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Subject: State aid/Poland
SA.56408 (2020/N)
Aid for debt restructuring of agricultural holdings

Excellency,

1. PROCEDURE

- (1) By letter of 5 February 2020, registered by the Commission on the same day, Poland notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) The Commission sent requests for additional information to the Polish authorities on 20 February 2020, to which the Polish authorities answered by letters of 25 February 2020 and 16 March 2020, registered by the Commission on the same day.

2. DESCRIPTION

2.1. Title

- (3) Aid for debt restructuring of agricultural holdings.

2.2. Objective

- (4) With the present notification, the Polish authorities aim to introduce aid for the restructuring of debts of the agricultural holdings, in order to restore their financial liquidity and economic viability.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

H.E. Jacek CZAPUTOVICZ
Minister of Foreign Affairs
Al. J. Ch. Szucha 23
Warsaw

2.3. Legal basis

- (5) The legal basis is constituted by:
- Act of 9 November 2018 on the restructuring of agricultural holdings' debt (hereafter the "Restructuring Act");
 - Act of 28 February 2003 on Bankruptcy, as amended (hereafter the "Bankruptcy Act");
 - Act of 30 April 2004 on proceedings in matters concerning State aid;
 - Regulation of 11 August 2004 on the detailed method of calculating the value of public aid granted in various forms;
 - The rules governing the provision of loans for financial debts relief for agricultural activities;
 - The rules governing the provision of loans to finance the payment of debts arising in connection with agricultural activities.

2.4. Duration

- (6) From the approval of the aid scheme until 31 December 2021.

2.5. Budget

- (7) Overall budget is estimated at PLN 457,4 million (approx. EUR 100 million).
- (8) Aid will be granted in the form of restructuring loans, interest subsidies and guarantees. The Polish authorities estimate the overall aid budget at PLN 240 million (approximately EUR 52,4 million) for restructuring loans, PLN 17,4 million (approximately EUR 3,8 million) for interest subsidies and PLN 200 million (approximately EUR 43,7 million) for the guarantees.
- (9) The granting authorities will be the Agency for the restructuring and modernisation of agriculture (hereafter "the Agency") and the National Centre for Agricultural Assistance. Both granting authorities are public bodies. Aid will be granted from the State budget.

2.6. Beneficiaries

- (10) Eligible for aid under this aid scheme will be small and medium sized undertakings¹ active in agricultural primary production, which are in a state of insolvency within the meaning of Article 11 of the Bankruptcy Act ².

¹ 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 TFEU, Annex 1. OJ L 193 of 1.7.2014, p.1.

² According to the amended art. 11 of the Bankruptcy Act, the debtor is insolvent if he has lost the ability to honour his due monetary obligations. It is presumed that the debtor has lost the ability to honour his/her mature monetary obligations if the delay in fulfilling financial obligations exceeds three months. A debtor, who is a legal person or an organisational unit without legal personality whom a separate law

- (11) Any aid for the restructuring of the debts of large enterprises will be notified individually.
- (12) Enterprises in liquidation or bankruptcy or for which restructuring proceedings are pending on the basis of the Act of 15 May 2015 on restructuring will not be eligible for aid.
- (13) The estimated number of beneficiaries is over 1000.
- (14) The Polish authorities committed to suspend the payment of the aid if the beneficiary of the aid still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until the beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

2.7. Description of the aid scheme

- (15) As regards the conditions qualifying an enterprise as being in difficulty, the Polish authorities specified that for the purpose of this aid scheme a company will be considered as being in difficulty where it is subject to collective insolvency proceedings or fulfils the criteria under the domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- (16) Newly created enterprises will not be eligible for aid. Only enterprises that have been carrying out an agricultural activity for at least 3 years can receive aid.
- (17) In order to receive the State aid, the operator of an agricultural holding must prepare a restructuring plan, which will be approved by the territorially responsible Regional Advisory Centre. The restructuring plan must be attached to the aid application. Granting of aid will be conditional upon the implementation of the restructuring plan.
- (18) Depending on the potential of a beneficiary, the restructuring plan will indicate the path leading to the recovery of financial liquidity of the beneficiary and to generating profits, to make an enterprise competitive again through reorganizing and rationalizing the activity carried out and restructuring of the existing business or its diversification. Reorganization and rationalization of the business activity will include withdrawal from loss-making activities, restructuring of those activities and the diversification towards new, viable activities.
- (19) The restructuring plan shall include at least the following elements:
 - description of the situation of the agricultural holding prior to State aid and the description of the envisaged situation of the agricultural holding after obtaining aid;

confers legal capacity, is also insolvent when his/her monetary obligations exceed the value of his/her assets, and this state persists for a period exceeding twenty-four months. It is assumed that the debtor's monetary obligations exceed the value of his assets if, according to the balance of his liabilities, excluding reserves for liabilities and liabilities to related parties, they exceed the value of his assets, and this state persists for a period exceeding twenty-four months.

