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**Subject: State Aid SA.57054 (2020/N) – Poland
COVID-19: The Polish anti-crisis measures – aid for damage
compensation and to improve the liquidity of undertakings affected
by the COVID-19 outbreak**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 April 2020, Poland notified an aid scheme providing for aid in the form of a loan granted at subsidised interest rates and which can be redeemed in an amount not exceeding 75% of the value of the actual damage suffered due to the COVID-19 outbreak and the containment measures related thereto (Financial Shield of the Polish Development Fund for Large Enterprises – write off of loans, “the measure”). The scheme is notified under Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”) and under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹. The measure was notified in compliance with Article 108(3) of the TFEU. The Polish authorities submitted further information on 30 April, and submitted revised notifications on 11 May, 18 May, and 23 May 2020.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1-9 and by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3-15.

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- (2) Poland exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English only.

2. DESCRIPTION OF THE MEASURE

2.1. COVID-19 outbreak in Poland and the official reaction of the Polish authorities

- (3) According to the Polish authorities, the COVID-19 crisis is affecting the entire Polish economy: real GDP is forecast to decline by 4.7% in 2020 due to the COVID-19 outbreak and its containment measures which caused a disruption in economic activity and an unprecedented fall in external demand. This has had a significant negative impact on the economic wellbeing of many fundamentally healthy enterprises, ultimately threatening their solvency and survival. Looking forward, many of these enterprises are also facing a serious threat of losing financial liquidity.
- (4) In response to the COVID-19 outbreak, the Polish Government has taken a number of measures aiming to slow down the rate of infection. These included the suspension, as of 12 March 2020, of classes in universities, schools, kindergartens, and nurseries and of the activities of cultural institutions such as theatres, museums, cinemas, etc. These restrictions were followed on 13 March 2020 by the declaration of the state of epidemic emergency and the introduction of border control measures and significant limitations of international rail and air transport as well as of domestic air operations. Additional measures included the closure of restaurants, fitness clubs, swimming clubs and a ban on public gatherings of more than 50 people. On 20 March 2020, Poland moved into a “state of epidemic” and introduced further restrictions on economic and social activities and as from 24 March 2020 restrictions on the mobility of people. On 1 April 2020 further limits were imposed on the maximum number of customers allowed in stores, trade fairs, and post offices and on their opening hours. Hotels and other accommodation businesses as well as beauty and hair saloons were closed, and the performance of certain medical procedures were suspended. Poland explained that, at the time of the notification, it was not possible to anticipate when the prohibitions and recommendations put in place by the Polish Government to contain the spread of the virus would be lifted as this would depend on the success in limiting the infection.
- (5) These restrictions led to a slowdown and in some instances a total halt of economic activity and significant perturbations in supply chains. Poland’s Manufacturing Purchasing Managers Index (PMI) decreased from 48.2 points in March 2020 to 31.9 in May 2020³, marking the lowest level since 1998. The high uncertainty and risk aversion resulted in significant cash outflows from the Polish financial market as shown by the significant declines of the Warsaw Stock Exchange Index (WIG): as of the end of April, WIG lost nearly 20% since the end of January. Private consumption was hard-hit due to an increase in unemployment and weak consumer confidence. Falling demand from Poland’s main trading

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

³ <https://www.statista.com/statistics/1066618/poland-manufacturing-pmi/>

partners and disruptions in international trade are expected to cause a drop in both exports and imports in 2020. The instability and loss of revenues caused by the COVID-19 outbreak and the lockdown measures are affecting all sectors of the Polish economy and undertakings of all sizes.

- (6) Therefore, the Polish authorities developed a scheme to provide compensation for the damage suffered from the COVID-19 outbreak as well as access to liquidity to undertakings that are facing a sudden liquidity shortage. The notified measure forms part of an overall package of measures entitled the “Financial shield for large undertakings” which aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (7) The compatibility assessment of the measure is based on Article 107(2)(b) and on Article 107(3)(b) TFEU, as interpreted by section 3 of the Temporary Framework.

2.2. Objective of the measure

- (8) As explained in recitals (3), (4), and (5) above, the spread of COVID-19 has resulted in a limitation of economic activity affecting all sectors of the Polish economy. The losses suffered by the respective undertakings and the weakening economic environment have put them in a sudden liquidity shortage resulting in difficulties to cover their running costs.
- (9) The measure therefore has two distinct objectives: (1) to ensure access to liquidity and (2) to compensate the affected undertakings for the damage caused by the COVID-19 outbreak and the containment measures adopted by the Polish authorities to limit the spread of the virus.

