Subject: State aid N 364/2010 – Poland
Aid scheme for compensation of damage caused by the floods in Poland – amendment to N 235a/2010

Sir,

1. PROCEDURE

(1) By letter of 12 August 2010, registered on the same day, the Polish authorities notified to the Commission an amendment to the aid scheme N235a/2010 - Aid scheme for compensation for damage caused by the floods in Poland in May and June 2010 (outside the field of Annex I of the Treaty and the part of the forestry sector not covered by the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013).

(2) Additional information was requested by the Commission on 16 August 2010 (D/8732) and 23 September 2010 (D/9240) and was provided by the Polish authorities on 18 August 2010 (A/11793) and 27 September (A/12725) respectively.

2. DESCRIPTION OF THE AMENDMENT

2.1. Change to the legal basis

(3) As a result of the notified amendment, the legal basis for the aid scheme will consist of:
   – the Law of 24 June 2010 on special solutions to alleviate the effects of the heavy rainfall that took place in May and June 2010 in Poland; and

   1 Ustawa z dnia 24 czerwca 2010 r. o szczególnych rozwiązań związanych z usuwaniem skutków powodzi z maja i czerwca 2010 r.

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– the (draft) Law on the amendment of the Law on special solutions to alleviate the effects of the heavy rainfall that took place in May and June 2010 in Poland and the Law on the promotion of development of rural areas with the participation of funds of the European Agricultural Fund for Rural Development.

(4) The Polish authorities explicitly stated in the notification that any aid to be granted pursuant to the modification of the aid scheme (and its legal basis) to enterprises in the agricultural sector will be the subject of a separate notification. Therefore, the present decision does not concern activities linked to the production, processing and marketing of agricultural products of Annex I of the Treaty nor the part of the forestry sector covered by the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013.

2.2. Objective of the amendment

(5) The aid scheme, as originally approved by the Commission, only allowed for aid to be granted in order to compensate for damages caused by the natural disaster resulting from heavy rainfalls that affected Poland in May and June 2010. In the course of August 2010, however, certain other areas of Poland have been affected by exceptionally heavy rainfalls.

(6) The Polish authorities submitted to the Commission data of the Institute of Meteorology and Water Management confirming this exceptionally heavy rainfall that resulted in floods and landslides in August 2010. Certain localities listed in the Regulation of 10 August 2010 amending the regulation on communes and localities in which special rules on reconstruction, renovation and demolition of buildings destroyed or damaged as a result of natural catastrophe apply, were struck by the natural catastrophe of August. Consequently, the Polish authorities decided to enlarge the scope of the scheme to allow for granting of aid for damages caused by the floods and landslides of August and any further floods and landslides taking place in 2010.

(7) In view of the inclusion of subsequent floods and landslides causing damages as grounds for receiving aid under the scheme, the deadlines for the beneficiaries to apply for aid, as well as the timeframe that will be taken into account for determining the damage as defined in N235a/2010, will not be set in the Law on special solutions to alleviate the results of the floods itself. After the amendment comes into force such deadlines and timeframes will be set by the Council of Ministers in a separate decree, promulgated on the basis of the aforementioned Law, as amended. Notwithstanding the foregoing change, any aid under the notified scheme may only be granted until 31 December 2012.

2 Projekt ustawy o zmianie ustawy z dnia 24 czerwca 2010 r. o szczególnych rozwiązaniach związanych z usuwaniem skutków powodzi z maja i czerwca 2010 r. oraz ustawy o wspieraniu rozwoju obszarów wiejskich z udziałem środków Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich

3 Rozporządzenie Prezesa Rady Ministrów z dnia 10 sierpnia 2010r. zmieniające rozporządzenie w sprawie gmin i miejscowości, w których stosuje się szczególne zasady odbudowy, remontów i rozbiorów obiektów budowlanych zniszczonych lub uszkodzonych w wyniku działania żywiołu (Dz.U. Nr 144, poz. 969).

