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Subject: **State aid SA.57519 (2020/N) – Poland  
COVID-19: R&D aid for Covid-19 relevant research and development,  
investment aid for the construction and upgrade of relevant testing and  
upscaling infrastructures, and investment aid for investments into  
production facilities for the production of Covid-19 relevant products**

Excellency,

**1. PROCEDURE**

- (1) Following pre-notification contacts, by electronic notification of 15 June 2020, Poland notified an aid scheme (“*R&D aid for Covid-19 relevant research and development, investment aid for the construction and upgrade of relevant testing and upscaling infrastructures, and investment aid for investments into production facilities for the production of Covid-19 relevant products*”, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)<sup>1</sup>.
- (2) The Polish authorities confirm that the notification does not contain any confidential information.

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<sup>1</sup> 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.

Jego Ekscelencja  
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- (3) Poland exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (4) The measure is composed of three sub-measures and aims at supporting (1) COVID-19 relevant research and development (“R&D”) activities, (2) testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, as well as (3) investments into production capacities for products needed to respond to the COVID-19 outbreak. According to Poland, given the public health crisis, it is crucial that the State can provide incentives to companies to direct their activities to research and production of certain products, which are crucial to address that crisis. Poland considers that the measure contributes to address the public health crisis.
- (5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, as interpreted by Sections 3.6, 3.7 and 3.8 of the Temporary Framework.

### **2.1. Nature and form of aid**

- (6) All three sub-measures provide aid in the form of direct grants and repayable advances.

### **2.2. National legal basis**

- (7) The legal basis for the measure will be the *Regulation of the Minister of Development Funds and Regional Policy on granting aid for COVID-19 outbreak relevant research and development, investment aid for testing and upscaling infrastructures required to test and upscale COVID-19 relevant products, and investment aid for the production of COVID-19 relevant products, under operational programmes for 2014-2020 perspective*.<sup>3</sup>

### **2.3. Administration of the measure**

- (8) The Ministry of Development Funds and Regional Policy is responsible for administering the measure. The measure will be implemented by several managing authorities, responsible for managing the European Structural and Investment Funds (“ESIF”) operational programmes 2014-20, across Poland.

### **2.4. Budget and duration of the measure**

- (9) The estimated budget of the measure is PLN 2 billion (approx. EUR 449 million), of which PLN 650 million is foreseen for COVID-19 outbreak relevant research and development, PLN 650 million for testing and upscaling infrastructures required to test and upscale COVID-19 relevant products, and PLN 700 million for the production of COVID-19 relevant products.

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

<sup>3</sup> The regulation will be adopted after the adoption of this Decision.

- (10) Aid will be granted within regional operational programmes and national operational programmes under the 2014-2020 programming period of the ESIF, and will be co-financed by Union funds under shared management, notably from the European Regional Development Fund (“ERDF”) and the European Social Fund (“ESF”). The Polish authorities confirm that the rules applicable to these funds will be respected.
- (11) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

## **2.5. Beneficiaries**

- (12) The final beneficiaries of the measure are SMEs<sup>4</sup> and large enterprises active in Poland. The measure is not open to undertakings that are active in the primary agriculture, fishery or aquaculture sectors or credit and financial institutions.
- (13) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>5</sup> on 31 December 2019.
- (14) The Polish authorities estimate that more than 1000 undertakings will benefit from aid under the measure.

## **2.6. Sectoral and regional scope of the measure**

- (15) The measure is open to all sectors except those identified in recital (12). The measure applies to the whole territory of Poland.

## **2.7. Basic elements of the measure**

### ***2.7.1. Sub-measure “Aid for COVID-19 relevant research and development”***

- (16) This aid is granted for COVID-19 and other antiviral relevant research, which includes but is not limited to research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products. R&D projects having received a COVID-19-specific “Seal of Excellence” quality label under the Horizon 2020 SME instrument are also eligible for the aid.
- (17) The aid is granted in the form of direct grants or repayable advances by 31 December 2020.
- (18) For R&D projects started as of 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, the aid is deemed to have an incentive effect. For projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate their implementation or to

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<sup>4</sup> As defined in Annex I to 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.

<sup>5</sup> Article 2 (18) of Commission Regulation (EU) No 651/2014.

extend their scope. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.