2.3. The nature and form of aid and duration of the measure

- (10) The measure provides aid in the form of loans at subsidised interest rates combined with aid for the compensation of damage to undertakings that have suffered or are suffering from both damage and liquidity shortages due to the COVID-19 outbreak and the containment measures related thereto. The aid in the form of subsidized interest rates can be granted under the measure as from its approval until no later than 31 December 2020.
- (11) Given the fact that the COVID outbreak in Poland and the related confinement measures imposed by the Polish authorities might still be ongoing at the time when the subsidised loans envisaged by the measure will be granted to the beneficiaries, it might not be possible to define precisely at that stage the amount of the actual damage incurred by the targeted undertakings. Therefore, at the latest by 30 September 2021, the loan beneficiary will receive a partial capital rebate on the loan (equivalent to a non-reimbursable grant) constituting aid in the form of compensation for damage caused by the COVID-19 outbreak and the respective containment measures taken by the Polish Government. The partial capital rebate cannot exceed 75% of the ex post quantification of the damage incurred by the beneficiary due to the COVID-19 outbreak in the period between

1 March 2020 and 31 August 2020 at the latest. The partial capital rebate also cannot exceed 75% of the nominal value of the loan.

2.4. The national legal basis

- (12) The legal basis for the measure comprises *inter alia* the following instruments:
- (a) the Polish Act of 4 July 2019 on the system of development institutions (Journal of Laws, item 1572), as amended by the Act of 31 March 2020 amending the Act on the system of development institutions (Journal of Laws, item 569), and
 - (b) the Resolutions of the Polish Council of Ministers of 27 April 2020 establishing the financial support programme entitled “Financial shield for large enterprises”, as amended.

2.5. Administration of the measure

- (13) The Polish Development Fund S.A. (Polski Fundusz Rozwoju S.A.) (“PFR”) is responsible for administering the measure. The funds under the notified programme will be distributed directly by PFR. Poland confirmed that no other financial intermediaries will be involved in the implementation of the measure.

2.6. Budget of the measure

- (14) The estimated budget of the measure is PLN 7.5 billion (EUR 1.6 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.
- (16) The notified measure is part of a larger programme “Financial shield for large enterprises”. Poland indicated that it may reallocate up to 20% of the budget to other measures under the programme, which are the subject of separate notifications, and vice versa. The budget of the notified measure may therefore be increased by a maximum of 20% up to PLN 9 billion (EUR 1.92 billion).

2.7. Beneficiaries

- (17) The final beneficiaries of the measure are enterprises (“przedsiębiorcy”) within the meaning of Article 4 of the Polish Entrepreneurs Law dated 6 March 2018 (Journal of Laws of 2019, item 1292, as amended), which meet the following criteria:
- (a) Large enterprises: which employ more than 249 employees⁴ (as of 31 December 2019), excluding the owner, and/or having annual turnover in 2019 of more than EUR 50 million and a balance sheet for 2019 of more than EUR 43 million; and

⁴ For the purposes of establishing the status of the beneficiary, an employee is understood as a person employed based on employment contract, provided that employees on maternity, parental, childcare leave and employed to obtain occupational training are excluded.

- (b) Small and medium-sized enterprises (“SMEs”)⁵, that are not large enterprises but exceed a certain size, which employ more than 150 employees (as of 31 December 2019), excluding the owner, and their annual turnover in 2019 exceeds PLN 100 million, as long as: (i) all of the following conditions have been met: (1) their financing gap under the financial projections exceeds PLN 3.5 million and (2) the undertaking has exhausted the maximum financing possibilities of the Polish Development Fund programme "Financial Shield of the Polish Development Fund for SMEs"; and/or (ii) the financing concerns the Sectoral Programme in relation to Covid-19 epidemic in the form of, e.g. a financing programme regarding medical technologies⁶.
- (18) The measure may be granted to undertakings as defined in recital (17) meeting all of the following criteria:
- (a) Enterprises which conducted a business activity on 31 December 2019;
 - (b) Enterprises, which, as at the day of the submission of the application or as at the day of the signing of a financing agreement, were not subject to bankruptcy, liquidation or restructuring proceedings under Polish law;
 - (c) Enterprises which, as at 31 December 2019 or on the day of the signing of the loan agreement, were not in arrears with the payment of taxes and social security contributions, whereby: (i) the payment of instalments or deferrals, or (ii) the delay in the payment of taxes and social security contributions which does not exceed the tripled amount of the fee collected by the designated operator within the meaning of the Postal Law for treating a postal item as a registered mail are not considered as arrears;
 - (d) Enterprises which have submitted a restructuring plan and financial projections indicating that they will achieve financial viability after the COVID-19 crisis and have successfully passed a simplified due diligence analysis, including the know your client analysis, carried out by the PFR (or its advisers). However, this can take the form of a confirmatory due diligence analysis or vendors due diligence;
 - (e) Under the notified measure, aid cannot be granted to enterprises 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

⁵ SMEs are defined in line with Annex I of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (O.J. L 187/1 from 26.6.2014).

