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Subject: **State Aid SA.56876 (2020/N) – *Poland***
COVID-19: Liquidity guarantee fund

Excellency,

1. PROCEDURE

(1) By electronic notification of 31 March 2020, Poland notified aid in the form of guarantees on loans (Anti-Crisis Shield, "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[1]

(2) The Polish authorities confirm that the notification does not contain confidential information.

(3) 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,[2] and to have this Decision adopted and notified in English.

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9.

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

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2. DESCRIPTION OF THE MEASURE

(4) Poland considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(5) The measure is expressly based on Article 107(3)(b) TFEU, as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of guarantees on loans.

2.2. National legal basis

(7) The legal basis for the measure is The Act of 31 March 2020 amending the Act on specific solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and the emerging crises[3].

2.3. Administration of the measure

(8) The Polish Development Bank (*Bank Gospodarstwa Krajowego*,[4] "BGK") is responsible for administering the measure.

2.4. Budget and duration of the measure

(9) The Polish authorities estimate the budget of the measure at PLN 22 billion (ca. EUR 4.8 billion), which will allow BGK to issue guarantees amounting up to PLN 100 billion (ca. EUR 22 billion) under the measure. That amount of guarantee can be used to cover the total of loans of up to PLN 125 billion (ca. EUR 27 billion).

(10) Aid may be granted under the measure as from its approval until 31 December 2020. The guarantee is valid from the date of the conclusion of the loan agreement, but only if the loan agreement was concluded not earlier than 1 March 2020.

2.5. Beneficiaries

(11) The final beneficiaries of the measure are all medium and large undertakings[5] established in Poland. Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[6], the Agricultural Block Exemption Regulation

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[3] http://dziennikustaw.gov.pl/D2020000056801.pdf

[4] National development bank of Poland, https://www.en.bgk.pl/

[5] Within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36.

[6] As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1

(”ABER”)[7] or the Fisheries Block Exemption Regulation (“FBER”)[8] on 31 December 2019. Aid is granted under the measure through credit institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

(12) The measure is open to all sectors. It applies to the whole territory of Poland.

2.7. Basic elements of the measure

2.7.1. Nature of the eligible instruments

(13) The measure provides for the issuance of proportional guarantees[9] for new loans, as well as for renewals of existing overdrafts and revolving credit lines, for which the relevant loan agreements have been concluded, but not earlier than 1 March 2020. The purpose of the loan subject to the guarantee provided by the measure cannot be the repayment of another loan. With the measure, Poland seeks to alleviate the temporary liquidity needs caused by the COVID-19 outbreak. The guarantee can cover working capital loans and/or loans to finance investment expenditure. The guarantee covers only the outstanding principal amount, without interest or other costs.

2.7.2. Maximum amount of the eligible instrument

(14) The amount of the loan per undertaking covered by the measure shall not exceed PLN 250 million per borrower. In any event, the amount of the loan per undertaking shall not exceed one of the following:

i. double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

ii. 25% of the total turnover of the beneficiary in 2019; or

iii. with appropriate justification and based on self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for medium-sized enterprises and for the coming 12 months for large enterprises.

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7 As defined in Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1

8 As defined in Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

9 Under proportional, or pari passu, guarantees the State and the bank share the risks on equal terms to the extent determined by the shares agreed upfront (that type of guarantee is referred to in the point 25(f)I of TF) It is a different type of guarantee agreement than first-loss guarantee, where the losses are first attributed to the State until the point, when the State’s limit is reached (this type of guarantee is referred to in point 25(f)ii of TF).

(15) The Polish authorities confirm that the limits specified in recitals (14)i. to (14)iii. above also explicitly apply to aid granted under other decisions taken by the Commission on the basis of the Temporary Framework.

(16) In so far as one and the same beneficiary may benefit from multiple measures taken as a response to the COVID-outbreak and based on the Temporary Framework in parallel, the Polish authorities commit to ensure that the maximum thresholds on aid amounts per beneficiary, as specified in point 25(d) of the Temporary Framework, are respected.

2.7.3. Maximum amount of the guarantee

(17) Guarantees granted under the measure shall not exceed 80 percent of the amount of the underlying obligation, whereby the losses are sustained proportionally and under the same conditions by the credit institution and BGK. When the size of the eligible instrument decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount decreases proportionally. The granted guarantee limit is non-renewable.

2.7.4. Maximum duration of the guarantee

(18) Without prejudice to the exceptional cases mentioned in recital (22) below, the maximum duration of guarantees granted under the measure is 27 months, while the maximum maturity of the underlying obligation is 24 months. Those three additional months of the guarantee's duration are considered necessary in the case that the guarantee is triggered, since lending banks may need that additional period to follow up the administrative steps of the call for payment under the guarantee.

2.7.5. Period for granting the eligible instruments

(19) Guarantees may be granted under the measure until 31 December 2020.

2.7.6. Remuneration of the eligible instruments

(20) Under the measure, the minimum guarantee premia depend on the size of the borrower and the duration of the underlying loan. They are determined as follows:

- Medium enterprises will be charged an up-front, one-off premium of 0.25% for guarantees covering loans with a maturity of one year or less and an up-front, one-off premium of 0.55% for guarantees covering loans with a maturity greater than one and up to two years; the one-off premium of 0.55% for guarantees covering loans for up to 2 years reflects the payment of a premium for two years, with a step up, which is equivalent to an annual payment of the premium of at least 0.25% in the first year and 0.3% in the second year.

- Large enterprises will be charged an up-front, one-off premium of 0.50% for guarantees covering loans with maturity of one year or less and an up-front, one-off premium of 1.15% for the guarantees covering loans with a maturity between one and two years; the one-off premium of 1.15% for guarantees covering loans for up to 2 years reflects the payment of a premium for two years, with a step up, which is equivalent to an annual payment of the premium of at least 0.5% in the first year and 0.65% in the second year.

2.7.7. Mobilisation of the guarantee

(21) The Polish authorities confirm that the mobilisation of the guarantee under the measure is contractually linked to specific conditions, which are agreed between the parties when the guarantee is initially granted.

2.7.8. Additional provisions

(22) In exceptional cases where the entrepreneur is unable to repay the loan on time and the loan repayment period is extended by the commercial bank to improve the chances of its repayment, the guarantee granted under the measure shall also be prolonged. The duration of that guarantee shall be three months longer than the maturity of the underlying loan, but it may not exceed a total of 6 years from the initial issuance of the guarantee. The other terms of the guarantee will remain unchanged.

(23) In the case of a prolongation of the guarantee, the beneficiary of the guarantee will be charged the following additional annual premia:

– for medium-sized companies: 0.4% in the second and third year, and 0.8% in the fourth to sixth year of the guarantee;

– for large enterprises: 0.8% in the second and third year, and 1.6% in the fourth to sixth year of the guarantee.

2.8. Cumulation

(24) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(25) The Polish authorities confirmed that aid granted under Section 3.2 of the Temporary Framework will be not to cumulated with other aid granted for the same underlying loan principal under Section 3.3 of the Temporary Framework, and vice versa.

2.9. Monitoring and reporting

(26) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework. To implement those obligations, Poland will establish dedicated reporting codes for aid granted in line with Temporary Framework. Data on the aid granted under the measure will then be made publicly available through the SUDOP database (State aid data sharing system).

3. ASSESSMENT

3.1. Legality of the measure

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

3.2. Existence of State aid

(28) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(29) The measure is imputable to the State, since it is administered by BGK, the Polish Development Bank, and it is based on The Act amending the Act of March 2, 2020 on specific solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and the emerging crises. It is financed through State resources, since it is financed by public funds.

(30) The measure confers an advantage on its beneficiaries in the form of guarantees on loans. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(31) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular it excludes micro- and small enterprises[10].

(32) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(33) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

3.3. Compatibility

(34) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(35) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(36) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(37) The measure aims at facilitating the access of companies and self-employed to external finance by increasing the banks' willingness to issue credit at a time

[10] See recital (11).

when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(38) The measures are one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. The importance of the measure to ensure lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measures are of a scale which can be reasonably anticipated to produce effects across the entire Poland's economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("Aid in the form of guarantees on loans") described in Section 3.2 of the Temporary Framework and the requirements for aid in the form of guarantees channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.

(39) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- The measure sets minimum levels for one-off guarantee premiums of 0.25% for medium-sized enterprises and 0.5% for large enterprises on loans with a maturity of maximum 1 year in line with point 25(a) of the Temporary Framework (recital (20)). For guarantees on loans of up to two years (recital (20)) and for guarantees on loans that are prolonged for up to six years (recital (23)), the Polish authorities have taken advantage of the flexibility provided by point 25(b) of the Temporary Framework, whereby Member States may notify guarantee schemes, considering the table in point 25(a) as a basis, but with the possibility to modulate maturity, pricing and guarantee coverage (e.g. lower guarantee coverage offsetting a longer maturity). They have justified recourse to minimum guarantee premia lower than those indicated in the table under point 25(a) by pointing to the fact that the maximum coverage ratio of the guarantee under the measure is 80%, which is lower than the maximum coverage ratio of 90% allowed under point 25(f) of that framework. That increased degree of risk sharing ensures a sufficient incentive for the intermediary financial entities to assess adequately the risk of providing a loan and to select whether the viability outlook of the borrower ensures the likely repayment of the loan. The minimum guarantee premia therefore comply with points 25(a) and (b) of the Temporary Framework.

- Guarantees may be granted under the measure by 31 December 2020 at the latest (recital (19)). The measure therefore complies with point 25(c) of the Temporary Framework.

- The maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (14)) and additionally to not more than PLN 250 million.

- The measure limits the duration of guarantees subject to the reduced one-off guarantee fees to a maximum of 27 months (recital (18)) or 6 years in the exceptional cases mentioned in recital (22) above. Those guarantees cover only 80% of the loan principal, and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State (recitals (13) and (17)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (17)). The measure therefore complies with point 25(f) of the Temporary Framework.

- Guarantees granted under the measure relate to investment and working capital loans (recital (13)). The measure therefore complies with point 25(g) of the Temporary Framework.

- Firms in difficulty (situation as of 31 December 2019) within the meaning of the GBER, ABER and FBER are excluded from benefitting from the measure (recital (11)). The measure therefore complies with point 25(h) of the Temporary Framework.

- The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions through which the aid is channelled to limit undue distortions to competition. The guarantee is limited to 80%, so that the financial institution continues to bear a significant part of the risk itself. Furthermore, the loan covered by the guarantee cannot be used for repayment of another loan. Finally, the guarantee can only be used for new loans, as well as for renewals of existing overdrafts and revolving credit lines. The risk of improving the quality of banks' loan portfolio without passing on any advantage of the measure to the borrowers is limited, because the grant of the guarantee requires the bank to issue a new loan or renew an overdraft facility or a revolving credit line. This ensures that banks will offer fresh liquidity, which would not have been available without the guarantee. Such safeguards ensure that the credit institutions or other financial institutions through which the aid is channelled pass on the advantages of the measure to the final beneficiaries to the largest extent possible (recitals (13) and (17)). The measure therefore complies with points 21 to 31 of the Temporary Framework

- The Polish authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (26)).

- The applicable cumulation rules are respected (recital (25)).

- The mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (21)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

(40) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[11] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of

[11] OJ L 173, 12.6.2014, p. 190-348.

that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD.

(41) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[12] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD.

(42) Moreover, as indicated in recital (39) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(43) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

[12] Points 6 and 29 of the Temporary Framework.

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)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION