EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: **State Aid SA.56896(2020/N) – Poland**
COVID-19: anti-crisis measures in the form of loans and guarantees financed from EU funds

Excellency,

1. PROCEDURE

(1) By electronic notification of 7 April 2020, Poland notified aid in the form of guarantees on loans and subsidised interest rates for loans that will be provided under *Regulation of the Minister of Development Funds and Regional Policy on providing state aid from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak* ("the Measures") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[1] Poland complemented the notification on 8 April 2020.

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

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, C/2020/1863, OJ C 91I, 20.3.2020, p. 1.; as amended on 3 April 2020, C/2020/2215, OJ C 112I , 4.4.2020, p.1.

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(3) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(4) Poland considers that the COVID-19 outbreak has started to affect the real economy. Since the beginning of March 2020, the Polish authorities have introduced a number of preventive measures and restrictions in order to minimise the spread of the COVID-19 pandemic that may lead to the suspension of production and services, and ultimately to financial difficulties for individuals and undertakings across sectors. Therefore, Poland submits that there is a need to introduce specific solutions aimed at counteracting the negative economic effects of the COVID-19 outbreak. The Measures form part of an overall package of measures and aim at ensuring sufficient liquidity in the market, countering the damage inflicted upon undertakings impacted by the outbreak and at preserving the continuity of economic activity during and after the outbreak.

(5) The Measures are expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(6) Aid will be provided aid in the form of (i) guarantees on loans and (ii) subsidised interest rates for loans (see in more detail in Section 2.7).

(7) The Measures will be granted under five national and sixteen regional operational programmes under the 2014-2020 programming period and will be co-financed by Union funds under shared management, notably the European Regional Development Fund ("ERDF") and the European Social Fund ("ESF"). The Polish authorities confirm that the rules applicable to these funds will be respected.

2.2. National legal basis

(8) The legal basis for the Measures is *Regulation of the Minister of Development Funds and Regional Policy on providing state aid from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak.*[3]

2.3. Administration of the Measures

(9) The Ministry of Development Funds and Regional Policy is responsible for administering the Measures. The Measures will be implemented by several managing authorities across Poland.

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

3 The regulation will be adopted after the adoption of this Decision.

2.4. Budget and duration of the Measures

(10) The Polish authorities estimate that the nominal amount of loans and guarantees granted under the Measures will be around PLN 3.5 billion (approximately EUR 0.7 billion).

(11) Aid may be granted under the Measures as from its approval until 31 December 2020.

2.5. Beneficiaries

(12) The Measures are open to small and medium-sized enterprises ("SMEs")[4], as well as large undertakings. The Polish authorities estimate that around 20 000 undertakings will benefit from aid under the Measures.

(13) Under the Measures, aid may be granted only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[5], the Agriculture Block Exemption Regulation ("ABER")[6] and the Fisheries Block Exemption Regulation ("FIBER")[7] on 31 December 2019, but that faced difficulties or entered into difficulty thereafter because of the COVID-19 outbreak.

(14) Aid will be granted under the Measures through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the Measures

(15) The Measures are open to all sectors. They apply to the whole territory of Poland, and will be implemented under several national and regional operational programmes (recital (7)).

2.7. Basic elements of the Measures

(16) The Measures consist of (i) aid in the form of guarantees ("Measure A") and (ii) aid in the form of subsidised interest rates for loans ("Measure B").

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4 As defined in Annex I 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

5 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, 26.6.2014, p. 1.

6 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, 1.7.2014, p.1

7 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, 24.12.2014, p. 37

(17) Under Measure A, guarantees and sureties[8] (together referred to as guarantees for the purposes of this Decision, unless otherwise specified) will be granted on loans to the final beneficiaries in line with the following conditions:

(a) Eligible loans are both investment loans and working capital loans, with a maximum maturity of six years.

(b) The guarantee may cover the full maturity of the underlying loan. The duration of the guarantee is limited to six years.

(c) For loans with a maturity beyond 31 December 2020, the overall amount of loan principals per final beneficiary will not exceed:

(i) double the annual wage costs[9] of the beneficiary and the cost of personnel working within the beneficiary undertaking, but formally receiving remuneration from 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 beneficiary's total turnover in 2019; or

(iii) if there is important public interest or important entrepreneur's interest and with appropriate justification 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 SMEs and for the coming 12 months for large enterprises;

(d) For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point (c) if there is important public interest or important entrepreneur's interest and with appropriate justification and provided that the proportionality of the aid remains assured.

(e) The guarantee will not exceed:

(i) 90% of the loan principal where losses are sustained proportionally and under the same conditions by the institution granting the loan and the State; or

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8 Under Polish civil law, a surety promise by a third party (not a bank) to assume responsibility for the debt obligation of a borrower if that borrower defaults (see Title XXXII of the Act of 23 April 1964 Civil Code). The Polish authorities confirm the sureties meet the conditions for guarantees in Article 2(67) 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, 26.6.2014, p. 1.

