11 December 2015, 25 February 2016 and 15 March 2016, the Commission requested additional information on the notified scheme, to which Poland replied on 25 January 2016, 22 April 2016 and 6 July 2016.

## **2. DESCRIPTION OF THE SCHEME**

### **2.1. Objective**

- (3) The objective of the scheme is the rescuing and restructuring of SMEs in difficulty in Poland. To this end the scheme foresees rescue aid, temporary restructuring support and restructuring aid.

Jego Ekscelencja  
Pan Witold WASZCZYKOWSKI  
Minister Spraw Zagranicznych  
Al. J. Ch. Szucha 23  
00-580 Warszawa  
POLSKA

## 2.2. Legal basis

- (4) The scheme is subject to the provisions contained in the Regulation on the rescue and restructuring aid<sup>1</sup> ("the Regulation") and the Restructuring Law<sup>2</sup>. On 6 July 2016, upon preliminary examination of the notified scheme by the Commission, Poland submitted draft amendments to the Regulation and the Restructuring law. The Commission's assessment is based on the provisions of the scheme including these amendments.
- (5) Under the Regulation, the granting authority (Minister of State Treasury) will provide rescue aid and temporary restructuring support in the form of loans as well as restructuring aid in the form of loans, grants, supplemental contributions<sup>3</sup>, acquisition of shares in the increased share capital or participation in the increase of share capital through the increase of the nominal value of shares, acquisition of bonds, deferral of liabilities towards the Ministry of State Treasury and conversion of a rescue loan to equity. Under the Restructuring Law, the granting authorities (public creditors, e.g. the responsible Minister, local authorities, Social Security Institution, tax authorities) will provide only restructuring aid in the form of deferral or repayment in instalments of public liabilities<sup>4</sup>.

## 2.3. Beneficiaries

- (6) The scheme is addressed to SMEs in difficulty located in Poland, active in all sectors excluding undertakings operating in the coal, steel or financial sector.
- (7) An undertaking is considered to be in difficulty if it fulfils the criteria under domestic law for being placed in collective insolvency proceedings or if more than half of its share capital has disappeared as a result of accumulated losses.
- (8) Rescue aid and temporary restructuring support can also be granted to SMEs that are not in difficulty but that are facing acute liquidity needs due to exceptional and unforeseen circumstances.
- (9) Newly created undertakings during the first three years following the start of operations are not eligible for aid under the scheme.
- (10) Aid to companies belonging to or being taken over by a larger business group can only be granted if it is demonstrated that their difficulties are intrinsic and are not

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<sup>1</sup> Rozporządzenie Ministra Skarbu Państwa z dnia 20 marca 2015 r. w sprawie pomocy publicznej udzielanej w celu ratowania lub restrukturyzacji przedsiębiorców, Dz. U. z 2015 r., poz. 531 ze zm.

<sup>2</sup> Ustawa z dnia 15 maja 2015 r. – Prawo restrukturyzacyjne, Dz. U. z 2015 r., poz. 978.

<sup>3</sup> In cases referred to in Article 20(a)(3) of the Law on commercialisation and privatisation (Ustawa z dnia 30 sierpnia 2006 r. o komercjalizacji i prywatyzacji, Dz.U. z 2013 r., poz. 216 ze zm.). That article stipulates that the Minister of State Treasury can contribute in cash to the share capital of an undertaking or provide it with supplemental contributions.

<sup>4</sup> Those liabilities include taxes, social security contributions payable by employer, contributions to the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*), the Labour Fund (*Fundusz Pracy*), the Early Retirement Fund (*Fundusz Emerytur Pomostowych*), social and health security contributions of a debtor, other liabilities towards the Social Security Institution (*Zakład Ubezpieczeń Społecznych*), including penalty interest, execution costs, warning letter costs and other fees, the employee benefits disbursed from the resources of the Guaranteed Employee Benefits Fund and guarantees granted by the State Treasury and local self-government authorities.

the result of an arbitrary allocation of costs within the group and their economic situation is too serious to be dealt with by the group itself.