⁶ For the purposes of assessing the status of the beneficiary in its relations as partner or linked enterprise 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 (O.J. L 26.6.2014 L 187/1) applies.

- payment services and other financial institutions as well as rating agencies;
 - Manufacturing and/or selling of products, and services as specified in Chapter 3, section 3.1, point 7 of the national legal basis specified in recital 12(b);
 - Testing on animals, gambling and similar activities, production and distribution of tobacco products and similar stimulants and production and distributions of narcotics;
 - Activities in commercial property and real estate developers;
- (f) Enterprises which: (i) have their tax residence on the territory of the European Economic Area; (ii) are registered on the territory of the Republic of Poland; and (iii) whose main beneficial owner does not have a tax residence in a so called “tax haven” within the meaning of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (2020/C 64/03, OJ C 64, 27.2.2020, p. 8-14). Derogation from this rule is possible if the undertaking and/or its main beneficial owner is obliged to move its tax residence to the European Economic Area within nine months of the grant of the loan;
- (g) Enterprises which meet one of the following conditions:
- recorded a decline in revenue of at least 25% in any given month after 1 February 2020 as compared with a preceding month or an analogous month from a previous year in relation with the economic disruptions caused by Covid-19;
 - have lost their capacity to produce goods, provide services or to receive goods or services provided by contractors in relation to the unavailability of components and resources caused by Covid-19;
 - did not receive sales payments in excess of 25% of the due amounts as a result of Covid-19;
 - do not have access to the capital market or credit limits for new contracts due to financial market disruptions;
 - are participants in sectoral programmes⁷ entailing the provision of funds which are significant in light of combating the Covid-19 epidemic in the form of, e.g., a financial programme with respect to medical technologies.
- (h) Financing granted to a partnership (*spółka osobowa*), may depend on its transformation into a company (*spółka kapitałowa*) for the purposes of other elements of the “financial shield for large enterprises” programme.
- (19) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation

⁷ Sectoral programmes implement the Polish Act on the National Development Plan adopted on 20 April 2004 (Journal of Laws of 2019, item 1465) and are prepared by the Minister responsible for the development of a particular sector that is important for the Polish and the EU economies, including research and development, IT, smart systems and innovative technologies in medicine and pharmaceuticals. Sectoral programmes are dedicated to undertakings or groups of undertakings active in a given sector.

(“GBER”),⁸ the Agricultural Block Exemption Regulation (“ABER”)⁹ or the Fisheries Block Exemption Regulation (“FIBER”)¹⁰ on 31 December 2019.

- (20) Poland estimates that approximately 150-200 undertakings will benefit from the scheme.

2.8. Sectoral and regional scope of the measure

- (21) The measure applies on the entire territory of Poland and is open to all sectors except the financial sector and the other exclusions stipulated in recital (18)(e) above.

2.9. Basic elements of the measure

- (22) As explained above (see recital (9)), the objective of the measure is to, on the one hand, ensure access to liquidity and on the other hand, to compensate the affected undertakings for the damage caused by the COVID-19 outbreak and the containment measures adopted by the Polish authorities to limit the spread of the virus. The section below presents successively the basic elements of each of the two components of the measure.

2.9.1. Basic elements of the aid in the form of subsidised interest rates for loans

2.9.1.1. Nature of the eligible instrument

- (23) The measure provides for financing in the form of subsidised loans relating to investment and/or working capital needs with a maximum duration of four years.

2.9.1.2. Maximum amount of the subsidised loan

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

- (a) double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking’s site but formally on the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
- (b) 25% of the beneficiary’s total turnover in 2019.

⁸ As defined in Article 2(18) of 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.

⁹ As defined in Article 2 (14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, (OJ L 193 of 1.7.2014, p.1).

¹⁰ As defined in Article 3 (5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, (OJ L 369 of 24 December 2014, p. 37).

