EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.57191 (2020/N) – Poland
State aid in the simplified repayable form from financial engineering instruments resources subject to re-use and from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 6 May 2020, Poland notified aid in the form of financial instruments, based on a draft regulation[1] (“the measure”), under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).[2]

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

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[1] Draft Regulation of the Minister of Development Funds and Regional Policy of April 2020 on granting state aid in the simplified repayable form from financial engineering instruments resources subject to re-use and from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak.

[2] Communication from the Commission -. Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak as adopted on 19 March 2020 (C(2020) 1863), OJ C 91I, 20.3.2020, p. 1-9, as amended on 3 April 2020, OJ C112 I, 4.4.2020, p.1-9.

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

2. DESCRIPTION OF THE MEASURE

(4) Following the outbreak of the COVID-19 in Poland, the Polish authorities have adopted since 2 March[4] several administrative measures to prevent the spread of the virus such as travel restrictions, cancellation of mass gathering events, closure of schools and universities and administrative population containment measures. Poland considers that these preventive measures have started to affect the real economy and may lead to further suspension of production and services, and ultimately to financial difficulties for individual companies.

(5) Taking that into account, the Polish authorities consider that there is a need to introduce specific solutions aimed at counteracting the negative economic effects of the COVID-19 outbreak, in particular, the loss of liquidity of undertakings and lay-offs, and at preserving the continuity of economic activity during and after the outbreak.

(6) The compatibility assessment of the measure is based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by Sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(7) The measure provides aid in the form of a loan, surety or guarantee[5].

2.2. National legal basis

(8) The legal basis for the measure is a draft Regulation of the Minister of Development Funds and Regional Policy of April 2020 on granting State aid in the simplified repayable form from financial engineering instruments resources subject to re-use[6] and from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the occurrence of the COVID-19 pandemic outbreak.

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

[4] On the basis of the legislative Act of 2 March 2020 on special solutions on the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them.

[5] The Polish authorities explained that sureties, under the Polish civil law involve a promise by one party (not a bank) to assume responsibility for the debt obligation of a borrower if that borrower defaults. For the purpose of the notified measure, sureties are defined as meeting the conditions of the guarantees within the meaning of Art. 2 point 67 of Regulation No. 651/2014.

[6] These resources stem from the programming period 2007-2013 and are considered as national resources from the Polish State budget.

2.3. Administration of the measure

(9) Aid will be granted under the mechanism of regional operational programmes and national operational programmes 2014-2020.

(10) The measure is to be administered by the Minister of Development Funds and Regional Policy and regional managing authorities of the relevant operational programmes.

(11) The distribution of public loans, sureties and guarantees will be made through credit institutions and other financial institutions as financial intermediaries, under two organisation structures: a holding fund, whereby the managing authority entrusts an entity to set up several financial instruments with different financial intermediaries; directly, where the managing authority sets up a financial instrument in partnership with a financial intermediary[7].

(12) The Polish authorities confirmed that the financial intermediaries are obliged to provide a mechanism ensuring that the aid element in the form of public loans, sureties and guarantees is to be transferred to the beneficiary. Public loans, sureties or commercial loans covered by guarantee shall be granted on more favorable terms than those resulting from the market practice of the financial intermediary. In the case of guarantees, the lending bank has to offer to the final recipient better loan terms compared to the bank's standard offer, e.g.: lower margin, lower commission, spreading debt repayment over a longer period, grace period for debt repayment, providing a larger loan amount. The same will relate, mutatis mutandis, to the body granting the aid in the form of loan. Bodies implementing financial instruments will be obliged to deposit funds intended for providing loans, surety or guarantees on a separate account, which will minimize the risk of indirect aid. Moreover, the financial instruments set up under operational programmes for 2014-2020 are subject to the management and controls provided for by ESIF rules[8], including audits that also cover State aid compliance checks.

2.4. Budget and duration of the measure

(13) The budget of the measure is estimated at EUR 450 million (PLN 2 043 million)[9].

(14) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

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[7] These two methods of implementing financial instruments are allowed by Regulation 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

[8] Regulation (EU) n°1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the ERDF, ESF, Cohesion fund, EAFRD and EMFF, OJ 20.12.2013, L 347, p. 320.

[9] Exchange rate 6 May 2020 EUR 1= 4.5402.

2.5. Beneficiaries

(15) All enterprises are in principle eligible under the measure, in compliance with the specific relevant ESIF rules where applicable. It is estimated that approx. 7 000 enterprises will benefit from the measure. Financial institutions are excluded as eligible final beneficiaries.

(16) Aid may be granted under the measure only to undertakings that were not already in difficulty within the meaning of the General Block Exemption Regulation, the Agricultural Block Exemption Regulation and the Fisheries Block Exemption Regulation[10] on 31 December 2019.

2.6. Sectoral and regional scope of the measure

(17) The measure is in principle open to all sectors and applies to the whole territory of Poland. To the extent the scheme is co-financed by European Structural and Investment Funds (ESIF)[11], the Polish authorities confirm that the rules applicable under these Funds shall be respected. This implies therefore the territorial restrictions of the individual operational programmes and the sectoral exclusions from the scope of the ESIF regulations.

2.7. Basic elements of the measure

(18) The measure will be granted in the form of public loans, sureties or guarantees. The value of the aid granted under the measure shall be expressed in nominal value of a loan, surety or guarantee.

