EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.56979 (2020/N) – Poland
COVID-19: Interest rate subsidy scheme

Excellency,

1. PROCEDURE

(1) By electronic notification of 8 April 2020, Poland notified aid in the form of subsidised interest rate for loans ('The draft Act on interest rate subsidy', "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 TFEU, in conjunction with Article 3 of Regulation 1/1958,[2] and to have this Decision adopted and notified in English.

2. DETAILED 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

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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 and Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 03.04.2020, C(2020)2215 final.

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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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) 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) The measure provides aid in the form of grants intended to cover part of the financial costs (interests) of private loans. In effect, part of the interest due by the borrower to its bank for the repayment of private loans will actually be paid by public authorities to the lending banks, thereby reducing the burden on each borrower. The State, represented by the State development bank (Bank Gospodarstwa Krajowego, 'BGK')[3] will assume no risk and will bear no exposure on these loans. The purpose of the measure is to ensure liquidity to undertakings affected by COVID-19 outbreak and to fund with subsidised interest rate their finance costs incurred in the first 12 months from the moment of signing the loan agreement.

2.2. National legal basis

(7) The legal basis for the notified measure is the Polish draft Act of 6 April 2020 on subsidies to bank loans' interests.

2.3. Administration of the measure

(8) The BGK is responsible for administering the measure.

(9) Aid is granted by BGK through commercial banks acting as financial intermediaries of BGK to the borrowers.

(10) Loans with subsidised interest rate shall be granted by banks that have concluded a cooperation agreement with BGK. The list of banks providing loans with subsidised interest rate shall be published on the website of BGK. The day of granting the aid is the day of concluding the loan agreement.

(11) Subsidies to the interest rate for loans shall be paid on a monthly basis collectively in respect of all loan agreements with subsidised interest rate concluded by the bank.

(12) The loan with subsidised interest rate granted under the measure will be a new loan or a loan already granted on the basis of previous loan agreements concluded:

- (a) from the date of entry into force of the Act introducing the national legal basis;
- (b) before the date of entry into force of the Act introducing the national legal basis, if these agreements are adapted to the conditions set out in the Act.

(13) In the cases referred to in recital (12)(b), a loan agreement referred to in the measure should be understood as an amending agreement adapting the loan

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

agreement concluded before the entry into force of the Act introducing the national legal basis to the conditions specified in the Act.

2.4. Budget and duration

(14) The estimated budget is PLN 527 600 000 (EUR 115 million).

(15) The aid may not be granted before the Commission has adopted a decision declaring the above-mentioned measure compatible with the internal market. The aid may be granted no later than 31 December 2020.

2.5. Beneficiaries

(16) The beneficiaries of the measure are all undertakings[4] affected by the economic repercussions of COVID-19 and having temporary financial difficulties linked to the lack of liquidity.

(17) The beneficiaries are undertakings active in Poland irrespective of their size and nationality and active in all markets' sectors including undertakings active in the processing and marketing of agricultural products, fisheries and aquaculture sectors.

(18) The primary production of agricultural products is excluded from aid under the measure.

(19) Under the measure, aid is not granted to undertakings that were already in difficulty within the meaning of the General Block Exemption ("GBER")[5] on 31 December 2019.

2.6. Sectorial and regional scope of the measure

(20) The measure applies to the whole territory of Poland and is open to all sectors of economy with exclusion of the primary production of agricultural products as described in recital (18) above.

2.7. Basic elements of the measure

(21) Eligible costs are the finance costs incurred in the first 12 months from the moment of signing the loan agreement with subsidised interest rate as described in recital (6).

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4 In the meaning of the Polish Law of 6 March 2018 – Law of Entrepreneurs.

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 of 26.6.2014, p. 1, 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, and 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.

(22) The value of the subsidised interest rate to loans does not exceed EUR 800 000 per undertaking on a gross basis.

(23) The aid shall be granted, provided that its value does not exceed, including other aid granted in accordance with Section 3.1 of the Temporary Framework, an amount of:

(a) EUR 100 000 for undertakings operating in the primary production sector of agricultural products[6], or

(b) EUR 120 000 for undertakings operating in the fisheries and aquaculture sector[7], or

(c) EUR 800 000 for other undertakings.

(24) The aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(25) Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014[8].

(26) Where an undertaking is active in several sectors to which different maximum amounts apply, the Polish authorities shall ensure that the relevant ceiling is respected for each of these activities[9].

(27) The measure provides for the issuance of loans with subsidised interest rate. The loans may cover both revolving and non-revolving working capital needs. The aid shall be equivalent to direct grant as described in recital (6) above, payable in instalments.

(28) The commercial bank's interest rate regarding the subsidy shall be specified in the loan agreement. The commercial bank does not charge the borrower with a higher interest rate on a loan than the average interest rate applied to other working capital

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6 The sector of primary production of agricultural products (namely all products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector) is excluded from the scope of the scheme, as mentioned in paragraph (18). However, when a company is active in several sectors, including the sector of primary production of agricultural products, it may apply for aid for its other activities. In order to ensure that no undue aid is passed on to the agricultural branch of the company, the scheme provides that aid for such a company will be capped at the threshold applicable for agricultural products in the Temporary Framework, namely EUR 100 000.

7 Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013, p. 1.

8 Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

9 Except when the undertaking is also active in the sector of primary production of agricultural products, see above footnote 6.

loans concluded by this commercial bank outside of the State interest rate subsidy scheme[10].