- economic and financial assessment of the agricultural holdings' financial situation, assessment of the reasons of insolvency and of the management actions that might have led to that and, where pertinent, the need to introduce relevant changes in the farm management system;
 - description of the causes of the difficulties of the agricultural holding, weak points of the carried agricultural activity that led to insolvency and the method of restoring payment capability;
 - description of the measures that will be taken to restore the capacity to cover the cost of farming activities and to pay off the financial liabilities;
 - an indication of the sources of financing of the actions referred to in the previous indent and the forecast of the economic and financial impact of the implementation;
 - the timetable for the implementation of the measures referred to in the 3rd indent of this recital and for the implementation of the restructuring plan;
 - an indication of the restructuring period in which the operator of the agricultural holding will be expected to return to capacity to cover the cost of farming activity and to pay back the financial liabilities.
- (20) The restructuring plan shall be implemented within three years. The beneficiary will be expected to regain its financial viability in the fourth year.
- (21) During that period, the beneficiary of aid must not increase its production. The beneficiaries which are medium size enterprises must commit to both structural and behavioural measures limiting the distortive effects of the aid on competition. The Polish authorities committed to monitor that these requirements are respected.
- (22) The expected results of the planned restructuring will be demonstrated in a baseline scenario and in a pessimistic scenario. To this end, the restructuring plan will include, inter alia, the current state of demand and supply as well as the forecast of demand and supply of raw materials produced in a given farm and the main cost factors for a given agricultural production sector reflecting the assumptions of the baseline scenario and of the pessimistic scenario, as well as strengths and weaknesses of the agricultural producer and agricultural activity. The scenarios will refer to the results obtained in a given sector of agricultural production in the region³ or in FADN⁴.
- (23) The restoration of financial liquidity specified in the restructuring plan must not result from optimistic assumptions of external factors, such as price changes or changes in demand or supply for limited resources, nor must it be linked to the beneficiary outperforming the market and its competitors or entering and expanding into new activities where it has no experience and track record, except when it is justified and required due to the envisaged diversification and profits generation.

³ Województwo.

⁴ Farm Accountancy Data Network

- (24) The assessment of the viability of implementing the restructuring plan will be carried out on the basis of economic data, in particular from the Polish Agricultural Accounting Program.
- (25) After completing the restructuring plan, the beneficiary shall achieve long-term viability and should be able to compete on the market on its own merits.
- (26) Aid may be granted in the form of:
- Interest subsidy on the restructuring bank loan;
 - Restructuring loan;
 - Guarantees securing the restructuring loan.
- (27) According to the Polish authorities, these aid forms have been chosen with the aim to immediately improve the financial situation of a beneficiary by limiting further indebtedness resulting from expensive civil law liabilities with an interest rate inadequate to the payment possibilities of the farms.
- (28) The selection of the financial instrument will be made by the farmer in the aid application. The adequacy of the aid form chosen will be subject to verification by the granting authority in light of achieving the restructuring objectives. It will be described in the restructuring plan.
- (29) The aid amount will respect the proportionality criterion and will be limited to the minimum necessary.
- (30) The maximum aid amount cannot exceed 5 million PLN (approximately EUR 1.09 million).
- (31) The interest subsidy can be combined with the guarantee.
- (32) Where these two aid forms are combined, for the purpose of determining the aid intensity, the percentage of the beneficiary's own contribution and the maximum aid amount per beneficiary, the aid amounts expressed in gross grant equivalent of aid (hereafter the "GGE") will be added up.
- (a) *Interest subsidy*
- (33) On the basis of the contractual agreement pursuant to Article 4 (8) of the Act, the Agency will grant interest subsidy on the restructuring loan provided by the bank.
- (34) The interest rate on the restructuring loan may be variable and shall be calculated as the sum of the reference rate of the WIBOR reference rate for loans on the interbank market granted for a period of 3 months (WIBOR 3M), rounded to the second decimal place, increased by not more than 3 percentage points.
- (35) Of the total interest rate, 2% shall be paid by the borrower. The aid amount shall correspond to the remaining part. The aid is conditional upon the borrower's obligation to repay the loan according to the restructuring loan contract and upon the implementation of the restructuring plan.
- (36) The total aid amount cannot exceed:

- 40% of the amount of the restructuring loan granted;
 - 60% of the amount of the restructuring loan granted to a young farmer, referred to in art. 2 (34) of Regulation No. 702/2014, or a young farmer, whose agricultural tax obligation was established not later than 5 years before the date of the aid application;
 - 60% of the amount of the restructuring loan granted to the entity running the agricultural holding, the major part of which is located in areas with natural constraints or other specific constraints specified in the regulations on rural development support from the European Agricultural Fund for Rural Development.
- (37) In compliance with § 4 (7) of Regulation of 11 August 2004 on the detailed method of calculating the value of public aid granted in various forms (hereafter “Regulation of 11 August 2004”), the GGE of aid in the form of interest subsidy equals to:
- a) in the case of a one-off payment: a lump sum payment,
 - b) if the interest subsidies are spread over time: the discounted interest rate shall be expressed by the following formula:

$$EDB = \sum_{i=1}^N \frac{F_i}{(1+r)^i},$$

where: “N” is the number of instalments; “Fi” is the interest rate amount per instalment; “r” is reference rate expressed as a decimal fraction, “i” is the next subsidy period.