#### **2.4. Conditions for granting of aid**

- (11) The notified scheme provides that the maximum amount of aid that can be granted to any one undertaking within a single restructuring process may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.
- (12) Under the scheme, aid can only be granted if it contributes to a well-defined objective of common interest, if the need for a State intervention is shown, if the aid measure is appropriate, if the aid has an incentive effect, if the aid is proportionate and if any undue negative effects on competition and trade between Member States are avoided.
- (13) According to the scheme, aid can be granted if it prevents social hardship or addresses market failure, in particular understood as:
  - The risk of exit of an innovative SME or an SME with a high growth potential entailing negative consequences for a given region or sector;
  - The risk of exit of an SME with strong links to other local or regional undertakings, particularly other SMEs;
  - The failure of financial markets leading to the increased number of bankruptcies;
  - Other hardships, duly substantiated by the beneficiary.
- (14) Furthermore, the granting of restructuring aid under the scheme is conditional upon authorisation of a restructuring plan that must be credible, feasible and demonstrate the return to long-term viability of the beneficiary on the basis of realistic assumptions and within a limited timeframe.
- (15) According to the scheme, aid can be granted if an undertaking provides a comparison with a credible alternative scenario not involving State aid, in which it is shown how the relevant objective of common interest would not be attained, or would be attained to a lesser degree, in the case of that alternative scenario. In addition, it needs to be shown that the aid has an incentive effect by demonstrating that in the absence of the aid the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective of common interest.
- (16) According to the scheme rescue aid can only be granted in the form of loans. The interest rate of the rescue loan must not be lower than the base rate plus 400 basis points, that is to say the rate set out in the Reference Rate Communication<sup>5</sup> for weak undertakings offering normal levels of collateralisation, and must be increased by at least 50 basis points in case the rescue aid period is extended.

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<sup>5</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

- (17) Rescue aid is only granted for a period of not more than six months. Before the end of this period a restructuring or liquidation plan must be approved.
- (18) Rescue aid must not be used to finance acquisition of assets or business development, unless they are required for the survival of the beneficiary during the rescue period.
- (19) Restructuring aid under the scheme is granted in the form of loans, grants, equity investments, acquisition of bonds, conversion of a rescue loan to equity and deferral of liabilities towards the Ministry of State Treasury.
- (20) The Regulation provides that the form of restructuring aid chosen must be appropriate to the issue that it intends to address, in particular to liquidity or solvency problems. The granting authority will assess the reasons for difficulty by analysing the aid application and financial situation of an undertaking in terms of liquidity and solvency and, on this basis, will decide case by case whether the chosen form of aid is appropriate to tackle the identified problems. The aid applicants are obliged to submit i.a. their financial statements, auditor's opinions and the analysis of their economic situation for the previous two years which will be used by the granting authority to perform the assessment. The Restructuring Law applies to companies which are insolvent or threatened with insolvency and provides only for aid instruments that are appropriate to address their problems, that is to say deferral or repayment in instalments of public liabilities.
- (21) Temporary restructuring support under the scheme is granted in the form of loans. The interest rate of such loan must not be lower than the base rate plus 400 basis points, that is to say the rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation, and must be increased by not less than 50 basis points once 12 months have elapsed from the granting of aid (less any immediately preceding period of rescue aid).
- (22) Temporary restructuring support may only be granted for a period not exceeding 18 months, less any immediately preceding period of rescue aid. Before the end of that period a restructuring or liquidation plan must be approved or the loan must be reimbursed.
- (23) Before the granting of temporary restructuring support, a simplified restructuring plan must be submitted and approved by granting authority. This plan must identify the actions necessary to restore long-term viability of the beneficiary without State support.
- (24) Rescue aid and temporary restructuring support are limited to the amount needed to keep the beneficiary in business for the period the aid is granted for (maximum of 6 months for rescue aid and of 18 months for temporary restructuring support). This amount will be calculated on the basis of the formula set out in Annex I of the Guidelines. Any aid exceeding the result of that calculation must only be authorised if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 6 months (for rescue aid) or 18 months (for temporary restructuring support).
- (25) The scheme provides that the restructuring aid should be limited to the minimum necessary to restore long-term viability of the beneficiary and must be accompanied by an own contribution.

- (26) The own contribution can be considered adequate if it amounts to at least 40% of the restructuring costs in case of medium-sized enterprises or at least 25% of the restructuring costs in case of small enterprises. Under the Restructuring Law, in exceptional circumstances and in cases of particular hardship, the share of the own contribution in the restructuring costs can be lower than mentioned above, provided that it remains significant. Furthermore, the own contribution must be real and free of State aid.
- (27) In addition, the scheme provides that the own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary.
- (28) According to the Regulation, where State support is given in a form that enhances the beneficiary's equity position (e.g. grant, equity investment, conversion of rescue loan to equity), incumbent shareholders and subordinated creditors must absorb losses in full before State intervention takes place. Subordinated creditors should contribute to the absorption of losses via conversion of debt to equity or its write-down. Poland will prevent cash outflows from the beneficiary to holders of equity or subordinated debt during the restructuring period. Aid granted under the Restructuring law will only be provided in the form of measures that do not enhance the beneficiaries' equity position
- (29) The scheme provides that the "one time, last time" principle must be respected. In particular, it is stipulated that if less than ten years have elapsed since rescue aid or temporary restructuring support was granted, the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), no further aid may be granted on the basis of the scheme except for in the situations foreseen in point 112 of the Guidelines.
- (30) The scheme provides that, in case of restructuring aid granted to medium-sized undertakings, measures to limit distortions of competition must be taken. Such measures include in particular divestment of assets, reduction of capacity or market presence. The measures concerned must be taken without undue delay, within the restructuring period and in the market where the undertaking will have a significant market position after restructuring. Closure or limitation of loss-making activities which would at any rate be necessary to restore long-term viability is not considered sufficient. In addition, the scheme provides that the behavioural measures, that is to say non-acquisition of shares and non-publicizing of restructuring aid as a source of competitive advantage during the restructuring period, must be applied in all cases.
- (31) Under the scheme, small undertakings are not subject to measures to limit distortions of competition. However, the scheme provides that such small undertakings must not increase their capacity during the restructuring period.
- (32) In line with Article 25(3) of the Law on proceeding in State aid cases<sup>6</sup> State aid cannot be granted to undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and

