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**Subject: State Aid SA.56996 (2020/N) – Poland
COVID-19: repayable advance scheme for micro, small and medium-sized enterprises**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 April 2020, Poland notified aid in the form of repayable advances (*‘Financial Shield of the Polish Development Fund for Small and Medium Enterprises’*, “the measure”)¹ on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union (‘TFEU’), as interpreted by the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).²
- (2) By email of 24 April 2020, the Commission requested additional information on the measure. Poland replied by email of 25 April 2020.
- (3) The Polish authorities confirm that the notification does not contain confidential information.

¹ This measure is part of a Government financial support programs for enterprises, which also comprises a second financial support program called ‘Financial Shield of the Polish Development Fund for Large Enterprises’ subject to a separate notification of 23 April 2020 registered by the Commission’s services on the same day under case State aid SA. 57054 (2020/N).

² 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.

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

2. DETAILED DESCRIPTION OF THE MEASURE

- (5) Poland considers that the COVID-19 outbreak has started to affect the real economy. The notified measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to address the economic losses inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.
- (6) 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

- (7) The measure provides aid in the form of repayable advances.
- (8) The purpose of the measure is to ensure liquidity to undertakings affected by COVID-19 outbreak. It also aims to maintain jobs and to minimise other economic effects of the pandemic caused by the shutdown of business, lower consumption demand and supply chain disruptions.

2.2. National legal basis

- (9) The legal basis for the notified measure is Article 21a(1) of the legal Act of 4 July 2019 on the system of development institutions ('Act on SDI')⁴, as amended by the legal Act of 31 March 2020⁵. The governmental 'program' of the measure will be adopted in the form of a resolution of the Council of Ministers.

2.3. Administration of the measure

- (10) The aid granting authority responsible for administering the measure is the Polish Development Fund ('Polski Fundusz Rozwoju', ('PFR'))⁶. PFR is a public company fully owned by the Polish State Treasury.
- (11) The PFR is governed by the Act on SDI, which describes its role and responsibilities. It is also responsible for implementing measures to address the economic consequences of COVID-19⁷.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁴ Polish Journal of Laws, item 1572, as amended:
<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20190001572/U/D20191572Lj.pdf>.

⁵ Polish Journal of Laws, item 569.

⁶ www.pfr.pl.

⁷ Article 21a(1) of the Act on SDI.

- (12) The procedure for granting the financial support will be implemented through electronic channels with the collaboration of commercial banks⁸ for its technical operation. The role of the commercial banks is limited to the channelling of funding to micro, small and medium-sized enterprises through an online platform, without charging commissions or fees neither to aid recipients, nor to PFR. The commercial banks are not entitled to establish conditions for applying for aid or to decide on an award of aid. The commercial banks will also enable potential applicants to lodge their aid applications and to sign potential aid agreements via their ‘e-banking platforms’.
- (13) PFR is the aid granting authority with responsibilities to select beneficiaries and verify compliance with the general conditions of aid granting for micro, small and medium sized enterprises. Aid applications will be checked online by PFR via their database, which is connected with the tax authority and the social security fund. The procedure is fully automated, open and online.

2.4. Budget and duration

- (14) The estimated budget is PLN 75 billion (EUR 16.6 billion).
- (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 July 2020, with a possible extension until 31 December 2020⁹.

2.5. Beneficiaries

- (16) The beneficiaries of the measure are all micro, small and medium-sized enterprises (‘SMEs’)¹⁰ registered and active in Poland, which are affected by the economic repercussions of COVID-19 and having temporary financial difficulties linked to the lack of liquidity. Furthermore, the beneficiaries must have a tax residence in the European Economic Area (‘EEA’); in addition, the main beneficial owner, within the meaning of Article 2, clause 2, item 1) of the Act on Counteracting Money Laundering (‘AML Act’), cannot have tax residence in the so-called ‘tax havens’ within the meaning of the EU Council conclusions on the revised list of non-cooperating countries for tax purposes (2020/C 64/03). A deviation from this rule is only possible if the aid beneficiary and/or its main beneficial owner commit to transfer their tax residence to the EEA within nine months from the date of granting aid under the measure.