- (38) The aid will be granted for maximum 10 years. The Polish authorities explained that in order to reduce the credit related costs, the credit granting institution may adjust the repayment period to the actual payment capabilities of the agricultural producer, in accordance with the assumptions of the restructuring plan.
- (b) *Refinancing loan*
- (39) The refinancing loan can be granted by the Agency for restructuring and modernisation of agriculture for a period not longer than 15 years. This period can be adjusted by the granting authority to the actual repayment capacity of the agricultural producer, in order to reduce the loan related costs.
- (40) In compliance with § 4 (5) of Regulation of 11 August 2004, the GGE of aid in the form of the loan will be equal to the difference between the discounted values of principal and interest instalments in the case of similar loans granted on market terms and the discounted values of principal and interest instalments in the case of the loans. Where it is particularly difficult to determine the market interest rate, interest corresponding to the market conditions for loans will be calculated by applying the reference rate; in such cases, the calculation for the loans will be performed using the calculation formulas provided for in § 4(5) Regulation of 11 August 2004.

- (41) Refinancing loans cannot be cumulated with other aid forms.
- (42) The loan interest rate will be variable and will not be less than the basic rate published by the European Commission⁵, in force at the date of granting the loan, increased by 4 percentage points.
- (43) The beneficiaries' own contribution to the costs of restructuring must cover at least 40% of the restructuring costs of medium-sized enterprises or 25% of the restructuring costs of small enterprises. The application for a loan must include the list of debts of the operator of the agricultural holding in connection with his agricultural activity.
- (44) The loan will be provided on the basis of the contract pursuant to Article 5 (10) of the Restructuring Act, which shall specify, among other, the method of securing the repayment of the loan, loan instalments and interest payments, the terms and date of repayment of the loan, including in the event of the non-execution or the cessation of the implementation of a restructuring plan or the cessation of repayment of the loan the arrangements for terminating the loan.
- (45) In case of failure to repay the loan by the dates specified in the contract, at the request of the Agency, the beneficiary must repay the loan together with the interests within the time limit set out in the request.
- (46) The loan is conditional upon its securing by the guarantee covering its repayment in an amount ensuring the repayment together with interest. The guarantee chosen by the beneficiary must be sufficient in terms of securing repayment of the loan in its entirety.

3. *Guarantees*

- (47) The guarantee may be granted by the National Centre for Agricultural Assistance to a bank with which the beneficiary has concluded a conditional loan contract.
- (48) The guarantee is conditional upon the conclusion of a guarantee contract and the establishment of a mortgage on a real estate of the beneficiary in favour of the granting authority. The mortgage will provide collateralization for the claim of the National Centre. The mortgage must be registered in the land and mortgage register.
- (49) The guarantee may be granted up to the amount of the underlying loan together with interests, excluding any subsidized interests granted by the Agency. The amount of the guarantee may not be higher than the sum of the mortgage covering the National Centre's claim and not higher than the value of the real estate on which the mortgage will be established.
- (50) The GGE of aid in the guarantees is proposed to be calculated, in compliance with § 4 (8) and (9) of Regulation of 11 August 2004, as follows:
 - a) where it is possible to determine the market value of the guarantee premium for a similar guarantee: the GGE will be equal to the difference between the discounted market value of the premium for the provision of a similar surety or

⁵ Currently 1.87%.

guarantee and the discounted value of the premium paid for the provision of a surety or guarantee,

b) where it is not possible to determine the market value of the guarantee premium for a similar guarantee: the GGE will be equal to the difference between the discounted value of the interest related to the loan, credit facility or other liability acquired under market conditions without a guarantee and the discounted value of the interest on the loan, credit facility or other liability acquired by virtue of providing guarantee, less the value of the premium paid for the provision of the guarantee; where it is particularly difficult to determine the market interest rate, interest corresponding to market conditions is calculated by applying the reference rate;

c) since this aid scheme is limited to SMEs, the GGE can be calculated as the difference between the discounted value of the premium calculated by applying the annual safe-harbour premium defined by the European Commission in line with the rating of the enterprise and the discounted value of the premium paid for provision of the surety or guarantee.

- (51) According to the Polish authorities, the beneficiaries' own contribution to aid in the form of guarantees will cover at least 40% of the restructuring costs of medium-sized enterprises or 25% of the restructuring costs of small enterprises.
- (52) The guarantee premium will amount to 0.5% of the guarantee.
- (53) The guarantee shall be granted for a period not longer than three months following the termination of the underlying loan.
- (54) The application for the guarantee shall contain, among others, a list of the debts of the beneficiary in connection with the agricultural activity exercised by that entity as well as the other debts and a list of the properties to be covered by the mortgage.