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<sup>6</sup> Ustawa z dnia 30 kwietnia 2004 r. o postępowaniu w sprawach dotyczących pomocy publicznej, Dz.U. z 2007 r., nr 59, poz. 404 ze zm.

incompatible with the internal market. That provision applies without exception to all beneficiaries of State aid granted in Poland.

- (33) Poland committed to fulfil the obligation concerning the transparency of the aid. The information required in point 96 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>7</sup> ("the Guidelines") will be published on a comprehensive State aid website administered by the Office of Competition and Consumer Protection.

## **2.5. Budget and duration of the scheme**

- (34) The scheme entered into force on 1 September 2015<sup>8</sup> and will expire on 31 December 2020. Poland confirmed that until the decision approving the scheme is adopted by the Commission, Poland respects the standstill obligation under Article 108(3) TFEU.
- (35) The scheme foresees a yearly budget of PLN 153 million (c. EUR 36.2 million<sup>9</sup>) over the period 2016-2020, including PLN 53 million in the form of restructuring of public liabilities, therefore, an overall budget for the entire duration of the scheme amounts to PLN 765 million<sup>10</sup> (c. EUR 181 million).

## **3. ASSESSMENT**

### **3.1. Existence of State aid**

- (36) Article 107(1) TFEU provides 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 internal market.
- (37) Poland notified the scheme as aid scheme and does not question the qualification of measures taken on its basis as State aid.
- (38) The measures provided for under the Regulation will be granted by the Minister of State Treasury from the State-owned Entrepreneurs' Restructuring Fund (*Fundusz Restrukturyzacji Przedsiębiorców*). The measures provided for under the Restructuring Law will be granted by the relevant public creditors from the State budget or/and from the budgets of the local self-government authorities. Thus, the measures to be granted under the scheme clearly involve State resources and are imputable to the State.
- (39) The measures under the scheme will be granted to selected beneficiaries only and on terms that these beneficiaries, being undertakings in difficulty, would not obtain on the market. As such, the measures concerned confer on the beneficiaries

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<sup>7</sup> OJ C 249 of 31.7.2014, p. 1.

<sup>8</sup> The Regulation entered into force in April 2015 and the relevant provisions of the Restructuring law on 1 September 2015.

<sup>9</sup> Calculated at the average exchange rate of the National Bank of Poland as of the notification date (EUR = PLN 4.2245).

<sup>10</sup> Including 265 million in the form of forgone tax revenues (PLN 53 million p.a.)

of the scheme selective advantage. The public support granted in this manner, furthermore, strengthens the position of the beneficiaries compared to that of their competitors in Poland and in other Member States and must therefore be regarded as distorting competition and affecting trade between Member States.

- (40) Therefore, the Commission concludes that the measures granted on the basis of the scheme constitute State aid within the meaning of Article 107(1) TFEU.

### **3.2. Compatibility of the aid with the internal market**

- (41) The notified scheme provides for granting of rescue and restructuring aid as well as temporary restructuring support to SMEs in difficulties. In view of this, the Commission has examined the scheme in the light of Article 107(3) (c) TFEU and, in particular, on the basis of the Guidelines, which foresee, in their point 37, the possibility of authorising aid schemes for SMEs.

#### *3.2.1. Beneficiaries*

- (42) In accordance with point 37 of the Guidelines, aid under the scheme can only be granted to SMEs.
- (43) As foreseen in point 18 of the Guidelines, the scheme excludes from its sectoral scope any undertakings operating in the coal, steel and financial sector.
- (44) In accordance with point 19 of the Guidelines, aid under the scheme can only be granted to undertakings in difficulty as defined in point 20 of the Guidelines.
- (45) Additionally, in line with point 29 of the Guidelines, by way of derogation to point 19 of the Guidelines, rescue aid and temporary restructuring support can also be granted to undertakings that are not in difficulty in the meaning of point 20 of the Guidelines but that have acute liquidity needs due to exceptional and unforeseen circumstances.
- (46) The scheme excludes aid to newly created undertakings as defined in point 21 of the Guidelines. Aid to companies belonging to or being taken over by a larger business group can only be granted under the conditions laid down in point 22 of the Guidelines.