9 As defined in Article 2(31) 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, 26.6.2014, p. 1

(ii) 35% of the loan principal, where losses are first attributed to the State and only then to credit institution granting the loan (i.e. a first-loss guarantee); and

(iii) in both of the above cases, when the size of the loan decreases over time, the guaranteed amount will decrease proportionally.

(f) The guarantees will be granted no later than 31 December 2020.

(g) The level of the guarantee fee will be at least:

(i) For the first year of the loan: 25 bps in case of SMEs and 50 bps in case of large undertakings;

(ii) For the second and the third year of the loan: 50 bps in case of SMEs and 100 bps in case of large undertakings;

(iii) For the fourth to sixth years of the loan: 100 bps in case of SMEs and 200 bps in case of large undertakings.

(18) The Polish Authorities confirm that 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.

(19) Under Measure B, loans will be granted to the final beneficiaries in line with the following conditions:

(a) Both investment loans and working capital loans are eligible.

(b) The loans will be granted for a period up to six years.

(c) For loans with a maturity beyond 31 December 2020, the overall amount of loans per final beneficiary will not exceed:

(i) double the annual wage costs of the beneficiary and the cost of personnel working within the beneficiary undertaking but formally receiving remuneration from 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 beneficiary’s total turnover in 2019; or

(iii) if there is important public interest or important entrepreneur's interest and with appropriate justification 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 SMEs and for the coming 12 months for large enterprises.

(d) For loans with a maturity until 31 December 2020, the amount of the loan principal per beneficiary may be higher than under point (c) if there is important public interest or important entrepreneur's interest and with appropriate justification and provided that the proportionality of the aid remains assured.

(e) The loan contracts will be signed no later than 31 December 2020.

(f) The level of the interest rate will be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission[10]) applicable on 1 January 2020 plus the credit risk margins as follows:

(i) For the first year of the loan: 25 bps in case of SMEs and 50 bps in case of large undertakings;

(ii) For the second and the third year of the loan: 50 bps in case of SMEs and 100 bps in case of large undertakings;

(iii) For the fourth to sixth years of the loan: 100 bps in case of SMEs and 200 bps in case of large undertakings.

(20) Aid under the Measures will be granted through credit institutions or other financial intermediaries. The Polish authorities foresee two potential implementation mechanisms, to be chosen by the managing authorities:

(a) Implementation mechanism with fund-of-funds: The managing authority will select and sign the funding agreement with a well-established financial institution with long-term presence on the market and highly qualified staff (e.g. national promotional bank, European Investment Bank, etc.), which will become the manager for the fund-of-funds. The fund-of-funds is responsible for developing the parameters of the loans and guarantees to be provided. The fund-of-funds will then select financial intermediaries (e.g. commercial banks, loan funds, guarantee funds, regional development agencies, etc.) and entrust them with the implementation of the loan and guarantee schemes. In the case of loans, the financial intermediaries will provide the loans directly to the final beneficiaries. In the case of guarantees, the financial intermediaries will provide the guarantees on loans provided by banks to the final beneficiaries. In the case of sureties, the financial intermediary provides the surety directly to the final beneficiary who then uses the surety to take a loan from a bank[11].

(b) Implementation mechanism without fund-of-funds: The managing authority will select and sign the funding agreements directly with financial intermediaries, which will be both responsible for developing the parameters of the loans and guarantees and to provide them to the final beneficiaries. In the case of loans, the financial intermediaries will provide

[10] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

[11] No other financial institution (bank, loan fund, regional agency) is engaged in the contractual relation with the provider of the surety and no other financial institution benefits from the issuance of the surety.

the loans directly to the final beneficiaries. In the case of guarantees, the financial intermediaries will provide the guarantees on loans provided by banks to the final beneficiaries. In the case of sureties, the financial intermediary provides the surety directly to the final beneficiary who then uses the surety to take a loan from a bank.

(21) The Polish authorities submit that the Measures contain mechanisms to ensure that the advantage is passed on to the final beneficiaries to the largest extent possible. In the case of subsidised loans, the interest rate of the loan required by the entity granting the aid in the form of a loan shall be lower than the market value of the interest. In the case of sureties, the level of the commission fee for the surety, collected by the entity providing the aid in the form of a surety, shall be lower than the market commission fee. In the case of guarantees, the financial intermediary will be required to grant the loan covered by the guarantee at more favourable terms than the market terms.

(22) In addition, financial intermediaries will be prohibited from passing on the costs associated with the provision of the guarantees and loans under the Measures that are covered separately. These management costs or management fees to be obtained by the financial intermediaries will be in line with the rules applicable to Union funds under shared management[12]. The Polish authorities also submit that the funding agreements will include additional safeguards in this regard and financial intermediaries will subject to regular controls and audits to ensure that they comply with these conditions.

2.8. Cumulation

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

(24) The Polish authorities confirm 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. Each undertaking applying for aid will be obliged to inform the body granting the aid whether it obtained any State aid in the form of loan, surety or guarantee after 31 January 2020. If yes, the body granting the aid will be obliged to gather the necessary information from the final beneficiary and to check available databases to make sure that the above condition is met.