Other conditions:

- (55) No aid will be granted to undertakings which have received rescue or restructuring aid or temporary restructuring support in the past 10 years or which have received any non-notified aid. Likewise, no further separate State aid will be envisaged in the restructuring plan. Any future aid must be notified individually. Where an undertaking takes over assets of another undertaking, and in particular one that has been the subject of judicial or administrative procedures or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid or temporary restructuring support, the purchaser will not be excluded from the aid due to the 'one time, last time' principle, provided that there is no economic continuity between the old undertaking and the purchaser. In the case of the sale of a farm, which received the restructuring aid, the buyer will not be eligible for the restructuring aid again.
- (56) Where an entity belonging to a business group has received restructuring aid, the group as a whole as well as the other entities of the group remain eligible for restructuring aid, subject to compliance with the other provisions of the Guidelines on State aid for rescuing and restructuring non-financial undertakings

in difficulty⁶ (hereinafter "the R and R Guidelines"), with the exception of the earlier beneficiary of the aid. No aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

- (57) The beneficiary will contribute to the implementation of the restructuring plan also by his work and by depreciation costs of fixed assets involved in agricultural production. The value of depreciation will be determined in the restructuring plan.
- (58) The own contribution can be provided:
- from the applicant's own funds;
 - by the acquisition of new external capital on market terms;
 - raising new capital from existing shareholders.
- (59) The own contribution to the restructuring costs must be documented, depending on a restructuring measure, in a credible way. It will be verified during the approval of the restructuring plan.
- (60) According to the Polish authorities, aid will be limited to cases where a failure of a beneficiary would likely involve social hardship or market failure, in particular where an exit of SMEs with broad links to other local or regional SMEs would have potential negative consequences or other similar situations of hardship, duly justified by a beneficiary.
- (61) The Polish authorities further submit that without the restructuring aid, the insolvent agricultural holdings would be sold or liquidated in a way that would prevent them from reaching the pursued objectives of common interest.
- (62) The national authorities will compare the measures set out in the restructuring plan with a credible alternative scenario that does not involve State aid. Such a counterfactual scenario must demonstrate that without aid, the appropriate targets or objectives of common interest would not be achieved or would be achieved to a lesser extent. In particular, the scenario should demonstrate that without the aid, the beneficiary would be restructured, sold or liquidated in a way that would prevent the achievement of the objective or objectives of common interest.
- (63) Such assessment will be made by the Director of the Agricultural Advisory Centre, the State legal entity in possession of statistical data on farm incomes in a given administrative district, which will enable analyzing the possibilities of functioning of the restructured farm against the background of similar farms in the immediate environment.
- (64) The Polish authorities undertook to conform to the reporting obligation and to submit annual reports to the Commission.
- (65) The Polish authorities have informed the Commission that in order to comply with the transparency requirement the publication of the aid scheme and the individual aid awards above EUR 60 000 EUR will be done through the following web page: <https://srpp.minrol.gov.pl/> . They committed that the information will

⁶ OJ C 249 of 31.7.2014, p.1.

be kept for at least 10 years and will be available for the general public without restrictions.

3. ASSESSMENT

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

- (66) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".
- (67) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (68) The scheme in question is being established through legislative acts of the State (recital 5). Therefore, it is imputable to the State. Further, the aid will be granted from the State budget, hence it is financed through State resources (recital 9). The notified scheme confers to Polish agricultural undertakings in financial difficulty an advantage in the form of Interest subsidy on the restructuring bank loan; Restructuring loan and Guarantees securing the restructuring loan (recital 26), which they would not obtain under normal market circumstances. Other undertakings, in the same sector or other sectors, in a comparable legal and factual situation, in the light of the objective pursued by the scheme, are not eligible for such aid. Thus, the scheme is selective. It gives only certain undertakings a selective economic advantage, by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit, which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition⁷.
- (69) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade⁸. The beneficiaries of aid operate on a market of agricultural primary products where intra-EU trade takes place⁹. This sector is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.

⁷ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁸ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

⁹ In 2018, the intra-EU agricultural export in commodities and other primary products amounted to 170 000 million EUR and the intra-EU agricultural imports in commodities and other primary products amounted to 167 000 million EUR.

- (70) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

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

- (71) The aid scheme was notified to the Commission on 5 February 2020. It has not been implemented yet. Therefore, Poland has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

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

- (72) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (73) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.

3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (hereinafter "the Guidelines")¹⁰

- (74) Since the notified scheme concerns the restructuring of the debts of the agricultural holdings in difficulty, Chapter 1.3.5. of Part II of the Guidelines is applicable.
- (75) In compliance with point 482 of the Guidelines, aid for rescue and restructuring of undertakings in difficulty in the agricultural sector will be examined in accordance with the R and R Guidelines. This provision is confirmed by point 18 of the R and R Guidelines, which stipulates that "[the Commission] will apply these guidelines ... to the agricultural sector, including the primary agricultural production".