#### *3.2.2. Aid instruments*

- (47) In line with points 25-28 of the Guidelines the scheme foresees the granting of three types of aid, namely rescue aid, restructuring aid and temporary restructuring support, through different possible aid instruments, as described in recital (5).

#### *3.2.3. Conditions for granting of aid*

- (48) In line with point 105 of the Guidelines, the scheme limits the maximum amount of aid that can be awarded to any one undertaking within a single restructuring process to EUR 10 million.
- (49) As foreseen in point 38 of the Guidelines, aid can only be granted if it contributes to a well-defined objective of common interest, if the need for a State intervention is shown, if the aid measure is appropriate, if the aid has an incentive effect, if the

aid is proportionate and if any undue negative effects on competition and trade between Member States are avoided. In addition, Poland committed to fulfil the requirements concerning the transparency of aid, as required by point 96 of the Guidelines.

- (50) The scheme provides that aid can be granted if it prevents social hardship or addresses market failure as defined in point 107 of the Guidelines. In addition, the granting of restructuring aid is conditional upon authorisation of a restructuring plan that must be credible, feasible and demonstrate the return to long-term viability of the beneficiary on the basis of realistic assumptions and within a limited timeframe.
- (51) In line with points 53 and 59 of the Guidelines Poland must establish the need for State intervention and that the aid has an incentive effect, as described in recital (15).
- (52) The appropriateness of any rescue aid must be demonstrated in accordance with the requirements laid down in points 55 (a)-(c) and (e), 56 as well as 109 of the Guidelines. As regards restructuring aid, the Regulation provides that its form must be appropriate to the issue that it intends to address, as described in recital (20). The Restructuring Law applies to companies which are insolvent or threatened with insolvency and provides only for aid instruments that are appropriate to address their problems, that is to say deferral or repayment in instalments of public liabilities. Therefore, the scheme ensures that the form of restructuring aid is appropriate, in line with point 58 of the Guidelines.
- (53) The proportionality of rescue aid and temporary restructuring support must be established on the basis of the formula set out in Annex I to the Guidelines. Any aid exceeding the result of that calculation must only be authorised if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 6 months (for rescue aid) or 18 months (for temporary restructuring support), as required in points 60 and 117 of the Guidelines.
- (54) Restructuring aid is regarded to be proportionate only if, in line with point 61 of the Guidelines, it is limited to the minimum necessary to restore long-term viability of the beneficiary and, furthermore, only if it is accompanied by an adequate own contribution, in line with point 111 of the Guidelines. The scheme provides that own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary (point 62 of the Guidelines), that it must be real and free of aid (point 63) and that, where in exceptional circumstances and in cases of particular hardship, a contribution lower than 25% (for small enterprises) or 40% (for medium-sized enterprises) of the restructuring costs is accepted, such contribution must still remain significant (point 64).
- (55) In line with points 65-69 of the Guidelines, aid granted under the Regulation that enhances the beneficiary's equity position, must be granted on terms that ensure adequate burden sharing by existing investors. Aid granted under the Restructuring law will only be provided in the form of measures that do not enhance the beneficiaries' equity position (deferral or repayment in instalments of public liabilities), and, therefore, in line with the Guidelines, no burden sharing is required.

- (56) The scheme stipulates that the "one time, last time" principle must be respected. In addition, it provides that measures to limit distortions of competition in line with points 77-93 as well as 113 of the Guidelines must be taken, as described in recitals (30) and (31).
- (57) Furthermore, the scheme expressly excludes the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (58) As regards temporary restructuring support, the scheme implements the requirements set out in points 115-117 of the Guidelines.
- (59) Finally, while the scheme entered into force on 1 September 2015<sup>11</sup>, Poland confirmed that it respects the standstill obligation under Article 108(3) TFEU. The scheme provides that it will, in line with the duration of the Guidelines (see its point 135), expire on 31 December 2020.
- (60) In view of the above, the Commission concludes that the scheme fulfils all compatibility criteria laid down in the Guidelines and is, therefore, compatible with the internal market.
- (61) This decision shall take effect as of the entry into force of the draft amendments to the Regulation and the Restructuring law submitted by Poland on 6 July 2016, as mentioned in recital 2.2.

#### 4. CONCLUSION

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

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European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)



Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission