



EUROPEAN COMMISSION

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Subject: **State aid – Poland
SA.46318 (2016/N)
Preferential loans for producers of milk, pigmeat, fruits and vegetables
for the repayment of civil law liabilities. Interest-free loans for
producers of milk, pigmeat, fruits and vegetables for the repayment of
non-tax budget receivables under public law**

Sir,

The European Commission ("the Commission") wishes to inform Poland that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 26 August 2016, registered by the Commission on the same day, Poland notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) By letters dated 12 September 2016 and 28 September 2016, the Commission asked for additional information, which the Polish authorities provided in a letter of 20 September 2016 and 3 October 2016, registered by the Commission as received.

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(Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

2. DETAILED DESCRIPTION OF THE AID

2.1. Title

- (3) Preferential loans for producers of milk, pigmeat, fruits and vegetables for the repayment of civil law liabilities. Interest-free loans for producers of milk, pigmeat, fruits and vegetables for the repayment of non-tax budget receivables under public law.

2.2. Objective

- (4) With the present notification the Polish authorities wish to introduce an aid scheme to provide temporary financing for farmers in the milk, pigmeat and fruit and vegetable sectors. The objective of the aid scheme is to help farmers to bridge acute but temporary liquidity shortage caused by the market crisis in these sectors.

2.3. Legal basis

- (5) Cabinet Regulation of 23 August 2016 amending Regulation of 27 January 2015 on the detailed scope and the manner of performing certain tasks of the Agency for Restructuring and Modernisation of Agriculture (short: 'the Cabinet Regulation') [*Rozporządzenie Rady Ministrów zmieniające rozporządzenie z dnia 27 stycznia 2015r. w sprawie szczegółowego zakresu i sposobów realizacji niektórych zadań Agencji Restrukturyzacji i Modernizacji Rolnictwa, Dz.U. 2015, poz. 1608, z późn. zm.*]

2.4. Budget

- (6) The aid will be financed from the State budget and the total aid amount under the present notified scheme will not exceed:
- (a) in case of interest-free loans: PLN 63.240.000 (approx. EUR 14.7 million¹);
 - (b) in case of preferential loans: PLN 380 million (approx. EUR 88 million).

2.5. Aid instrument

- (7) Aid will be granted in form of interest-rate subsidies (under preferential loans or/and interest-free loans).
- (8) The aid amount will be calculated as the gross grant equivalent of the aid. Formulas according to which the gross grant equivalent is calculated are defined in the Regulation of the Council of Ministers² and are based on the

¹ Exchange rates of 20.09.2016

² Cabinet Regulation of 11.8.2004 on detailed method of calculation of state aid granted in different forms [*Rozporządzenie Rady Ministrów z dnia 11 sierpnia 2004 r. w sprawie szczegółowego sposobu obliczania wartości pomocy publicznej udzielanej w różnych formach, Dz.U. Nr 194, poz. 1983, z późn. zm.*]

Communication from the Commission on the revision of the method for setting the reference and discount rates³.

- (9) As aid will be granted in instalments, the Polish authorities confirmed that aid/eligible costs will be discounted to its/their value at the moment of granting the aid. The interest rate to be used for discounting purposes will be the discount rate applicable on the date of granting the aid.

2.6. Duration

- (10) According to the national legal basis, aid may be granted with effect from the date on which the Commission issues a positive decision on compatibility of the State aid with the internal market. Aid can be granted until 30 April 2017.

2.7. Beneficiaries

- (11) The beneficiaries are micro, small and medium-sized enterprises (SMEs) as defined in Annex I of Commission Regulation (EU) No 702/2014⁴, which are active in the primary production of agricultural products in the dairy, pigmeat and fruits and vegetables sectors.
- (12) The number of beneficiaries is estimated to be over 1000.
- (13) Only those agricultural producers that were not firms in difficulty within the meaning of point (35)¹⁵ of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020⁵ (the "Guidelines") on 1 September 2015 can benefit from the aid.
- (14) The Polish authorities committed to suspend the payment of the aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

2.8. Description of the aid scheme

Justification of the scheme

- (15) The macro-economic data submitted by the Polish authorities show that the dairy, pigmeat and fruit and vegetable sectors in Poland have been seriously hit by a market crisis caused by various events (e.g. Russian ban, significant price drops and input price increases etc.), as detailed in the recitals below.
- (16) The Polish authorities explained the following:

³ OJ C 14, 19.01.2008, p. 6.

⁴ OJ L 193, 1.7.2014, p. 1.

⁵ OJ C 204, 1.7.2014, p. 1, as amended by Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 390, 24.11.2015, p. 4).

- (17) On 7 August 2014, the Russian Government introduced a ban on imports into the Russian Federation of certain agricultural products originating in the EU. In June 2015, the Russian authorities decided to maintain the ban until August 2016. In January 2016, the embargo was extended to Turkey, which was a major supplier of fruit and vegetables to the Russian Federation. This exacerbated what was already a difficult situation in agricultural markets, including the markets for milk, pigmeat, and fruit and vegetables.
- (18) There is an imbalance in the milk market resulting from increased milk production and increased supply of milk products on the domestic and EU markets, particularly as a consequence of the abolition of the milk quota system, combined with weaker demand for dairy products in developing countries and the Russian embargo on agricultural and food products from the EU. The need to sell increased quantities of milk in the face of declining international demand puts downward pressure on prices and impacts the viability and liquidity of agricultural holdings. A rapidly growing supply of milk in deteriorating domestic and EU markets, including a reduction of the prices obtained for exports of dairy products and a drop in milk consumption in 2015 (0.5% compared to 2014) resulted in continued falls in farm gate milk prices, which started at the beginning of 2014, following a record high of PLN 155.26/100 kg in December 2013. In the first five months of this year, downward trends in farm gate milk prices have been accelerating. The farm gate price of milk has declined by almost 11% since the beginning of the year, to PLN 102.76/100 kg in May of this year. The farm gate price of milk is 25% lower than in 2014. In Poland, the average farm gate milk price in 2015 was PLN 116.14/100 kg, which was 13.7% lower than in 2014.
- (19) In the pigmeat market, the impact of the Russian ban was also considerable. Producer prices started to decrease significantly in August 2014 and they dropped by around 30% in live weight, to 1.20 EUR/kg, until end of 2015. The pig farmers' revenue dropped by almost 45% between 2013 and 2015 (see the table below). The prolonged period of low prices has led to serious liquidity problems for farmers and a drastic decline in Poland's pig population.
- (20) The situation on the market for fruit and vegetables, which are of highly perishable nature, is heavily dependent on the relation between the supply of the respective varieties and consumer demand for them. Consequently, there is major price volatility in the market for these products. In the case of the fruit and vegetable market, negative effects of the Russian embargo particularly concern fruits which, as fresh fruit or processed fruits, have traditionally been exported to Russia. Most concerned are in particular apples, cherries and black currants (see the table below). The average prices of those fruits drastically decreased immediately after the imposition of the embargo. In 2015, prices have increased, which to some extent has been the consequence of an EU mechanism for the temporary exceptional support for fruit and vegetable producers. In the 2015/2016 season, around 300 tonnes of fruit have been withdrawn from the Polish market. In 2016, the price of this fruit once again returned to levels recorded in 2014.

Fruit prices 2012-2016 (PLN/kg):

Varieties	2012	2013	2014	2015	2016
Dessert apples	1,30	1,15	1,00	1,20	1,00

Cherries for juice	2,90	1,80	1,05	1,20	0,80
Cherries for freezing	3,30	2,35	1,35	1,70	1,45
Black currants	1,75	1,45	0,60	0,55	0,60

Source: Polish Ministry of Agriculture

Indicators of fruit production profitability (%):

Varieties	2012	2013	2014	2015
Apples	130	121	87	104
Cherries	160	114	59	83
Black currants	96	85	30	25

Source: Polish Ministry of Agriculture

- (21) The drop in farmers' revenue in the milk, pig meat and fruit/vegetable sectors is presented in the table below:

	Years		
	2013	2014	2015
Type of holdings in numbers			
Milk holdings	61 964	60 434	50 941
Pig holdings	69 688	50 751	38 631
Fruit/vegetable holdings	43 004	17 225	39 808

Agricultural holdings' income - % change

Type of holdings	2013	2014	2015
Milk holdings	100	97,53	82,21
Pig holdings	100	72,83	55,43
Fruit/vegetable holdings	100	40,05	92,57

Source: Polish Ministry of Agriculture

- (22) The Polish authorities therefore consider that the recent developments in the Polish dairy, pigmeat and fruit/vegetable sectors point to an overall downturn, when compared to previous periods.
- (23) The adverse conditions prevailing in agricultural markets, described in the preceding recitals are such that many farmers are experiencing difficulties processing payments in connection with the management of the agricultural holding.
- (24) Due to the economic situation described above, intermediaries are unwilling to lend to producers in the relevant sectors, especially to SMEs, or are willing to lend only at very high costs. Hence, SMEs in the said sectors are currently facing an acute liquidity shortage.
- (25) According to the Polish authorities, the liquidity shortage and lack of access to credit that SMEs are currently facing represent a sufficient market disruption to

justify the introduction of financial instruments to help SMEs in the sectors concerned. To that end, a system of preferential/ interest-free loans will be set up in order to offset farmers' debts vis-à-vis public and private creditors.

- (26) The Polish authorities consider that the preferential conditions on which the loans will be granted (low /no interest-rates combined with a reasonably long duration) will allow for stabilising the financial situation of the holdings concerned and for later repayment of the loan. Without such aid, the undertakings hit by the market crisis will not be able to continue their production and, therefore, will have to close their businesses. The loans will allow them to bridge their temporary financial difficulties and restore the long-term viability of the sectors concerned.

Description

- (27) The objective of the aid scheme is to facilitate the access to finance of milk, pigmeat and fruit/vegetable producers whose revenues, due to the Russian embargo and the drops in prices on the agricultural markets, are not sufficient to allow them to meet their civil- and public-law liabilities.
- (28) Concerned are in particular the following liabilities: resulting from the sales contracts, leases and loan agreements, liabilities under the guarantees and warranties provided by the State and local government entities, recovery of sums reimbursed in the cases set out in the law on public finances (grants misused or collected unduly or in excess).
- (29) In this context, the Polish authorities confirmed that the aid will not be granted in respect of debts or liabilities resulting from the application of EU law, in particular the law governing the Common Agricultural Policy.
- (30) The competence to grant aid under the present aid scheme lies with the Agency for the Restructuring and Modernisation of Agriculture (hereinafter: 'the Agency').
- (31) Aid will be granted on application by the producer of milk, pigmeat, or fruit and vegetables. The application is submitted to the Head of the District Office of the Agency responsible for the producer's place of residence or registered office not later than 15 October 2016. The producers submit the application for aid before the work on the relevant project has started, i.e. before the relevant loan agreement is concluded.
- (32) The application for aid will include:
- (a) the applicant's first name, surname, place of residence and address, or name, registered office and address;
 - (b) the identification number issued pursuant to the provisions on national registration systems for producers, agricultural holdings and applications for payment;
 - (c) the applicant's PESEL (Universal Electronic Population Register System) identification number or tax identification number (NIP) and, in the case of natural persons who are not Polish nationals, their passport number or other identification document number;

- (d) the amount of civil- or public-law liabilities, together with copies of documents proving the existence of those liabilities.
- (33) The following must be enclosed with the application for aid:
- (a) a statement by the producer of milk, pigs, or fruit and vegetables to the effect that their revenues are insufficient to finance their civil-law and/or public-law liabilities;
 - (b) copies of invoices or VAT invoices proving the reduced revenues.
- (34) The maximum aid amount per beneficiary cannot exceed the gross grant equivalent of EUR 15.000.

Preferential loans

- (35) Under the present aid scheme, the Agency will grant financial assistance to agricultural producers referred to in recital (11) whose revenues are not sufficient to cover their civil-law liabilities incurred between 7 August 2014 and the end of 2015 in connection with the milk, pig meat or fruit/vegetable production.
- (36) The aid consists of subsidised interest on bank loans (recital (39)(b)) with a term of not more than 8 years granted with a view to financing civil-law liabilities.
- (37) The amount of the bank loans covered by the aid may not exceed the amount of the civil-law liability, nor may it exceed PLN 5 million (approx. EUR 1.16 million) per agricultural holding. The amount of PLN 5 million will be reduced by the amount of the preferential loan referred to in recitals (40)-(44) below granted to the same farmer.
- (38) Interest rates on bank loans referred to above may be variable and may not be more than the WIBOR⁶ reference rate established for loans on the interbank market granted for a period of 3 months (WIBOR 3M), rounded to two decimal places, plus no more than 1.7 percentage points.
- (39) Interest accruing to the bank will be paid by:
- (a) the borrower, at 2.5%, but at 1% for the first two years following the date on which the credit agreement is concluded;
 - (b) the Agency, which shall pay the remainder, subject to the proviso that the interest rate subsidy may not exceed the total amount of State aid, which itself may not exceed 40% of the amount of the bank loan.