3.3.2.1. Application of the R and R Guidelines

- (76) Pursuant to point 19 of the R and R Guidelines, only undertakings, which are in difficulty within the meaning of point 20 of those Guidelines, can receive rescue and restructuring aid.
- (77) Pursuant to point 20 of the R and R Guidelines, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

¹⁰ OJ C 204 of 1.7.2014, p. 1. amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10 and by the Corrigendum published in OJ C 265, 21.7.2016, p. 5.

- (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.
 - (b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
 - (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
 - (d) In the case of an undertaking that is not an SME, where, for the past two years:
 - the undertaking's book debt to equity ratio has been greater than 7,5 and
 - the undertaking's EBITDA interest coverage ratio has been below 1,0.
- (78) This aid scheme is designed to provide debt restructuring aid to undertakings which meet the criteria of point 20 (c) of the R and R Guidelines (recital 15).
- (79) The Commission observes that the conditions defining the beneficiaries referred to in recital 15 of this decision comply with point 20 (c) of the R and R Guidelines.
- (80) Pursuant to point 21 of the R and R Guidelines, a newly created undertaking is not eligible for aid under the R and R Guidelines even if its initial financial position is insecure. An undertaking will in principle be considered as newly created for the first three years following the start of operations in the relevant field of activity.
- (81) As confirmed in recital 16, newly created enterprises will not be eligible for aid. Only enterprises that have been carrying out an agricultural activity for at least 3 years can receive aid. The condition stipulated in point 21 of the R and R Guidelines is therefore met.
- (82) Pursuant to point 22 of the R and R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for aid under those Guidelines, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Where a company in difficulty creates a subsidiary, the subsidiary, together with the company in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.

- (83) The Polish authorities confirmed that where an undertaking, belonging to a business group, has received restructuring aid, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid, with the exception of the earlier beneficiary of the aid. No aid will be passed on from the group or other group entities to the earlier beneficiary of the aid (recital 56).
- (84) Pursuant to point 25 of the R and R Guidelines, those Guidelines concern three types of aid: rescue aid, restructuring aid and temporary restructuring support. The notified scheme is designed to provide restructuring aid, therefore, it falls within the scope of the R and R Guidelines.
- (85) The present aid scheme envisages restructuring aid (recital 4) for smaller aid amounts for SMEs, including in assisted areas. Therefore, the scheme is assessed in lights of the conditions of Chapters 3, 4 and 6 of the R and R Guidelines.
- (86) Pursuant to point 104 of the R and R Guidelines, should Member States wish to provide aid to SMEs or smaller State-owned undertakings, such aid should normally be granted under schemes. The use of the schemes helps to limit distortions of competition linked to moral hazard, by allowing a Member State to make a clear statement *ex ante* concerning the terms on which it may decide to grant aid to undertakings in difficulty. This condition is met in the present case, because the notification concerns an aid scheme for SMEs (recital 10).
- (87) Pursuant to point 105 of the R and R Guidelines, the schemes must specify the maximum amount of aid that can be granted to any one undertaking as part of an operation to provide rescue aid, restructuring aid or temporary restructuring support, including where the plan is modified. The maximum total amount of aid granted to any one undertaking may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes. As confirmed in recital 30 the maximum aid amount for a single beneficiary is specified. This ceiling is below EUR 10 million. Therefore, point 105 of the R and R Guidelines is complied with.
- (88) In compliance with point 106 of the R and R Guidelines, the provisions of Chapters 3, 4 and 5 apply to the schemes for SMEs *mutatis mutandis*, except as provided otherwise in sections 6.2, 6.3, 6.4 and 6.5.

Objective of the common interest

- (89) Chapter 6.2 of the R and R Guidelines provides for a derogation from point 44 as regards the demonstration of social hardship or market failure. Pursuant to point 107 of the R and R Guidelines, where aid is granted under schemes to SMEs, it is sufficient for a Member State to determine that the failure of the beneficiary would likely involve social hardship or a market failure, in particular that:
- (a) the exit of an innovative SME or an SME with high growth potential would have potential negative consequences; the exit of an undertaking with the extensive links to other local or regional undertakings, particularly other SMEs, would have potential negative consequences;
 - (c) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy, or