(29) In view of the above recital, the aid is:

a) part of the interests owed to the commercial bank and amounts to:

i) 2% for micro, small or medium-sized undertakings within the meaning of Annex I to Regulation 651/2014,

ii) 1% for other undertakings.

b) equal to the interests owed to the commercial bank, if lower than the interest rate specified in recital (29) a). This level of aid is subject to the condition that the aid ceilings per type of undertaking as described above is respected.

(30) The undertaking benefitting from the subsidised interest rate to a loan repays part of the interest rate due to the bank. The part of the interest rate due to the bank is a difference between the interests calculated according to the interest rate of the loan owed to the commercial bank and the portion of this interest rate referred to in recital (29).

(31) The subsidy to the interest rate is paid by BGK from the Fund for the Interest Rate Subsidy for loans, which has been created for the purpose of this measure, into commercial banks that have concluded a cooperation agreement with BGK.

2.8. Cumulation

(32) 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.

(33) Poland confirms that aid under the notified scheme may be cumulated in accordance with point 20 of the Temporary Framework. Thus, aid under the Section 3.1 can be cumulated with aid under Section 3.2 of the Temporary Framework.

(34) Poland confirms that the total nominal value of the measure remains below the overall caps per undertaking as described in recital (23) above.

(35) Furthermore, in case aid under the measure is cumulated with aid granted under another measure authorised under the Temporary Framework by the same competent granting authority or by another one, the maximum aid amounts established in the Temporary Framework will be respected.

(36) Aid under the measure may be cumulated with other compatible aid, de minimis aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

[10] Article 7.3. of the draft Act on interest rate subsidy.

2.9. Monitoring and reporting

(37) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (e.g., by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.). As set out in point 44 of the Temporary Framework, Poland will make publicly available relevant information[11] on each individual aid granted through the national State aid 'SUDOP' database (i.e. a State aid data sharing system).

3. ASSESSMENT

3.1. Lawfulness of the measures

(38) By notifying the measures before putting them into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(39) 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.

(40) The measure is imputable to the State because it is administered by BGK, which is the State development bank, and it is based on the legal Act described in recital (7). In addition, it is financed by the general State budget, and therefore financed through State resources.

(41) The measure confers an advantage on its beneficiary in the form of subsidised interest rate for loans equivalent to direct grants. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.

(42) The advantage granted by the measure is selective, since only undertakings affected by the economic repercussions of COVID-19 outbreak and having temporary financial difficulties will benefit from it, as described in recitals (16) and (19). Furthermore, the primary sector of agricultural products is excluded as described in recital (18) above.

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

[11] Annex III of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

(44) 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

(45) 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.

(46) 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*".

(47) 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*".

(48) The measure aims at facilitating the access of firms to external 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.

(49) The measure is 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 the measure to stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Polish economy.

(50) The measure aims at covering part of the interest rate due by companies affected by the Covid-19 outbreak in their loans with commercial banks. Even if it is not a direct grant, the measure falls within Section 3.1 of the Temporary Framework, given that it results in a financial support to undertakings with the same effect as a direct grant. As the measure, for practical reasons linked to the high number of potential beneficiaries, will be granted by BGK through the commercial banks, it has to be ensured that, by analogy with section 3.4 of the Temporary Framework, commercial banks, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries. In that respect, the Commission considers that the measure includes safeguards that the aid will not indirectly benefit commercial banks. Beyond the fact that the list of banks having concluded a cooperation agreement with BGK will be public (allowing potential borrowers to receive competing offers), the measure provides that the interest rate on a loan with subsidy cannot be higher than the average interest rate on other working capital loans granted by the lending bank. In addition, the Polish authorities confirmed that the cooperation agreement between BGK and the participating bank will provide that the advantage is passed on in full to the borrowers. As a result, the Commission considers that the measure targets undertakings facing a sudden

liquidity shortage and not the credit institutions that will be involved in the management of the scheme.

(51) The Commission 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 maximum aid amount per undertaking under the measure does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products[12] or EUR 800 000 for all other undertakings (recital (23) above). The total nominal value of such a measure remains below these overall aid caps per undertaking. All figures used are gross, that is, before any deduction of tax or other charge as described in recital (22) above. The measure therefore complies with points 22(a) and 23(a) of the Temporary Framework.

- The aid consists in the payment of a part of the interest due by the borrowers to the banks and therefore reduces the amount of interest due. It is therefore equivalent to a grant and complies with paragraph 22(a).

- The aid is granted on the basis of an aid scheme with an estimated budget of PLN 527 600 000 (EUR 115 million) as described in recital (14) above. The measure therefore complies with point 22(b) of the Temporary Framework.

- The aid may not be granted to undertakings that were already in difficulty within the meaning of the GBER on 31 December 2019 (recital (19) above). The measure therefore complies with point 22(c) of the Temporary Framework.

- Aid may be granted under the measure no later than 31 December 2020 (recital **Error! Reference source not found.**(15) above). The measure therefore complies with point 22(d) of the Temporary Framework.

- Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned (recital (24) above). The measure therefore complies with point 22(e) of the Temporary Framework.

- Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014[13] (recital (25) above). The measure therefore complies with point 23(c) of the Temporary Framework.

- For undertakings active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary

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12 See recital (23) a) above.

13 Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

Framework, the Polish authorities confirmed that they will grant an aid that does not exceed the lowest of the thresholds mentioned in those points (recital (26) above). The measure therefore complies with point 23bis of the Temporary Framework.

- The applicable cumulation rules are respected (recitals (32) to (34) above).

(52) Finally, the Polish authorities confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (37) above).

(53) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU and meets all the relevant conditions of the Temporary Framework.

4. 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) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President