- (25) In addition, the overall amount of the loan per beneficiary shall not exceed the following ceilings:
- (a) the ex-ante quantification of the damage the beneficiary expects to incur due to the COVID-19 outbreak and the related containment measures taken by the Polish authorities;
 - (b) PLN 750 million (approximately EUR 164 million).

2.9.1.3. Remuneration of the subsidised loans

- (26) The loans under the measure are granted at reduced interest rates which are at least equal to the base rate (1 year WIBOR) applicable on 30 April 2020 plus the credit risk margins as set-out in the table below:

Type of recipient	Credit risk margin for 1 st year	Credit risk margin for 2 nd to 3 rd year	Credit risk margin for 4 th year
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

2.9.1.4. Additional provisions

- (27) Loans granted under the measure may be used for the day-to-day operations of the beneficiary.
- (28) Loans granted under the measure cannot be used for: (i) making any distributions to the owners or affiliated entities; (ii) acquiring shares for the purpose of redemption; (iii) mergers and acquisitions; and/or (iv) refinancing or early repayment of current financial debts of the beneficiary.

2.9.2. *Basic elements of the aid for compensating damage*

2.9.2.1. Nature of the eligible instrument

- (29) The measure also provides for aid for compensation of damage caused by the COVID-19 outbreak and the respective containment measures taken by the Polish Government, in the form of partial capital rebates on the subsidised loans mentioned in recital (23) above.

2.9.2.2. The compensation period

- (30) The damage shall be calculated for the compensation period. The compensation period will start on the 1 March 2020 and shall not exceed:
- (a) The duration of the state of COVID-19 epidemic emergency on the territory of Poland, as specified in the relevant ordinance of the Minister of Health;

- (b) The period of the occurrence of the causes of the damage incurred by the beneficiary defined as the period during which the beneficiary meets at least one of the following conditions:
- (i) the beneficiary is subject to or affected by an administrative decision related to sanitary restrictions aimed at counteracting the Covid19 disease;
 - (ii) the beneficiary or its employees are under partial or full quarantine as a result of the occurrence of Covid-19 disease among the employees;
 - (iii) the beneficiary is affected by a partial or entire restriction of business activity resulting from the unavailability of key deliveries of goods, materials or services in connection with broken supply chains as a result of Covid-19 (suppliers must fulfil the condition in points (i) or (ii) above);
 - (iv) the beneficiary is affected by the loss of income caused by the entire or partial inability to carry out sales of ordered goods or services, because its clients are not able to collect them as a result of Covid-19 or because clients did not make payments as a result of Covid-19 (clients must fulfil the condition in points (i) or (ii) above);
- (c) 31 August 2020.

- (31) The maximum compensation period will therefore be from 1 March 2020 until 31 August 2020.

2.9.2.3. Ex ante quantification of the damage

- (32) The expected damage is calculated ex-ante for the purpose of granting the subsidized loan described in sections 2.9.1 and 2.9.2 above. This calculation is necessary since the nominal value of the loan cannot exceed the ex-ante estimation of the damage (see recital (25)(a) above). For each individual company, this calculation will be done on the basis of the already incurred and the forecasted financial results of the beneficiary for the compensation period and the historical financial results, based on financial data of the same company obtained during a reference period (either the months preceding the compensation period or, for sectors subject to seasonal changes, the same months in the previous year). The reference period will have the same duration as the compensation period.
- (33) Companies are eligible to receive subsidised loans - and later on compensation for damage - under the measure only if they have incurred or are expected to incur operating losses (negative EBITDA¹¹) during the maximum compensation period, namely from 1 March 2020 until 31 August 2020. As a consequence, companies that have obtained or are expected to obtain operating profits (positive EBITDA) during the compensation period – albeit lower than expected before the COVID

¹¹ EBITDA stands for Earnings Before Interest, Taxes, Depreciation, and Amortization and is a standard metric used to evaluate a company's operating performance. EBITDA is calculated as Net Income + Interest + Taxes + Depreciation + Amortization. The Net Income represents the bottom line, typically the last line of the company's income statement.

outbreak – will not be eligible to receive compensation for damage (nor liquidity loans at subsidized interest rates) under the notified measure.

- (34) The damage will be estimated ex-ante as the difference between the expected operating loss during the compensation period under the new circumstances (after the COVID-19 outbreak and the adoption of the containment measures by the Polish authorities) – “factual scenario” – and the operating loss incurred before these events during the reference period – “counterfactual scenario” (i.e. net additional losses). If the beneficiary incurred operating profits (i.e. positive EBITDA) during the reference period, the ex-ante estimation of the damage will be equal to the expected operating loss during the compensation period. If instead the beneficiary incurred operating losses (i.e. negative EBITDA) during the reference period, the ex-ante estimation of the damage will be equal to the difference between the operating loss obtained during the compensation period and the operating loss obtained during the reference period (i.e. incremental loss).
- (35) PFR will verify the estimations submitted by each company with the support of an independent financial auditor. PFR will have the discretion to make adjustments to the respective calculation or to reject it fully if it identifies material inconsistencies in the financial data provided by the beneficiary in the application for aid.