⁸ According to Poland, over fifteen banks, including the two largest networks of cooperative banks, have responded to the enquiry of PFR and signed up for the program. It is expected that this widespread bank coverage will result in an approximate 95% coverage of micro, small and medium-sized enterprises in the whole territory of Poland. All the banks associated to the program will be connected with the cooperation platform created by PFR.

⁹ The decision to extend the ‘Program’ of the measure will be made by the Prime Minister, taking into account the situation regarding the economic effects of the COVID-19 and the availability of funds to finance the measure.

¹⁰ In the meaning of the Polish Law of 6 March 2018 – Law of Entrepreneurs (Dz.U. z 2019 r. poz. 1292, z późn. zm.).

- (17) The estimated number of beneficiaries are 350 000 micro-sized enterprises (employing up to nine employees) and 26 000 small and medium-sized enterprises ('SMEs'), which report a decrease in revenues of at least 25% in any month after 1 February 2020, when compared to either the previous month or to the same month of the last year.
- (18) Undertakings active in the processing and marketing of agricultural products are eligible to aid under the notified measure. Undertakings active in the fishery and aquaculture sector as well as undertakings active in the primary production of agricultural products are also eligible to aid under the notified measure.
- (19) Under the notified measure, aid cannot be granted to self-employed and undertakings active in the following economic activities and sectors:
- Credit institutions, cooperative savings and credit unions, investment firms, lending institutions, insurance companies, reinsurance companies, pension funds, investment funds and other collective investment undertakings, asset management entities, providers or payment services and other financial institutions as well as rating agencies;
 - Manufacturing and/or selling of products, and services providers, which economic activities may result in restricting or breaching individual freedoms and/or human rights, and
 - Testing on animals, gambling and similar activities, production and distribution of tobacco products and similar stimulants and production and distributions of narcotics.
- (20) Under the measure, aid is not granted to undertakings that were already in difficulty within the meaning of the General Block Exemption ("GBER") and the Agriculture and Fishery Block Exemptions¹¹ on 31 December 2019.

2.6. Sectorial and regional scope of the measure

- (21) The measure applies to the whole territory of Poland and is open to all sectors of economy with exclusion of the business activities as listed in recital (19).

2.7. Basic elements of the measure

- (22) The aid takes the form of a repayable advance to undertakings whose viability is undermined by a sudden shortage of liquidity caused by the COVID-19 outbreak as mentioned in recital (7) above. Such aid aims at remedying serious disturbances in the economy as referred to in Article 107(3)(b) TFEU.

¹¹ 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.

Micro-sized enterprises

- (23) The measure aims to adjust the amount of financial support to the scale of potential loss of income due to a decrease in revenues caused by COVID-19 combined with the number of employees. The maximum amount of a repayable advance for micro-sized enterprises is specified in the table below:

Financial support in PLN		Financial subsidy amount depending on the number of employees (excluding the owner)								
The scale of decrease in revenues	Base financial subsidy amount per employee	1	2	3	4	5	6	7	8	9
<25%; 50%)	12 000	12 000	24 000	36 000	48 000	60 000	72 000	84 000	96 000	108 000
<50%; 75%)	24 000	24 000	48 000	72 000	96 000	120 000	144 000	168 000	192 000	216 000
<75%; 100%)	36 000	36 000	72 000	108 000	144 000	180 000	216 000	252 000	288 000	324 000

- (24) The aid amount is depending on the number of employees kept over the course of 12 months from the date on which the aid is granted. The employment rate¹², which constitutes a basis for calculating the amount of aid, is determined based on its value at the end of the month preceding the filing of application for the aid. It shall not, however, be higher than the employment rate as of 31 December 2019 or the employment rate at the end of the corresponding month of the application in the previous year. The estimate average amount of aid will be around PLN 72,000 (EUR 16,000) and up to a maximum of PLN 324,000 (EUR 72,000) per micro-sized enterprise.
- (25) The repayable advance will be repaid under the following conditions:
- 100% of the repayable advance, in case of (i) cessation or suspension of business activity, (ii) liquidation proceedings or (iii) bankruptcy/restructuring proceedings in the course of the 12 months from the date on which the repayable advance was granted;
 - If the beneficiary maintains its business activity for a period of 12 months as from the date on which the repayable advance was granted, it must repay:
 - 25% of the repayable advance, unconditionally; and
 - An additional amount depending on the average number of employees maintained during 12 full calendar months compared to the employment rate at the end of the calendar month preceding the month of the submission of the application for repayable advance, namely:
 - higher than 100% - an additional amount of 0% of the repayable advance;
 - from 50% to 100% - an additional amount of 0 to 50% of the repayable advance;
 - lower than 50% - an additional amount of 50% of the repayable advance.