2.9. Monitoring and reporting

(25) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework

[12] Article 12(1) of Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, OJ L 138, 13.5.2014, p. 5.

3. ASSESSMENT

3.1. Legality of the Measures

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

3.2. Existence of State aid

(27) 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.

(28) The Measures are imputable to the State, since they are administered by Ministry of Development Funds and Regional Policy and several managing authorities across Poland and it is based on *Regulation of the Minister of Development Funds and Regional Policy on providing state aid from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak*. The Measures are financed through State resources, since they are co-financed by Union funds implemented under shared management and the national promotional bank and regional development agencies may be involved in the implementation as financial intermediaries (recital (20)).

(29) The Measures confer an advantage on its beneficiaries in the form of guarantees on loans or subsidised interest rates. The Measures thus relieve those beneficiaries of costs which they would have had to bear under normal market conditions.

(30) The advantage granted by the Measures is selective, since it will be awarded only to those undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter because of the COVID-19 outbreak (recital (13)).The Commission notes that Poland estimates the number of beneficiaries to be around 20 000 undertakings. In addition, SMEs will be able to benefit from more favourable conditions under the Measures than large undertakings.

(31) The Measures are liable to distort competition, since they strengthen the competitive position of its beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

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

3.3. Compatibility

(33) Since the Measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the Measures are compatible with the internal market.

(34) 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*".

(35) 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*".

(36) The Measures aim at facilitating the access of firms to finance at a time 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.

(37) The Measures are part of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. The importance of such interventions to facilitate access to finance 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 Polish economy. Furthermore, the Measures have been designed to meet the requirements of a specific categories of aid ("*Aid in the form of guarantees on loans*" and "*Aid in the form of subsidised interest rates for loans*") described in Sections 3.2 and 3.3 of the Temporary Framework, and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.

(38) The Commission accordingly considers that the Measures are 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 for Measure A:

- The guarantee premiums comply with point 25(a) of the Temporary Framework (recital (17)(g)).

- Guarantees can be granted by 31 December 2020 at the latest (recital (17)(f)). Measure A therefore complies with point 25(c) of the Temporary Framework.

- For loans with a maturity beyond 31 December 2020, 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 (17)(c). For loans with a maturity until 31 December 2020, the higher amount of the loan principal is justified appropriately and the proportionality of the aid remains assured (recital (17)(d)) in line with point 25(e) of the Temporary Framework.

- The measure limits the duration of the guarantees to maximum six years (recital (17)(a)). Those guarantees may cover only up to 90% 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. Alternatively, losses up to 35% can be first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee) (recital (17)(e)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital(17)(e)(iii)). Measure A therefore complies with point 25(f) of the Temporary Framework.

- Guarantees granted under the measure relate to investment and working capital loans (recital (17)(a)). Measure A 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 FIBER are excluded from benefitting from the measure (recital (13)). Measure A therefore complies with point 25(h) of the Temporary Framework.

- Lastly, 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 (18)).

For Measure B:

- The applicable interest rates comply with the minimum rates included in point 27(a) of the Temporary Framework (recital (19)(f))).

- The loan contracts are signed by 31 December 2020 at the latest and are limited to maximum six years (recital (19)(b)). Measure B therefore complies with point 27(c) of the Temporary Framework.

- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (19)(c)). For loans with a maturity until 31 December 2020, any higher amount of the loan principal is justified appropriately and the proportionality of the aid remains assured in line with point 27(e) of the Temporary Framework (recital (19)(d)).

- The loans relate to investment and working capital needs (recital (19)(a)). Measure B therefore complies with point 27(f) of the Temporary Framework.

- Firms in difficulty (situation as of 31 December 2019) within the meaning of GBER, ABER and FIBER are excluded from benefitting from the measure (recital (13)). Measure B therefore complies with point 27(g) of the Temporary Framework.

For Measure A and Measure B:

- The Polish authorities confirm that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (25)).

- The applicable cumulation rules are respected (recitals (23)-(24)).

- The Measures introduce safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. In particular, the Commission notes positively that (i) financial intermediaries will be required to charge borrowers lower than market rates, (ii) in case of guarantees, the underlying loan will have to be provided at more favourable terms than the market terms, and (iii) financial intermediaries will be prohibited from passing on their costs associated with the provision of loans and guarantees that will be reimbursed separately (recitals (21)-(22)). Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the Measures to the final beneficiaries. In addition, the Commission takes into account the fact that all commercial banks have, in principle, access to the guarantee under Measure B, creating competition between the banks. The Measures therefore comply with points 21 to 31 of the Temporary Framework.

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

(39) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[13] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD.

(40) 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.[14] Nevertheless, any such indirect aid granted under the Measures do not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the Measures 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 Measures does not qualify as extraordinary public financial support under Article 2(1) No 28 BRRD.

(41) Moreover, as indicated in recitals (21)-(22) above, the Measures introduce 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 Measures to the final beneficiaries.

(42) The Commission therefore concludes that the Measures do not violate any intrinsically linked provisions of the BRRD.

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

[14] 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 o 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