2.9.2.4. Ex post quantification of the damage

- (36) The ex post quantification of the damage will be carried out with the purpose of determining the amount of aid in the form of compensation for damage which the loan beneficiary is entitled to as a result of the COVID-19 outbreak. The respective aid is granted in the form of a partial capital rebate on the subsidised loan (equivalent to a non-reimbursable grant) and will not exceed 75% of the ex-post quantification of the actual damage. As a result, the beneficiary will continue to support a minimum of 25% of the actual damage it suffered as a result of the COVID-19 outbreak. The partial capital rebate shall take place at the latest by 30 September 2021.
- (37) The damage will be calculated ex-post using the following method:
- (a) If the beneficiary recorded negative operating results (negative EBITDA) during the compensation period and
 - The beneficiary recorded positive operating results (positive EBITDA) during the reference period, the damage will be equal to the operating loss obtained during the compensation period;
 - The beneficiary recorded negative operating results (negative EBITDA) during the reference period, the damage will be equal to the difference between the operating loss obtained during the compensation period and the operating loss obtained during the reference period (incremental loss).
 - (b) If the beneficiary recorded positive operating results (positive EBITDA) during the compensation period, it will not be entitled to any compensation for damage.

- (38) In the context of the ex-post quantification of the actual damage, the aid granting authority will verify the ex-ante quantification on the basis of which the subsidized loan has been granted.
- (39) If the ex-ante quantification exceeds the actual damage calculated ex post, the capital rebate on the loan will not exceed 75% of the ex post calculation of the actual damage. In no case shall the compensation, as calculated ex post, exceed 75% of the actual damage. The remaining part of the loan will be reimbursed according to the conditions previously agreed.
- (40) If the ex-ante quantification is lower than the actual damage calculated ex post, the capital rebate on the loan will not exceed 75% of the ex ante calculation of the damage¹².
- (41) The Polish authorities confirm that they will recover any payment exceeding the 75% of the damage suffered as a direct consequence of the COVID-19 outbreak and the containment measures taken to limit the spread of the virus. The data used in the ex-post calculation of the damage will be based on the audited financial accounts of the beneficiary. PFR will verify the calculations submitted by each company with the support of an independent financial auditor.
- (42) Aid granted to beneficiaries shall be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary to avoid overcompensation.
- (43) In addition, the benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.

2.10. Cumulation

- *With respect to the aid in the form of subsidised interest rates on loans*

- (44) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹³ or the Block Exemption Regulations provided the provisions and cumulation rules of those Regulations are respected.

¹² This is because the partial capital rebate cannot exceed 75% of the nominal value of the loan (see recital (11)).

¹³ Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p.1), 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 (OJ L 352, 24.12.2013 p. 9), 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 190, 28.6.2014, p. 45) and 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 (OJ L 114 of 26.4.2012, p. 8).

- (45) The Polish authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (46) The Polish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (47) The Polish authorities confirm that aid granted under Section 3.2 of the Temporary Framework shall not be cumulated with aid granted for the same underlying loan principal under Section 3.3 of that framework and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.
- (48) A beneficiary may benefit in parallel from multiple schemes under Section 3.3 of the Temporary Framework provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 27(d) and (e) of the Temporary Framework.
- *With respect to the aid for damage compensation*
- (49) The Polish authorities confirm that aid granted under this measure cannot be cumulated with other State aid granted for the same eligible costs.

2.11. Monitoring and reporting

- (50) 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 national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁴).
- (51) The Polish authorities also committed to provide a report on the State aid granted from the scheme no later than 31 December 2021, specifying the amount of compensation granted. This data will then be made publicly available through the SUDOP database (State aid data sharing system).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

¹⁴ Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable loans, the nominal value of the underlying instrument shall be inserted per beneficiary.

3.2. Existence of State aid

- (53) 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.
- (54) The measure is imputable to the State, since it is administered by the PFR (the Polish Development Fund is a development institution, its legal form is a joint stock company wholly owned by the Polish State Treasury) and it is based on the instruments set out in recitals (10) and (11) above. It is financed through State resources, since it is financed by public funds.
- (55) The measure confers an advantage on its beneficiaries in the form of partially reimbursable loans granted at subsidised interest rates (recital (10)) and in the form of capital rebates granted for the respective loans (recital (11)). The advantage therefore corresponds to the amount of compensation paid to the beneficiary under the measure and the subsidised interest rate on the loan received. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (56) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that meet the conditions set out in recitals (18)(a)(b)(c)(d)(f)(g) with exclusion of the business activities as listed in recital (18)(e).
- (57) 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.
- (58) 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 assessment

- (59) 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.

3.3.1. Compatibility assessment of the aid in the form of subsidised interest rates for loans

- (60) 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*”.
- (61) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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”.

- (62) The measure aims at lowering the cost of access to external finance for undertakings at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (63) The measure is one of a series of measures developed at national level by the Polish authorities to remedy a serious disturbance in their economy. In particular, the measure aims at supporting eligible undertakings facing a sudden acute liquidity shortage, as a result of the COVID-19 outbreak, by subsidising public loans. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of subsidised interest rates for loans*”) described in Section 3.3 of the Temporary Framework.
- (64) 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 applicable interest rates for loans granted under the measure are composed of a base rate and a credit risk margin. The credit margin is set at least at 25 basis points for the 1st year, 50 basis points for the 2nd and 3rd years and 100 basis points for the 4th year for SMEs and 50 basis points for the 1st year, 100 basis points for the 2nd and 3rd years and 200 basis points for the 4th year for large enterprises (recital (26)). The measure therefore complies with the minimum credit risk margins set out in point 27(a) of the Temporary Framework. By contrast, the base rate is set at the 1 year WIBOR applicable on 30 April 2020, which deviates from the reference date set by point 27(a) of the Temporary Framework. By fixing the reference date for the IBOR at 1 January 2020, point 27(a) seeks to protect aid beneficiaries from increases in the base rate as a result of the economic consequences of the Covid-19 outbreak. However, unlike the IBOR applicable in most Member States, the WIBOR has declined steeply – by 100 basis points – between 1 January 2020 and 30 April 2020. Moreover, market participants commonly use the most recent reference rate when contracting a loan. Taking into account the steep decline in the IBOR in Poland since the COVID-19 outbreak therefore fits within the objective of point 27(a) of the Temporary Framework when it comes to setting the reference date of the measure.
 - The loan contracts are signed by 31 December 2020 at the latest and are limited to a maximum of four years (recitals (10) and (23)). The measure therefore complies with point 27(c) of the Temporary Framework.
 - The maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (24)). The measure therefore complies with point 27(d) of the Temporary Framework.
 - Loans granted under the measure relate to investment and working capital needs (recital (23)). The measure therefore complies with point 27(f) of the Temporary Framework.

- Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the measure (recital (19)). The measure therefore complies with point 27(g) of the Temporary Framework.
 - The cumulation rules set out in point 26bis of the Temporary Framework are respected (recitals (47) and (48)).
- (65) The Commission also notes that the Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (50)). The Polish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (44) to (46)).
- (66) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

3.3.2. *Compatibility assessment of the aid for compensating damage*

The notion of exceptional occurrences within the meaning of Article 107(2)(b) TFEU

- (67) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the settled case-law of the Court of Justice of the European Union¹⁵, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (68) The Commission assesses whether an event qualifies as an exceptional occurrence on a case-by-case basis, having regard to its previous decision-making practice¹⁶. For an event to be regarded as an exceptional occurrence, it needs to meet the following cumulative criteria: (i) be unforeseeable or difficult to foresee¹⁷; (ii) have significant scale/economic impact¹⁸, and (iii) be extraordinary¹⁹.

¹⁵ Judgements of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, ECLI:EU:C:2004:711, paragraph 37, and of 23 February 2006, *Giuseppe Atzeni and others*, joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

¹⁶ Exceptional occurrences that have been accepted by the Commission in the past include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss. See Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

¹⁷ Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

¹⁸ Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France); (ii) the significant number of dead or injured people

The COVID-19 outbreak as an exceptional occurrence

- (69) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, spreading not only to other parts of China but also to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (70) The declaration of the World Health Organization of a pandemic²⁰, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19, determine the exceptional nature of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption²¹. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors, which is clearly outside the normal functioning of the market.
- (71) In view of the above, this event qualifies as an exceptional occurrence because: (i) it was not foreseeable; (ii) it clearly distinguishes itself from ordinary events by its character and effects on both the undertakings directly affected and the economy as a whole; and (iii) it lies outside of the normal functioning of the market.
- (72) In this context, the COVID-19 outbreak can be regarded as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

Causal link between COVID-19 outbreak and damage compensated by the measure

- (73) The Court has held that only damage caused by natural disaster or exceptional occurrences may be compensated for under Article 107(2)(b) TFEU. It follows that there must be a direct link between the damage and the exceptional occurrence, which the State measure provides compensation for and that as

(Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 36); (iv) the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, recital 19).