- (d) similar situations of hardship duly substantiated by the beneficiary would arise.
- (90) As explained in recital 60, the Polish authorities intend to grant restructuring aid to agricultural holdings with strong links to other local and regional undertakings. Therefore, it has been determined by the Polish authorities that the failure of the beneficiaries would likely involve social hardship or a market failure. Thus, this aid scheme falls within the scope of point 107(b) of the Guidelines.
- (91) The other provisions to be taken into account in analyzing the pursuit of an objective of common interest are set out in section 3.1.2 (points 45 to 49) of the R and R Guidelines.
- (92) Pursuant to point 45 of the R and R Guidelines, a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability must be submitted. Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary's activities on to a more efficient basis, typically involving withdrawal from loss-making activities, restructuring of those existing activities that can be made competitive again and, possibly, diversification towards new and viable activities. It typically also involves financial restructuring in the form of capital injections by new or existing shareholders and debt reduction by existing creditors.
- (93) The Polish authorities confirmed that the beneficiaries would have to submit such a restructuring plan (recital 17).
- (94) The details of the restructuring plans, which will be required from the beneficiaries of aid, are described in recital 19. It follows that point 45 of the R and R Guidelines is respected.
- (95) Pursuant to point 46 of the R and R Guidelines, the granting of the aid must be conditional on implementation of the restructuring plan. As confirmed in recital 17, this point is complied with.
- (96) Pursuant to point 47 of the R and R Guidelines, the restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions that should exclude any further State aid not covered by the restructuring plan. The restructuring period should be as short as possible.
- (97) As regards the length of the restructuring period, it is limited to three years (recital 20), which is considered as reasonable time of the restructuring towards the economic viability. Recital 20 confirms that upon the completion of the restructuring, the beneficiary shall have the long-term viability restored and shall be capable of conducting business on his own merits. Point 47 of the R and R Guidelines is therefore respected.
- (98) Pursuant to point 48, the restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.

- (99) Pursuant to point 49, the restructuring plan must provide information on the business model of the beneficiary, demonstrating how the plan will foster its long-term viability. This should include, in particular, information on the beneficiary's organisational structure, funding, corporate governance and all other relevant aspects. The restructuring plan should assess whether the beneficiary's difficulties could have been avoided through appropriate and timely management action and, where that is the case, should demonstrate that appropriate management changes have been made. Where beneficiary's difficulties stem from flaws in its business model or corporate governance system, appropriate changes will be required.
- (100) As it is confirmed in recital 19, the restructuring plan will identify the causes of the beneficiary's difficulties and its weaknesses. It will also identify all information pursuant to point 49 of the R and R Guidelines.
- (101) Pursuant to point 50, the expected results of the planned restructuring should be demonstrated in a baseline scenario as well as in a pessimistic (or worst-case) scenario. For this purpose, the restructuring plan should take account, inter alia, of the current state and future prospects of supply and demand on the relevant product market and the main cost drivers of the industry, reflecting baseline and adverse scenario assumptions, as well as the beneficiary's specific strengths and weaknesses. Assumptions should be compared with appropriate sector-wide benchmarks and should, where appropriate, be adapted to cater for country- and sector-specific circumstances. The beneficiary should provide a market survey and a sensitivity analysis identifying the driving parameters of the beneficiary's performance and the main risk factors going forward.
- (102) The Polish authorities confirmed that the expected results of the planned restructuring will be demonstrated in a baseline scenario and in a pessimistic scenario. To this end, the restructuring plan will include, inter alia, the current state of demand and supply as well as the forecast of demand and supply of raw materials produced in a given farm and the main cost factors for a given agricultural production sector reflecting the assumptions of the basic scenario and of the pessimistic scenario, as well as strengths and weaknesses of the agricultural producer and its agricultural activity (recital 22).
- (103) As regards the market survey and the sensitivity analysis, point 108 of the R and R Guidelines provides for a derogation from this requirement for beneficiaries under aid schemes. Such is the case at hand, therefore, the derogation is applicable.
- (104) Pursuant to point 51, the beneficiary's return to viability should derive mainly from internal measures, entailing in particular withdrawal from activities which would remain structurally loss-making in the medium term. The return to viability must not be dependent on optimistic assumptions about external factors such as variation in prices, demand or supply of scarce resources, nor can it be linked to the beneficiary outperforming the market and its competitors or entering and expanding into new activities where it has no experience and track record (unless duly justified and required for reasons of diversification and viability). As detailed in recital 23, this point is respected. The Polish authorities confirmed that the return to viability must not depend on the external factors or optimistic assumptions, but rather on internal restructuring measures.

- (105) Pursuant to point 52 of the R and R Guidelines, long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges. The restructured undertaking should be able to compete in the market place on its own merits.
- (106) The Polish authorities confirmed that the beneficiaries will be expected to return to viability in the fourth year, to be able to cover the business costs and to compete on their own merits (recital 25). Thus, point 52 of the R and R Guidelines is respected.

Need for the State intervention

- (107) Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating how the relevant objective or objectives in section 3.1.1 of the R and R Guidelines would not be attained, or would be attained to a lesser degree, in the case of that alternative scenario. Such scenarios may, for example, include debt reorganisation, asset disposal, private capital raising, sale to a competitor or break-up, in each case either through entry into an insolvency or reorganisation procedure or otherwise.
- (108) The Polish authorities confirmed that the beneficiaries will submit a counterfactual scenario that does not involve State aid (recital 62). They also confirmed that the State intervention is necessary in order to restore the financial liquidity and to restructure the debts of the agricultural holdings in difficulty. Without aid, the beneficiary holdings would be liquidated and the objectives of the common interests would not be attained (recital 61).