¹² The number of employees may not exceed nine employees (calculated on a full-time basis).

Small and medium-sized enterprises

- (26) The maximum amount of the repayable advance under the scheme for SMEs is calculated as a percentage of the value of the enterprise's sales revenue for the financial year 2019. The aid amount depends on the scale of the decrease in turnover (from 25% to 100%) in connection with the economic repercussions of the COVID-19 outbreak. The estimate average amount of aid will be around PLN 1.9 million (EUR 0.42 million) and up to a maximum of PLN 3.5 million (EUR 0.77 million) per SME. The maximum and average amount of a repayable advance is specified in the table below:

The scale of decrease in revenues	financial subsidy amount as a percentage of revenue	SME (average)		SME (maximum)	
		SME average income	financial subsidy amount	SME's maximum income for calculating the financial subsidy amount	maximum financial subsidy amount
< 0; 25%)	0%	31 300 000	0	225 000 000	0
< 25; 50%)	4%	31 300 000	1 252 000	225 000 000	3 500 000
< 50; 75%)	6%	31 300 000	1 878 000	225 000 000	3 500 000
< 75%; 100%)	8%	31 300 000	2 504 000	225 000 000	3 500 000

- (27) The repayable advance will be repaid under the following conditions:
- (a) 100% of the repayable advance, in case of (i) cessation or suspension of business activity, (ii) liquidation proceedings or (iii) bankruptcy/restructuring proceedings in the course of the 12 months from the date of which the repayable advance was granted;
- (b) If the beneficiary maintains its business activity for a period of 12 months as from the date on which the repayable advance was granted, it must repay :
- 25% of the repayable advance, unconditionally; and
 - In addition to 25% of the value of the repayable advance, it must repay further 25%, reduced by the cash loss on sales accumulated over a period of 12 months, counting from the first month in which the undertaking recorded a loss after 1 February 2020 or from the month in which the repayable advance was granted, and
 - In the amount of up to an additional 25% of the repayable advance, provided the average number of employees (average employment) is maintained during 12 full calendar months as compared to the employment rate at the end of the calendar month preceding the month of the submission of the application for repayable advance, compared to the average employment in 2019 calculated as an average of the number of employees on 30 June 2019 and 31 December 2019, is at level:
 - i. higher than 100% - an additional amount of 0% of the repayable advance;
 - ii. from 50% to 100% - an additional amount of 0 to 25% of the repayable advance;

- iii. lower than 50% - an additional amount of 25% of the repayable advance.
- (28) The repayment of the advance is intended to protect jobs and promote employment. For micro-sized enterprises, a 10% decrease in the number of employees results in a 10% increase in the repayable advance. For SMEs, a 10% decrease in the number of employees results in a 5% increase in the repayment.
- (29) The reimbursable part of the repayable advance will be repaid in 24 equal monthly instalments, starting from the thirteenth calendar month after the date of the first payment of the repayable advance.
- (30) The aid may be granted provided that its nominal value, including other aid granted in accordance with section 3.1 of the Temporary Framework, does not exceed the following amounts (all figures used being expressed in gross):
- (a) EUR 100 000 for undertakings operating in the primary production sector of agricultural products¹³, or
 - (b) EUR 120 000 for undertakings operating in the fisheries and aquaculture sector¹⁴, or
 - (c) EUR 800 000 for other undertakings.
- (31) 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.
- (32) 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 717/2014¹⁵.
- (33) Where an undertaking is active in several sectors to which different maximum amounts apply, in accordance with point 23bis of the Temporary Framework, Poland shall ensure, by appropriate means, such a separation of accounts, that the

¹³ The sector of primary production of agricultural products (namely all products listed in Annex I to the TFEU) is not excluded from the scope of the scheme, as mentioned in recital (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.