- (19) Only costs directly related to and necessary for the R&D project during its duration and the subsequent intellectual property protection, clinical trial and regulatory procedures are eligible for aid.
- (20) The categories of research eligible for aid are fundamental research, industrial research and experimental development<sup>6</sup>. The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research and shall not exceed 80% of eligible costs for industrial research and experimental development. If the aided projects consist of different work packages which fall partly under fundamental research and partly under industrial research or experimental development, the respective maximum aid intensities apply separately for eligible costs falling under fundamental research (i.e. 100%) and for eligible costs falling under industrial research/experimental development (i.e. 80%).
- (21) The aid cannot be granted to undertakings carrying out contract research on behalf of other undertakings, for the work packages covered by the research contract.
- (22) The following costs are eligible:
  - a) wage cost in the meaning of Article 2, point 31, of the GBER of persons employed on the project, to the extent the wage cost is directly linked to the project;
  - b) costs of digital and computing equipment, to the extent used for the project;
  - c) costs of diagnostic tools, to the extent used for the project;
  - d) costs of tools for collecting and processing of data related to the course of the COVID-19 pandemic and combating it, to the extent used for the project;
  - e) costs of R&D services, to the extent carried out for the project;
  - f) costs of pre-clinical and clinical trials (trial phases I-IV);
  - g) costs of obtaining or maintaining of the legal protection of inventions and other intangible assets related to the project;
  - h) costs of obtaining the conformity assessments or authorisations necessary for the marketing of new or improved medicinal products, including vaccines, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment.
- (23) The costs related to Phase IV trials are eligible provided they allow for scientific and technological advance.

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<sup>6</sup> As defined, respectively, in paragraphs (84), (85) and (86) of Article 2 of the GBER.

- (24) The assets (instruments, equipment, etc.) which are not used for the entire duration of the R&D project and/or are used for purposes other than the R&D projects covered by the measure are only taken into account on a *pro rata* basis (depreciation over period of duration of R&D project or *pro rata* of the capacity used for the R&D project).
- (25) Beneficiaries of the aid undertake to grant non-exclusive licenses, under non-discriminatory market conditions, to third parties in the European Economic Area (“EEA”).

**2.7.2. Sub-measure “Investment aid for testing and upscaling infrastructures”**

- (26) The aid is granted for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; as well as data collection/processing tools.
- (27) The eligible infrastructure may be operated by the aid beneficiary, or by a separate operator.
- (28) The aid is granted in the form of direct grants or repayable advances by 31 December 2020.
- (29) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate their implementation or extend their scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the extended scope will be eligible for aid.
- (30) The investment project will be completed within six months after the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants shall be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid.
- (31) Eligible costs are the investment costs (land, buildings, and plant/equipment, immaterial assets, architect’s fees and necessary ancillary costs to investment) necessary to construct, or upgrade, the testing and upscaling infrastructures.
- (32) Assets (equipment, buildings, land, etc.) that are not used for the full lifetime of the infrastructure are taken into account only *pro rata* (i.e. depreciation over the lifetime, if applicable or *pro rata* of the capacity used for the infrastructure).

- (33) The aid intensity will not exceed 75% of the eligible costs.
- (34) The maximum allowable aid intensity may be increased by an additional 15 percentage points if the investment is concluded within two months after the date of aid granting.
- (35) The eligible infrastructures are not predominantly dedicated to one undertaking, but constitute service providers that are open to, and serve multiple users, based on transparent and non-discriminatory conditions.
- (36) The price charged for the services provided by the testing and upscaling infrastructure will correspond to the market price.
- (37) Any exceptional preferential access under more favourable conditions will be granted only to those undertakings that financed at least 10% of the investment costs of the infrastructure.

**2.7.3. Sub-measure “Investment aid for the production of COVID-19 relevant products”**

- (38) The investment aid is granted for the production of COVID-19 relevant products, such as medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection/processing tools.
- (39) The aid is granted in the form of direct grants or repayable advances by 31 December 2020.
- (40) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.
- (41) The investment project shall be completed within six months after the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants shall be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance shall be reimbursed in equal annual instalments within five years after the date of granting the aid.
- (42) Eligible costs relate to all investment costs (land, buildings, and plant/equipment, immaterial assets, architect’s fees and necessary ancillary costs to investment) necessary to create or expand production capacities for the production of the COVID-19 relevant products and services, and the costs of trial runs of the new production facilities.

- (43) The costs of trial runs of production, constituting operating costs less operating revenues from trial runs of the production, incurred between completion of the project and start of mass production, are in particular:
- a) wage cost of persons employed on the project, to the extent the wage cost is directly linked to the trial runs of the production;
  - b) costs of consultancy services provided by external consultants and training services needed for the trial runs of the production;
  - c) costs of raw materials, costs of materials and energy costs needed for the trial runs of the production.
- (44) The aid intensity will not exceed 80% of the eligible costs.
- (45) The maximum allowable aid intensity may be increased by an additional 15 percentage points if the investment is concluded within two months after the date of the aid granting.