Appropriateness

- (109) The Commission notes that the derogations envisaged in Section 6.3 of the R and R Guidelines for aid schemes for small amounts and for SMEs concern rescue aid. This aid scheme concerns the restructuring aid, therefore, the derogations provided for in Section 6.3 are not applicable. The appropriateness of the aid must therefore be assessed in the light of the provisions of point 58 of the R and R Guidelines.
- (110) Pursuant to point 58 of the R and R Guidelines, Member States are free to choose the form that restructuring aid takes. However, in doing so, they should ensure that the instrument chosen is appropriate to the issue that it is intended to address. In particular, Member States should assess whether beneficiaries' problems relate to liquidity or solvency and select appropriate instruments to address the problems identified. For instance, in the case of solvency problems, increasing assets through recapitalisation might be appropriate, whereas in a situation where the problems mainly relate to liquidity, assistance through loans or loan guarantees might be sufficient.
- (111) The Polish authorities explained the aid forms chosen are considered as the most appropriate to address the financial liquidity problems of the indebted agricultural holdings (recital 27). The specific aid form will be chosen by the aid applicant and its adequacy will be verified by the authorities in light of the attainment of the restructuring objectives (recital 28). Taking into account the explanations

provided by the Polish authorities, the Commission considers that the envisaged aid forms meet the conditions set up in point 58 of the R and R Guidelines.

Incentive effect

- (112) Pursuant to point 59 of the R and R Guidelines, Member States that intend to grant restructuring aid must demonstrate that in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective of common interest.
- (113) The Polish authorities explained that the State intervention is necessary and that without aid the objectives of common interest would not be achieved and the beneficiary would be restructured, sold or wound up (recital 61).

Proportionality of the aid/aid limited to the minimum

- (114) Pursuant to point 61 of the R and R Guidelines, the amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs. In particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured, as set out in more detail in this section (3.5.2). Such assessment will take account of any rescue aid granted beforehand. The aid forms chosen by the Polish authorities (recital 26) ensure that the aid will be limited to the strict minimum for achieving the aid scheme objectives. The objective is to restructure the existing debts and not write them off. Moreover, State aid is accompanied by the own contribution of the beneficiary. The chosen aid instruments ensure that the negative effect of aid on competition remains limited.
- (115) Pursuant to point 62 of the R and R Guidelines, a significant contribution to the restructuring costs is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors. Such own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. For example, where the aid to be granted enhances the beneficiary's equity position, the own contribution should similarly include measures that are equity-enhancing, such as raising fresh equity from incumbent shareholders, the write-down of existing debt and capital notes or the conversion of existing debt to equity, or the raising of new external equity on market terms. The Commission will take account of the extent to which own contribution has a comparable effect to the aid granted when assessing the necessary extent of the measures to limit distortions of competition in accordance with point 90.
- (116) In compliance with point 63 of the R and R Guidelines, the own contribution of the aid beneficiary must be real, that is to say actual, excluding future expected profits such as cash flow, and must be as high as possible.
- (117) Pursuant to point 111 of the R and R Guidelines, which derogates from point 64, Member States may consider an own contribution to be adequate if it amounts to at least 40 % of the restructuring costs in the case of medium-sized enterprises or 25 % of the restructuring costs in the case of small enterprises.

- (118) In the case at hand, the Polish authorities have sufficiently demonstrated that the own contribution attaining the minimum levels laid down in point 111 of the R and R Guidelines will be ensured (recitals 36 – 37, 43 and 51).
- (119) As detailed in recitals 34 and 42 of this decision, the interests, fixed in compliance with the Communication from the Commission on the revision of the method for setting the reference and discount rates¹¹, are to be paid by the beneficiary as own contribution.
- (120) The Commission Communication provides for the rates, which can be used as a proxy for the market rate. As regards the companies in economic difficulties, their rating category is CCC or below, thus, depending on the level of collateralization of the beneficiary's choice, up to 1000 basis points are to be added to the rate. Therefore, the own contribution of the beneficiaries is considered real in compliance with point 63 of the R and R Guidelines.
- (121) As regards aid in the form of guarantees, the Commission considers that, where the guarantee is combined with the interest subsidy, the own contribution amounting to at least 40 % of the restructuring costs in the case of medium-sized enterprises or 25 % of the restructuring costs in the case of small enterprises will be ensured. Likewise, the Polish authorities claimed that the own contribution will be expected from the beneficiaries (recital 51) also where the guarantee will be the sole aid form.
- (122) The Commission takes note that the State guarantees on restructuring loans will be conditioned by the beneficiary's commitment to register a mortgage as a guarantee for the State's claim (recital 48).
- (123) According to Polish authorities, the beneficiary will also contribute to the implementation of the restructuring plan by his work and by depreciation costs of fixed assets involved in agricultural production. The value of depreciation will be determined in the restructuring plan (recital 57).
- (124) The minimum own contribution will be verified during the approval of the restructuring plan (recital 59).