Interest-free loans

- (40) Under the present aid scheme, the Agency will also grant financial assistance to producers referred to in recital (11) whose revenues are not sufficient to finance non-tax public-law liabilities incurred between 7 August 2014 and the end of 2015 in connection with the milk, pig meat or fruit/vegetable production (hereinafter: 'outstanding debts').

⁶ Warsaw Interbank Offered Rate (Polish domestic reference rate for credits).

- (41) The aid will, for a period of not more than 10 years, consist of interest-free loans to finance outstanding debts.
- (42) The loans may not exceed the amount of the outstanding debts. The amount of outstanding debts does not include interest.
- (43) The aid is granted on the basis of a loan agreement concluded between the Agency and a beneficiary.
- (44) The loan is disbursed in two instalments, as follows:
 - (a) the first instalment is disbursed in 2016 at a rate of up to 50% of the amount of the loan;
 - (b) the second instalment is disbursed in 2017 upon proof of repayment of the outstanding debts in the amount paid in the first instalment of the loan; within one month from the date of payment of the second instalment, the borrower has to prove the repayment of outstanding debts under the second instalment of the loan.

Further details

- (45) The Polish authorities explained that, with the above conditions, the scheme is proportional and limited to what is strictly necessary to overcome the temporary liquidity shortage, since the aid does not exceed the losses of the beneficiaries.
- (46) The Polish authorities provided assurances that the aid scheme does not apply to export aids or aids favouring domestic over imported goods, that the aid amount is not fixed on the basis of the price or quantity of products put on the market and that the aid is not directly or indirectly linked to measures breaching other provisions of the TFEU, notably as regards the free circulation of goods.
- (47) The aid under this scheme is not expected to have an adverse impact on the environment.
- (48) The Polish authorities have confirmed that the notification does not contain business secrets.
- (49) The Polish authorities confirm their acceptance that the Commission decision is adopted in the English language, due to exceptional circumstances.

2.9. Cumulation

- (50) The Polish authorities explained that the two aid instruments under the present aid scheme can be cumulated as long as the cumulated aid amount does not exceed EUR 15.000.

2.10. Transparency

- (51) The Polish authorities commit to respect the transparency requirements under points 128 - 132 of the Guidelines.⁷

⁷ The information about the aid granted under this scheme will be published on the website: <http://srpp.minrol.gov.pl>

3. ASSESSMENT OF THE AID

3.1. Existence of aid - Application of Article 107(1) TFEU

- (52) According to Article 107(1) of the Treaty, "[s]ave 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".
- (53) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (54) The scheme in question confers an advantage (recital (7)) on its recipients. This advantage is granted through State resources (recital (6)) and it favours certain agricultural producers (recital (11)). According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁸
- (55) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.⁹ The beneficiaries of aid operate on the milk, pigmeat and fruit/vegetable markets where intra-EU trade takes place. In 2014, more than 98 million tons of raw milk were produced in the EU, and the intra-EU trade of milk and dairy products exceeded 9 million tons and EUR 4 billion. In 2015, 23 million tons of pigs were slaughtered in the EU, and the intra-EU trade of pigmeat exceeded 5 million tons and EUR 10 billion. In 2015, the value of the EU's production in the fruit and vegetable sector was approximately EUR 60 billion (prices at farm gate), and the intra-EU trade of fruits and vegetables exceeded 44 million tonnes and EUR 43.6 billion.¹⁰ The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (56) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

⁸ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁹ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

¹⁰ Source: Eurostat. Data on the production of milk and dairy products is still incomplete for 2015; that is why 2014 data is used.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (57) The aid scheme was notified to the Commission on 26 August 2016 (recital (1)). It has not been implemented yet. Therefore, Poland has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (58) Under Article 107(3)(c), an aid may be considered compatible with the internal market if it is found 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.
- (59) The aid granted under the present aid scheme is not covered by the Guidelines. As provided for in point 30 of the Guidelines, it is assessed on the basis of Article 107(3)(c) TFEU, taking into account the Common Agricultural Policy and by analogy the Guidelines. The Member State notifying the aid must demonstrate that the aid meets the common assessment principles laid down in Chapter 3 of Part 1 of the Guidelines.
- (60) By excluding firms in difficulty on 1 September 2015 from the scope of the scheme, as indicated in recital (13), the Polish authorities are ensuring that aid will not be granted to undertakings which were already in structural difficulties before the beginning of the current market crisis.
- (61) Beneficiaries with an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market are excluded from the scope of the scheme (recital (14)).
- (62) The aid scheme does not apply to activities listed in point 28 of the Guidelines (recital (46)).