## **2.8. Cumulation**

- (46) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the ESIF.
- (47) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>7</sup> or the relevant Block Exemption Regulation, in which case the provisions of the relevant Regulations will be respected.
- (48) 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.
- (49) For aid for COVID-19 relevant R&D, the Polish authorities confirm that aid granted under the sub-measure may be combined with support from other sources for the same eligible costs, provided the total amount of combined aid does not exceed the aid ceilings approved in this decision.
- (50) For investment aid for testing and upscaling of infrastructure under the second sub-measure, and investment aid for the production of COVID-19 relevant products under the third sub-measure, the Polish authorities confirm that it will not be combined with other investment aid for the same eligible costs.

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<sup>7</sup> 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) 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).

## **2.9. Monitoring and reporting**

- (51) 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<sup>8</sup>).

## **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.

### **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 Ministry of Development Funds and Regional Policy and implemented by managing authorities responsible for managing the ESIF operational programmes 2014-20 and it is based on the legislative act mentioned in recital (7). The measure, which is co-financed by Union funds implemented under shared management (see recital (10)), is financed through State resources, including EU co-financing controlled by the State.
- (55) The measure confers an advantage on its beneficiaries in the form of direct grants and repayable advances. The measure thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.
- (56) The advantage granted by the measure is selective, since it will be awarded only to undertakings involved in COVID-19 relevant research, testing and upscaling, and production.
- (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.

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<sup>8</sup> Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014.

### 3.3. Compatibility

- (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.
- (60) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market “*aid 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*”.
- (61) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to address the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research, testing and upscaling, and at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. The measure has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development”, “Investment aid for testing and upscaling of infrastructure” and “Investment aid for the production of COVID-19 relevant products”) described in Sections 3.6, 3.7 and 3.8 of the Temporary Framework.
- (62) The Commission accordingly considers that the measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:
- (63) The first sub-measure meets all the conditions provided for by Section 3.6 of the Temporary Framework for COVID-19 relevant R&D:
- Aid granted under this sub-measure is limited to the eligible research areas listed in point 35 of the Temporary Framework, as shown in recital (16) above.
  - Aid is granted in the form of direct grants and repayable advances and will not be granted after 31 December 2020, as shown in recital (17). The sub-measure therefore complies with point 35(a) of the Temporary Framework.
  - For R&D projects started as of 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, aid granted under the sub-measure is deemed to have an incentive effect; for R&D projects started before 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project, as shown in recital (18). The sub-measure therefore complies with point 35(b) of the Temporary Framework.
  - Eligible costs are defined under the sub-measure in accordance with point 35(c) of the Temporary Framework, as shown in recitals (22) and (23). All costs necessary for the duration of the R&D aided project are eligible for aid under the sub-measure. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid under the sub-measure, in line with point 35(b) of the Temporary Framework, as shown in recital (18).
  - The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research and shall not exceed 80% of eligible costs for industrial

research and experimental development. The sub-measure therefore complies with point 35(d) of the Temporary Framework, as shown in recital (20).

- Aid granted under the sub-measure may be combined with support from other sources for the same eligible costs, provided the total combined amount of aid does not exceed the aid ceilings laid down in points 35(d) and (e) of the Temporary Framework, as shown in recitals (48) and (49). The sub-measure therefore complies with point 35(f) of the Temporary Framework.
- Beneficiaries of aid under the sub-measure shall commit to grant non-exclusive licences under market conditions to third parties in other EEA states, as shown in recital (25). The sub-measure therefore complies with point 35(g) of the Temporary Framework.
- Aid may not be granted under the sub-measure to undertakings that were already in difficulty on 31 December 2019, as shown in recital (13). The sub-measure therefore complies with point 35(h) of the Temporary Framework.

(64) The second sub-measure meets all the conditions provided for by Section 3.7 of the Temporary Framework for the construction and upgrade of testing and upscaling infrastructures:

- Aid granted under this sub-measure is limited to the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to the first industrial deployment prior to mass production, COVID-19 relevant products listed in point 37(a) of the Temporary Framework, as shown in recital (26) of this decision.
- Aid is granted under it in the form of a direct grant and repayable advances, as shown in recital (28). The sub-measure therefore complies with point 37(b) of the Temporary Framework. If the investment is finalised within six months from the moment the aid is granted, aid in the form of repayable advances will be transformed into grants, as shown in recital (30), in accordance with point 39(d) of the Temporary Framework.
- For investment projects started as of 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect; for projects started before 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project, as shown in recital (29). The sub-measure therefore complies with point 37(c) of the Temporary Framework.
- The costs eligible for aid under the sub-measure are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in point 37(a) of the framework, as shown in recital (31). The sub-measure therefore complies with point 37(e) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the sub-measure in line with point 37(c) of the Temporary Framework, as shown in recital (29).
- The aid intensity shall not exceed 75% of the eligible costs, as shown in recital (33). The sub-measure therefore complies with point 37(e) of the Temporary Framework. A bonus of up to 15 percentage points may be granted under the conditions laid down in point 37(f) of the Temporary

Framework (*i.e.* if the investment is finalised within two months), as shown in recital (34).