Burden sharing

- (125) Chapter 3.5.2.2. of the R and R Guidelines stipulates the conditions for the scenario where the State aid is given in a form that enhances the beneficiary's equity position (for example where the State provides grants, injects capital or writes off debt). In the case at hand, the chosen aid forms are not principally aimed at enhancing the equity position, therefore, points 65 to 69 of the R and R Guidelines are not applicable.

Negative effects

- (126) Point 112 of the R and R Guidelines contain specific provisions for analyzing the potential negative effects of the proposed aid. A Member State that intends to grant rescue aid, restructuring aid or temporary restructuring support must verify whether the 'one time, last time' principle set out in section 3.6.1 is complied

¹¹ OJ C 14, 19.1.2008, p. 6

with. For that purpose, the Member State must determine whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past, including any such aid granted before the entry into force of these guidelines and any non-notified aid. If so, and where less than 10 years have elapsed since the rescue aid or temporary restructuring support was granted to a beneficiary active in the agricultural primary production or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), further rescue aid, restructuring aid or temporary restructuring support must not be granted, except

- (a) where temporary restructuring support follows the granting of rescue aid as part of a single restructuring operation;
- (b) where restructuring aid follows the granting of rescue aid or temporary restructuring support as part of a single restructuring operation;
- (c) where rescue aid or temporary restructuring support has been granted in accordance with these guidelines and that aid was not followed by restructuring aid, if:
 - i. it could reasonably have been believed that the beneficiary would be viable in the long term when the aid pursuant to these guidelines was granted, and
 - ii. new rescue or restructuring aid or temporary restructuring support becomes necessary after at least five years due to unforeseeable circumstances for which the beneficiary is not responsible;
- (d) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.

(127) The Polish authorities confirmed that the condition of point 112 of the R and R Guidelines will be respected and no restructuring aid will be granted to a beneficiary which received any aid under the R and R Guidelines in the course of the last 10 years (recital 55).

(128) Likewise, the Polish authorities confirmed that, where a business group has received rescue aid, restructuring aid or temporary restructuring support, no further rescue or restructuring aid to the group itself or any of the entities belonging to the group will be granted, unless 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted, whichever occurred the latest. Where an entity belonging to a business group has received rescue aid, restructuring aid or temporary restructuring support, the group as a whole as well as the other entities of the group will remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these guidelines), with the exception of the earlier beneficiary of the aid. No aid will be passed on from the group or other group entities to the earlier beneficiary of the aid (recital 56). Thus, point 74 of the R and R Guidelines is respected.

(129) The Polish authorities also confirmed that, in compliance with point 75 of the R and R Guidelines, where an undertaking takes over assets of another undertaking, and in particular one that has been the subject of judicial or administrative

procedures or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid or temporary restructuring support, the purchaser will not be excluded from the aid due to the ‘one time, last time’ principle, provided that there is no economic continuity between the old undertaking and the purchaser (recital 55).

- (130) Pursuant to point 76 of the R and R guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones.
- (131) Pursuant to point 113 of the R and R Guidelines, measures limiting distortions of competition are likely to have a disproportionate impact on small enterprises, particularly given the burden of carrying out such measures. Therefore, by way of derogation from point 76, the Member States are not obliged to require such measures from small enterprises, except where otherwise provided by rules on State aid in a particular sector. However, small enterprises should not normally increase their capacity during a restructuring period.
- (132) In this regard, the Commission notes that the sectoral rules applicable to agriculture do not impose specific measures to limit distortions of competition, since, in the case of granting rescue or restructuring aid, the EU Guidelines on State aid in the agricultural and agricultural sectors and in rural areas 2014-2020 refer to the R and R Guidelines. Thus, the derogation stipulated in point 113 of the R and R Guidelines is fully applicable. The criterion of the non-increase of the production capacity is fulfilled, as confirmed in recital 21.
- (133) The derogation provided for in point 113 of the R and R Guidelines does not apply to medium-sized enterprises. Therefore, pursuant to point 76 of the R and R Guidelines, measures must be taken to limit distortions of competitions by the beneficiaries, which are medium-sized companies. Such measures may take the form of structural, behavioural or market opening measures. The Polish authorities confirmed that the beneficiaries which are medium-sized enterprises, will be required to take both, structural and behavioural measures in order to limit to minimum possible distortions of competition. They undertook to monitor that these measures are effectively respected (recital 21).
- (134) Transparency: The transparency requirement is complied with, as shown in recital 65.

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)(c) of the Treaty on the Functioning of the European Union

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President