¹⁹ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

²⁰ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-mediabriefing-on-covid-19---11-march-2020>.

²¹ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

precise an assessment as possible must be made of the damage suffered by the beneficiary concerned. The COVID-19 outbreak qualifies as exceptional occurrence (see recital (72)).

- (74) As an immediate consequence of the COVID-19 outbreak in Poland, the Polish authorities have adopted various strict containment measures to limit the spread of the virus (see recital (4)). These measures have made it impossible for businesses in a broad range of sectors to carry on their normal activities, either because they were directly subject to government imposed sanitary restrictions or quarantine measures or because their main clients or suppliers were subject to similar coercive measures, resulting in broken supply and demand chains with direct and significant consequences on the activity and financial performance of the respective companies. The restrictions introduced by the Polish authorities are expected to lead, or have already resulted in significant reductions of the turnover as well as in sudden liquidity shortages for large companies in all sectors, and are ultimately expected to result in significant losses during the period from 1 March 2020 until 31 August 2020 (as described in recital (5)). As described in recital (30)(b), compensation under the scheme is strictly limited to the period when the beneficiaries (see recital (30)(b)(i) and (ii)) or their main clients (see recital (30)(b)(iv)) and suppliers (see recital (30)(b)(iii)) are directly affected by the strict governmental confinement measures which have direct consequences on the ability of the beneficiary to conduct its business activity. In light of the fact that large companies are particularly dependant on long, complex and highly intertwined supply and demand chains, the Commission therefore considers that this ensures that the compensated damage is directly linked to the exceptional occurrence, since the causal chain starts directly from the governmental measures imposing strict restrictions on economic activity of either the beneficiary companies or their main clients and suppliers which are part of closely interlinked value chains, and not from lower overall demand which is to be expected to follow the COVID outbreak.
- (75) The actual damage suffered by those undertakings and deriving from the exceptional occurrence is the difference between the operating results incurred in the new circumstances (after the COVID-19 outbreak and the containment measures taken by the Polish authorities) and the operating results incurred before these events (see recital (37)). The Commission notes that the notified scheme aims to provide damage compensation only to companies that incur negative operating results due to the COVID-19 outbreak during the compensation period. According to recital (37)(b) companies obtaining positive operating results, albeit lower than otherwise expected if the COVID outbreak did not occur, will not be entitled to compensation. The Commission considers that this condition, combined with the condition that the compensation period will not in any event exceed the interval ranging from 1 March 2020 until 31 August 2020 (see recital (30)(c)), should further strengthen the direct causal between the special occurrence and the damage incurred by the company.
- (76) Finally, as reported in recital (43), the aid is excluded for any applicant who, among the other conditions reported in recital (43) did not take measures to mitigate its damage. The submitted information, based on audited financial statements of the beneficiary will be checked by the aid grantor with the support of an independent auditor (see recital (41)).

- (77) Only beneficiaries for which a direct causal link between the damage suffered and the COVID-19 related mitigation measures can be established, shall be entitled to compensation.

Proportionality of the aid measure

- (78) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (79) The Commission notes that, as described in recital (33), companies that are expected to obtain operating profits during the compensation period – albeit lower than expected before the COVID outbreak – will not be eligible to receive compensation for damage under the notified measure.
- (80) As described in recitals (30) and (37), the actual damage of the companies is the difference between the losses incurred as a direct consequence of the COVID-19 outbreak and the relevant measures during the period from 1 March 2020 until 31 August 2020 at the latest, and the losses incurred during a reference period before these events. If the company did not incur losses during the reference period, the actual damage will be equal to the losses incurred during the compensation period.
- (81) In light of the exceptional circumstances, the uncertainty regarding the duration of the COVID-19 outbreak and the relevant confinement measures taken by the Polish Government, the fact that the respective confinement measures have not yet been lifted at the time of the notification of the present scheme, and the urgent need for a support measure to prevent the bankruptcy of the affected companies, the Commission can accept that the amount of the compensation is, as a transitory solution, calculated ex ante²² based on the available elements, namely the estimation of the net additional losses expected to be incurred by the beneficiary from 1 March 2020 until 31 August 2020 at the latest as compared to a similar period in the past.
- (82) The Polish authorities have put in place certain safeguards to ensure that the compensation under the measure does not exceed what is necessary to make good the damage caused by the exceptional occurrence:
- (a) First, the amount of compensation granted in the form of a capital rebate on the subsidised loan will not exceed 75% of the damage calculated ex post, therefore ensuring that the beneficiary undertakings participate in the covering of at least 25% of the COVID-19-related losses.
 - (b) Second, as indicated in recital (11) and (25)(b), the maximum amount of the compensation is also capped at PLN 562.5 million (app. EUR 123 million) per undertaking (i.e. 75% of the maximum value of the subsidised loan).
 - (c) Third, as described in recital (42), payments made to the beneficiaries are net of any amount obtained from insurance, litigation, arbitration or any