¹⁴ 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.

¹⁵ Commission Regulation (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.

relevant ceiling is respected for each of these activities, and that the highest possible amount is not exceeded in total.

2.8. Cumulation

- (34) 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.
- (35) Poland confirms that aid under the notified scheme may be cumulated in accordance with point 20 of the Temporary Framework.
- (36) Poland confirms that the total nominal value of the measure remains below the overall caps per undertaking as described in recital (30) above.
- (37) 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.
- (38) 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.

2.9. Monitoring and reporting

- (39) 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 information¹⁶ 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

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

¹⁶ 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.

3.2. Existence of State aid

- (41) 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.
- (42) The measure is imputable to the State, since it was adopted by a legislative Act as mentioned in recital (9) above and it is administered by PFR, which is a public company fully owned by the State as described in recital (10). It is financed through State resources, since it financed by public funds.
- (43) The measure confers an advantage on their beneficiaries in the form of repayable advances, the repayment of which is conditional upon the successful achievement of the program objectives. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (44) The advantage granted by the measure is selective, since it is awarded only to micro-sized enterprises and SMEs affected by the economic repercussions of COVID-19 outbreak and having temporary financial difficulties in terms of liquidity, which will benefit from it as described in recitals (16) and (20) above. Furthermore, the economic activities and sectors as described in recital (19) above are excluded from the aid scheme.
- (45) 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.
- (46) 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

- (47) 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.
- (48) 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*”.
- (49) 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*”.

- (50) The measure aims at facilitating the access of undertakings and easing the liquidity constraints at the time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is widely affecting the economy and leading to severe disturbances of the real economy of the Member States.
- (51) The measure is part of a series of Polish anti-crisis measures conceived at national level to remedy a serious disturbance in the Polish economy. The importance of the measure to address a sudden shortage or unavailability of liquidity and preserve the continuity of economic activity 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. Furthermore, the measure has been designed to meet the requirements of a specific category of aid, “Aid in the form of repayable advances” described in section 3.1 of the Temporary Framework.
- (52) The aid under the measure is directly targeting undertakings facing a sudden liquidity shortage and not credit institutions or other financial institutions. For practical reasons, linked to the high number of potential beneficiaries, aid will be granted by PFR through the technical assistance from commercial banks as described in recital (12) above. It has however to be ensured that, by analogy with section 3.4 of the Temporary Framework, commercial banks, to the largest extent possible, do not receive indirect advantage from the State. The commercial banks involved in the process do not charge any commission or fees to the aid recipients’ and to PFR, as described in recital (12). Therefore, in this respect, the Commission considers that the measure includes safeguards that aid will not indirectly benefit commercial banks.
- (53) 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 practical operation of the scheme.
- (54) 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 total nominal value of such a 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, or EUR 800 000 for all other undertakings (recital (30)). All figures used are gross, that is, before any deduction of tax or other charge as described in recital (30) above. The measure therefore complies with points 22(a) and 23(a) of the Temporary Framework.
 - The aid takes the form of repayable advances as described in recital (7). The condition of point 22(a) of the Temporary Framework is considered to be met.

- The aid is granted on the basis of an aid scheme with an estimated budget of PLN 75 billion (EUR 16.6 billion)¹⁷ 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 and the Agriculture and Fishery Block Exemptions on 31 December 2019 (recital (20) 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 (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 (31) 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 717/2014¹⁸ (recital (32) 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 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 (33) above). The measure therefore complies with point 23bis of the Temporary Framework.
 - The applicable cumulation rules are respected (recitals (34) to (38) above).
- (55) The Commission notes that the clause according to which beneficiaries of this scheme need to be tax residents in the EEA as described in recital (16) above does not constitute a breach of intrinsically linked internal market rules because of its non-discriminatory effect.
- (56) Finally, the Commission notes the confirmation by the Polish authorities that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (39) above).
- (57) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State

¹⁷ ECB EUR exchange rate of 23 April 2020 was PLN 4.5697.

¹⁸ 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.

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