(19) The maximum amount of support per undertaking will not exceed:

- The equivalent of EUR 100 000 in PLN (gross, i.e. before any deduction of tax or other charge) - in the primary production of agricultural products;

- The equivalent of EUR 120 000 in PLN (gross, i.e. before any deduction of tax other charge) - in the fisheries or aquaculture sector, covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organization 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;

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10 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; in Art. 2 point 14 of 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 on the Functioning of the European Union, or within the meaning of Art. 3 point 5 of 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 on the Functioning of the European Union.

11 European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF).

- The equivalent of EUR 800 000 in PLN (gross, i.e. before any deduction of tax or other charge) - in other cases.

(20) The support to undertakings active in the primary production of agricultural products is not fixed based on the price or quantity of products put on the market.

(21) The support to undertakings active in the fishery and aquaculture sector 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.

(22) Where an undertaking is active in several sectors to which different maximum amounts apply, it shall be ensured by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total.

(23) The Polish authorities confirm that where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid may not be partly or entirely passed on to primary producers and may not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

2.8. Cumulation

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

(25) The support granted under the measure may be cumulated with State aid granted on another legal basis, subject to the principles set out in that legal basis, and with de minimis aid[12], provided the cumulation rules under the relevant de minimis regulations are respected.

(26) If aid granted under the measure is subject to cumulation with other aid approved under section 3.1 of the Temporary Framework, the total nominal value of support granted to one undertaking shall not exceed the values indicated in recital (19).

(27) The Polish authorities confirm that if aids granted under the different sections of the Temporary Framework are cumulated, the relevant provisions of Temporary Framework will be respected.

[12] Granted in accordance with the provisions of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Art. 107 and 108 of the Treaty on the Functioning of the European Union for de minimis aid; Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector; 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; Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest.

2.9. Monitoring and reporting

(28) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting[13]).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(30) 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.

(31) The measure is imputable to the State, since it is administered by national and regional authorities and based on a Ministerial regulation It is financed through State resources, since it is financed by public funds and by European Structural and Investment Funds (ESIF) that are managed by the national authorities that have discretion on the use of those funds (see recitals (8), (10) and (11)).

(32) The measure confers an advantage on its beneficiaries in the form of a non-market conform loan, surety or guarantee. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions (see recitals (7) and (12)).

(33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings, which are affected by the economic repercussions of the COVID-19. In case of co-financing with structural funds, only undertakings that comply with the territorial and sectorial restrictions of the relevant fund, are included (see recitals (15) to (17)).

(34) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists (see recital (17)).

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[13] Referring to information required in 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. For repayable advances, the nominal value of the advance may be inserted per beneficiary.

(35) 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

(36) 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.

(37) 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*".

(38) 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*".

(39) The measure is one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. 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 described in Section 3.1 of the Temporary Framework.

(40) 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:

(a) The overall nominal value of the loan, surety or guarantee does not exceed the equivalent of EUR 800 000 in PLN per undertaking and does not exceed the equivalent of EUR 120 000 in PLN per undertaking active in the fishery and aquaculture sector or the equivalent of EUR 100 000 in PLN per undertaking active in the primary production of agricultural products (recital (19)); all figures used are gross, that is, before deduction of tax or other charge. The conditions of points 22(a) and 23(a) of the Temporary Framework are therefore considered to be met;

(b) The aid takes the form of a loan, surety or guarantee, and therefore complies with point 22(a) of the Temporary Framework;

(c) The aid is granted based on a scheme with an estimated budget of EUR 450 million (recital (13)). Therefore, the condition of point 22(b) of the Temporary Framework is considered to be met;

(d) In compliance with paragraph 22(c) of the Temporary Framework, the aid will only be granted to undertakings which were not already in difficulty on 31 December 2019 (recital (16));

(e) The aid will be granted no later than 31 December 2020 (recital (14)); hence the condition set out in point 22(d) of the Temporary Framework is met;

(f) Aid granted to beneficiaries 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 (23)); therefore, the condition of point 22(e) of the Temporary Framework is considered to be met;

(g) Aid to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (20)); hence the condition set out in point 23(b) of the Temporary Framework is met;

(h) Aid to undertakings active in the fishery and aquaculture sector 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 (recital (21)); therefore the condition set out in point 23(c) of the Temporary Framework is met.

(i) Where an undertaking is active in several sectors to which different maximum amounts apply, in accordance with points 22(a) and 23(a) of the Temporary Framework, Poland will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of these activities and that the highest possible amount of EUR 800 000 is not exceeded in total (recital (22)); the condition set out in point 23 bis of the Temporary Framework is considered to be met.

(j) The measure introduces safeguards in relation to the possible indirect aid in favour of the financial intermediaries implementing the aids to ensure that these institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (12)) in line with point 31 of the Temporary Framework.

(k) The Polish authorities committed to comply with all the monitoring and reporting provisions laid down in section 4 of the Temporary Framework (recital (28)).

(41) Aid granted under section 3.1 of the Temporary Framework may be cumulated with aid under other sections of the Temporary Framework within the limits of the specific provisions of these other sections and with aid granted under the “de minimis” Regulations provided that the cumulation rules in the relevant regulations and guidelines are respected (recitals (24) to (27)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(42) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[14] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[15] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD and the SRMR.

(43) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[16] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(44) Moreover, as indicated in recital (12) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

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

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

[15] OJ L 225, 30.7.2014, p. 1-90.

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

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President