- The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted, as shown in recital (50). The sub-measure therefore complies with point 37(g) of the Temporary Framework.
  - Investment projects must be completed within six months after the investment aid was granted. If this deadline is not respected, the beneficiary of the sub-measure where the aid took the form of a direct grant, shall reimburse 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the beneficiary; if this deadline is not respected, the beneficiary of a repayable advance shall reimburse it in equal annual instalments within five years after the date the aid was granted, as shown in recital (30). The sub-measure therefore complies with point 37(d) of the Temporary Framework.
  - The prices charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price, as shown in recital (36). The sub-measure therefore complies with point 37(i) of the Temporary Framework.
  - The testing and upscaling infrastructures shall be open to several users and access shall be granted on a transparent and non-discriminatory basis, as shown in recital (35). Only undertakings that have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions, as shown in recital (37). The sub-measure therefore complies with point 37(j) of the Temporary Framework.
  - Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019, as shown in recital (13). The measure therefore complies with point 37(k) of the Temporary Framework.
- (65) The third sub-measure meets all the conditions provided for by Section 3.8 of the Temporary Framework for aid for the production of COVID-19 relevant products:
- Aid granted under this sub-measure is limited to the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework, as shown in recital (38).
  - Aid is granted under it in the form of a direct grant or repayable advance, as shown in recital (39). The sub-measure thus complies with point 39(b) of the Temporary Framework. If the investment is finalised within six months from the moment the aid is granted, aid in the form of repayable advances is transformed into grants in accordance with point 39(d) of the Temporary Framework, as shown in recital (41).
  - For investment projects started as of 1 February 2020, the aid granted under the sub-measure is deemed to have an incentive effect; for projects started before 1 February 2020, the aid granted under the measure is deemed to have an incentive effect, provided the aid is necessary to accelerate or widen the scope of the project, as shown in recital (40). The sub-measure therefore complies with point 39(c) of the Temporary Framework.
  - Costs eligible for aid under the sub-measure consist of all investment costs necessary for the production of the products listed in point 39(a) of the

Temporary Framework as well as the costs of trial runs of the new production facilities, as shown in recitals (42) and (43). The sub-measure therefore complies with point 39(e) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the measure in line with point 39(c) of the Temporary Framework, as shown in recital (40).

- The aid intensity shall not exceed 80% of the eligible costs. The sub-measure therefore complies with point 39(e) of the Temporary Framework, as shown in recital (44). A bonus of up to 15 percentage points may be granted under the conditions laid down in point 39(f) of the Temporary Framework (i.e. if the investment is finalised within two months), as shown in recital (45).
- The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted, as shown in recital (50). The sub-measure therefore complies with point 39(g) of the Temporary Framework.
- Eligible investment projects must be completed within six months after the grant of the investment aid. If this deadline is not respected, the beneficiary shall reimburse 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the beneficiary, as shown in recital (41); in case of repayable advance, if this deadline is not respected, the beneficiary shall reimburse the repayable advances in equal annual instalments within five years after the date the aid was granted, as shown in recital (41). The provisions in point 39 d) of the Temporary Framework are thus complied with.
- Aid may not be granted under the sub-measure to undertakings that were already in difficulty on 31 December 2019, as shown in recital (13). The sub-measure therefore complies with point 39 (i) of the Temporary Framework.

- (66) The Commission notes that also the generally applicable requirements of the Temporary Framework are met, in particular:
- (67) As required by points 35(a), 37(b) and 39(b) of the Temporary Framework, the Polish authorities confirm that individual aid under the measure shall not be granted after 31 December 2020, as shown in recital (11) of this decision.
- (68) The Commission notes that undertakings in the agriculture, fisheries and aquaculture sectors are excluded from being beneficiaries, as shown in recital (12). In accordance with points 35 (h), 37 (k) and 39 (i) of the Temporary Framework, undertakings that were already in difficulty within the meaning of the GBER on 31 December 2019 are not eligible for aid under this measure, as shown in recital (13). In addition, in accordance with point 20bis of the Temporary Framework, credit and financial institutions are excluded from the benefit of the measure, as shown in recital (12).
- (69) The Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected, as shown in recital (51). 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, as shown in recitals (47) and (48).

- (70) In the light of the above elements, the Commission considers that the measure complies with the compatibility conditions laid down by the Temporary Framework. The Commission has taken due consideration of the common objective pursued by the measure and its positive effects on tackling the health crisis provoked by the COVID-19 outbreak when balancing those effects against the potential negative effects of the measure on the internal market. The Commission concludes that those positive effects of the measure outweigh its potential negative effects on competition and trade.

#### **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.

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