4 This was the case for the floods of May and June 2010.
2.3. Commitments of the Polish authorities

(8) The Polish authorities committed, in case of floods and/or landslides taking place in 2010 and giving rise to compensation under the present aid scheme, to notify any such disaster event to the Commission. Every notification of a disaster event will contain a description of the natural disaster, the affected area and the expected number of beneficiaries. The Polish Institute of Meteorology and Water Management verifies the existence, the duration and the area affected by the natural disaster. Furthermore, the Polish authorities committed to provide the Commission with a complete list of the municipalities affected by each of the floods and landslides of 2010 separately within 12 months of their occurrence.

2.4. Remaining elements of the aid scheme

(9) The Polish authorities confirmed that the tentative budget of the aid scheme, as approved under the number N 235a/2010, will remain unchanged.

(10) The Polish authorities further confirmed that all other elements of the aid scheme, as approved by the Commission under the number N 235a/2010, remain unchanged.

(11) The Polish authorities confirm that the notification does not contain business secrets.

(12) In view of the urgency, the Polish authorities agreed to the Commission decision on the case being taken solely in English as the authentic language.

3. Assessment

(13) The Commission approved the "Aid scheme for compensation for damage caused by the floods in Poland in May and June 2010 (outside the field of Annex I of the Treaty and the part of the forestry sector not covered by the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013)" (N 235a/2010) on 6 August 2010 (decision K (2010) 5639). The Commission considered that the scheme is compatible with the internal market in accordance with Article 107(2)(b) of the Treaty on the Functioning of the European Union ("TFEU").

(14) The Commission considers that the modification of the scheme does not alter such assessment. The conditions for applying Article 107(2)(b) of the TFEU remain in place. The Polish authorities provided information to the Commission on the heavy rainfall of August 2010 and the resulting floods and landslides that allowed the Commission to qualify it as a natural disaster. Additionally, the Polish authorities committed to provide the Commission with a complete list of the municipalities affected by the floods and landslides of 2010 within 12 months of their occurrence.

(15) As far as any potential future floods and landslides taking place in 2010 are concerned, the Commission notes that currently no common definition exists of a natural disaster. The Commission has, however, in its recent case practice.

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5 The tentative budget for the aid scheme was PLN 500 million.
6 State aid N 32/2008 Slovenia – Aid to compensate for the damage caused by the storm and floods of 18.9.2007, State Aid N 463a/2006 Hungary – Reconstruction loan to make good the damage caused
confirmed that floods and landslides can be considered to constitute natural disasters in the meaning of Article 107(2)(b) of the TFEU. Moreover, the Commission notes the commitment of the Polish authorities to notify any future natural disaster events to the Commission. Such notification of a disaster event will contain a sufficiently precise description of the natural disaster, the affected area and the expected number of beneficiaries. The Polish Institute of Meteorology and Water Management verifies the existence, the duration and the area affected by the natural disaster. This information will thus enable the Commission to decide on a case by case basis whether a notified event indeed constitutes a natural disaster in the meaning of Article 107(2)(b) of the TFEU and whether aid may hence be granted under the aid scheme concerned.

(16) The Polish authorities are reminded that no compensation can be paid until the Commission has approved the existence of a natural disaster in such an individually notified case and authorised the aid intended to compensate for damages caused by such a disaster.

(17) The Polish authorities confirmed that the remaining elements of the aid scheme – among others in relation to the definition of beneficiaries, the eligible costs, maximum aid amounts, mechanism to rule out overcompensation – will remain unchanged. Therefore, the amended scheme will continue to meet all the requirements of Article 107(2)(b) of the TFEU.

(18) The Commission notes that the notification does not contain business secrets.

(19) The Commission further notes that the Polish authorities agreed to the decision being taken in English as the authentic language.

4. DECISION

(20) The Commission has accordingly decided

– to consider that the notified aid scheme is compatible with the internal market in accordance with Article 107(2)(b) of the TFEU.

Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-President of the Commission

by the flood 2006, State Aid N 235a/2010 – Poland – Aid scheme for compensation for damage caused by the floods in Poland in May and June 2010 (outside the field of Annex I of the Treaty and the part of the forestry sector not covered by the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013)