²² This ex-ante calculation of the damage is required as the subsidised loan cannot exceed this threshold (see recital 25(a)).

other sources, which compensates for the same damage. If the compensation under the measure is paid before the insurance, Poland will recover the corresponding amount from the beneficiary. Additionally, as explained in recital (43), the benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct his activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.

- (d) Fourth, as explained in recitals (36) to (43), the compensation aid in the form of a capital rebate on the subsidised loan is granted only after the actual damage (i.e. net additional losses) is incurred by each beneficiary. The calculation of the actual damage is based on data from the audited financial accounts of the beneficiary which will be verified by the aid grantor with the support of an independent financial auditor (see recital (41)). On the basis of the above, the Commission considers that the measure includes sufficient safeguards to ensure that there is no overcompensation.
- (83) To the extent that the scheme applies in the sectors of primary production of agricultural products, fishery and aquaculture, the Commission recalls that it adopted guidelines on the interpretation of Article 107(2)(b) TFEU in those sectors²³. The said guidelines reflect the general principles of interpretation of Article 107(2)(b) TFEU which have been reminded above. Indeed, that Article of the TFEU must be subject to a narrow interpretation (see recital (68)). It applies in situations of exceptional occurrence; in the present case, the Commission concluded in this decision that the Covid-19 outbreak constitutes such an exceptional occurrence (see recital (72)). The present scheme aims at compensating the damage resulting from the exceptional occurrence. The aid benefits directly each undertaking concerned. The scheme is established shortly after the date of the occurrence of the event, and the aid must be paid at the latest by end of September 2021 (see recital (11)); it therefore meets the conditions in the above mentioned Guidelines which require that the aid scheme must be established within three years from the date of the occurrence of the event and that the aid must be paid out within four years of that date. Damage that shall be open to compensation shall be directly linked to the exceptional occurrence and compensation cannot exceed the damage suffered by the company individually. The methodology for setting the amount of the compensation ensures that the compensation is directly linked to the damage suffered by each company as a result of the exceptional occurrence (see recitals (73) to (77)); the actual damage is calculated by comparing the operating results during the compensation period to a reference period before the event, on the basis of audited statements (see recital (37) and (41)). The methodology ensures that the aid remains proportionate and that no company could benefit from overcompensation (see recitals (78) to (82)); in particular, the beneficiary will have to support at least 25% of the actual damage, calculated on the basis of audited financial statements, so that only part

²³ See Part II, Chapter I, Section 1.2.1.1. of the [European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701(01)-20181109&from=EN) ([https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701\(01\)-20181109&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701(01)-20181109&from=EN));

Section 4 of the Guidelines for the examination of State aid to the fishery and aquaculture sector (https://ec.europa.eu/competition/state_aid/legislation/mare/2018-11-consolidated-version-guidelines-for-the-examination-of-state-aid-to-fishery-and-aquaculture-sector_en.pdf)

of the actual damage will be compensated (see recital (82)(a)). The Commission therefore considers that the scheme, to the extent it applies to primary agricultural products and fisheries, fulfils the conditions of the said guidelines and is compatible with Article 107(2)(b) TFEU.

- (84) The Commission takes note of the fact that Poland plans to introduce other measures aimed at addressing the economic effects of the COVID-19 outbreak (see recital (6)), which may be available to the same undertakings that are eligible under the notified measure. In this respect, the Commission notes that support granted under those measures is based on different eligible costs and pursues objectives other than the compensation of the damage suffered due to the COVID-19 outbreak. The Commission, in light of the safeguards listed above, and taking into account the limited period covered by the compensation (from 1 March 2020 until 31 August 2020 at the latest), considers the compensation proportionate.

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(2)(b) and Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President