3.3.2. Common assessment principles

- (63) As described in recitals (18) - (22), the price development for milk, pigmeat and fruit/vegetable sectors has led to considerable income losses, which could affect the long term sustainability of these sectors. The data provided by the Polish authorities also shows that undertakings in the milk, pigmeat and fruit/vegetable sectors are facing an acute liquidity shortage due the effects of the market crisis (recitals (23) - (25)).
- (64) The Polish authorities have explained that without aid to overcome their current financing difficulties, the concerned farmers in Poland will not be able to continue their production and, therefore, will have to close their businesses (recital (26)). That would be detrimental to the development of the dairy, pigmeat and fruit/vegetable sectors.
- (65) The Commission therefore considers that the Polish authorities have sufficiently well demonstrated the presence of a sectorial market disruption in order to justify the introduction of the temporary aid scheme for farmers active in milk and pigmeat production.

- (66) Moreover, the Polish authorities have confirmed that:
- (a) the aid will be granted only to micro, small and medium-sized enterprises (recital (11));
 - (b) the scheme will be limited in time, since applications can only be submitted until 15 October 2016 (recital (31)) and the aid must be granted before end of April 2017 (recital (10));
 - (c) the maximum aid amount per beneficiary cannot exceed the gross grant equivalent of EUR 15.000 (recital (34)) and
 - (d) the loans may not exceed the amount of the civil- and public law liabilities (recitals (37) and (42)).
- (67) The Polish authorities have also demonstrated that the aid instrument chosen under the present scheme is appropriate in the current economic context (recital (26)).
- (68) On the basis of the above, the Commission concludes that the aid scheme can be considered to fulfil the conditions laid down in Sections 3.2 and 3.3 of Chapter 3 of Part I of the Guidelines, as regards the need for State intervention and the appropriateness of the aid.

Incentive effect

- (69) Under the scheme, beneficiaries submit an aid application to the competent national authority before entering into the relevant loan contract (recital (31)). The application contains at least the applicant's name and size (see recital (32)). On this basis, the Commission concludes that the aid scheme can be considered to fulfil the conditions laid down in Section 3.4 of Chapter 3 of Part I of the Guidelines, as regards the incentive effect.

Proportionality of the aid

- (70) The Polish authorities have demonstrated that the aid amount per beneficiary is limited to the minimum needed to achieve the objectives of helping SMEs to overcome their liquidity shortage - the aid does not exceed the losses of the beneficiaries because:
- (a) the loans to which the aid is linked cannot exceed the amount of liabilities the farmers are not able to pay (recitals (37) and (42)),
 - (b) the interest rate subsidy may not exceed the total amount of State aid, which itself may not exceed 40% of the amount of the bank loan (recital (39)(b)) and
 - (c) the maximum aid amount per beneficiary cannot exceed the gross grant equivalent of EUR 15.000 (recital (34)).

The combination of these factors also means that the risk of overcompensation is excluded.

Avoidance of undue negative effects on competition and trade

- (71) In the light of the above, it can be concluded that the sectors concerned are considerably hit by the market crisis and that the aid scheme has clearly defined objectives in terms of bridging liquidity shortage. Moreover, the aid will only be granted to micro, small and medium-sized enterprises. Finally, the granting of aid will be limited in time (recital (66)(a)) and the aid amount per beneficiary can be considered to be proportionate and does not exceed the maximum aid amount of EUR 15.000 per beneficiary (recitals (34) and (70)).
- (72) Accordingly, it is not likely that the scheme will have an important effect on competition and trade between Member States.
- (73) On that basis, the Commission finds that any possible distortion of competition or adverse effect on trade between Member States resulting from the present aid scheme can only be limited, so that the overall balance with regard to the objective of common interest is positive.

Transparency and reporting

- (74) It follows from recital (51) that Poland has committed to comply with the transparency requirements.
- (75) The Commission concludes that the notified aid scheme contributes to the development of the sector in such a way that it clearly outweighs the risks of distorting competition in the internal market and affecting trade between Member States.
- (76) The Commission notes that the Polish authorities confirmed that the notification does not contain business secrets (recital (48)).
- (77) The Commission furthermore notes that the Polish authorities accepted that the decision is adopted in the English language, due to exceptional circumstances (recital (49)).

4. CONCLUSION

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

For the Commission

Phil HOGAN

Member of the Commission

