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**Subject: State Aid SA.57726 (2020/N) – Poland
COVID-19: State aid in the form of reduction of the annual fee for
perpetual usufruct and relief in rent, lease and usufruct fees to
support entrepreneurs affected by the COVID-19 pandemic
outbreak**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 9 July 2020, Poland notified a measure in the form of limited amounts of aid, namely *State aid in the form of reduction of the annual fee for perpetual usufruct and relief in rent, lease and usufruct fees to support entrepreneurs affected by the COVID-19 pandemic outbreak* (“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”).¹
- (2) 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

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, 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, 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, and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Poland considers that the COVID-19 outbreak has started to affect the real economy. Although the full impact of the COVID-19 outbreak on the economy is not yet foreseeable, Poland notes that the short-term impact is already clear in the form of liquidity shortages, drastic drops in production in various sectors, and the weakening of the Polish Zloty (PLN), which will lead to an expected general slowdown in economic growth.³
- (4) The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market to counter the liquidity shortage faced by undertakings because of the outbreak, and to ensure that the disruptions caused by the outbreak do not undermine their viability and economic continuity.
- (5) Poland confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of Sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of:
 - (a) a reduction of the annual fee for perpetual usufruct; and
 - (b) an exemption of the fees for rent, lease or usufruct, due by undertakings for conducting their business activities on real estate owned by public authorities.⁴
- (8) The objective of the measure is to ensure that undertakings affected by the economic consequences of the COVID-19 outbreak have sufficient liquidity in the current crisis by reducing the burdens they have to bear arising from perpetual

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

³ The Polish authorities submit that preliminary estimates indicate an expected slowdown in economic growth by 0.5-1.3 percentage points in 2020. They also indicate that the “state of epidemic” was declared on 20 March 2020 by Ordinance of the Minister of Health. This declaration, which entailed the imposition of several types of restrictions and containment measures, was further amended on 24 March 2020 and on 1 April 2020.

⁴ The measure provides for this reduction and exemption for real estate owned by the State and for the possibility of introducing such reduction and exemption for real estate owned by local authorities, subject to their agreement.

usufruct fees and fees for renting, leasing or using real estate belonging to the public authorities.

2.2. Legal basis

- (9) The legal basis for the measure is the *Act of 2 March 2020 on special solutions related to the prevention, the counteraction and the combating of COVID-19, other infectious diseases and crises caused by them*, as amended in order to introduce the new provisions related to the measure (“the Polish Act of 2 March 2020”).

2.3. Administration of the measure

- (10) The following authorities are responsible for granting and administering the measure:
- (a) Regarding real estate owned by the State: starosts and cities presidents with powiat rights and other bodies and entities managing property on behalf of the State Treasury;⁵
 - (b) Regarding real estate owned by the local government:⁶ commune head, mayor, city president, powiat board, or voivodeship board.

2.4. Budget and duration of the measure

- (11) The estimated budget of the measure is:
- (a) for the form of the measure set out in recital (7)(a):
 - PLN 150 million (approximately EUR 33.8 million)⁷ from the State budget;
 - PLN 130 million (approximately EUR 29.3 million) from the city budgets;
 - PLN 25 million (approximately EUR 5.6 million) from the municipality budgets.
 - (b) for the form of the measure set out in recital (7)(b):
 - PLN 240 million (approximately EUR 54.1 million) from the local government budgets.

⁵ The Polish public administration, excluding the central level, comprises three tiers: voivodship (regions), powiat (counties), and gmina (communes/municipalities). See, to this effect, *Public administration characteristics and performance in EU28: Poland*, available at <http://ec.europa.eu/social/BlobServlet?docId=19962&langId=en>

⁶ Under the condition of expressing the appropriate consent by the competent council or parliament.

⁷ Exchange rate at 21 July 2020: EUR 1 = PLN 4.4362 (source: European Central Bank, available at this [link](#)).

- (12) The Polish authorities submit that the above-indicated budget figures are based on the assumption that only an estimated 30% of undertakings conducting business activity on the land would eventually benefit from the measure. This percentage reflects the approximate share of undertakings that, according to Polish authorities, have suffered negative economic effects as a result of the COVID-19 outbreak over the total number of undertakings operating in Poland.
- (13) The measure will not be co-financed by EU funds.
- (14) Aid may be granted under the measure as from its approval until no later than 31 December 2020. The Polish authorities explain that, for the perpetual usufruct fee, although the latest date until which beneficiaries can submit applications for aid will be 30 January 2021, the measure (i.e. the proportional reduction of the fee) will only apply to burdens from perpetual usufruct fees that must have arisen no later than 31 December 2020. They explain that the perpetual usufruct fee is a periodic fee payable in annual cycles and that, therefore, setting the deadline for applications on 30 January 2021 is necessary in order to determine the proportion of the year 2020 for which the fee will be proportionately reduced.⁸

2.5. Beneficiaries

- (15) The beneficiaries of the measure are undertakings⁹ active in Poland, regardless of their size and the subject of their activity, which fulfil the following criteria:
- (a) They have experienced a decline in economic turnover as a result of the COVID-19 outbreak amounting to:
- not less than 15%, calculated as the ratio between (i) the total turnover during any given two consecutive calendar months falling within the period from 31 December 2019 to the day preceding the date of the application for aid, and (ii) the total turnover during the same two consecutive calendar months of the previous year;¹⁰
- or
- not less than 25%, calculated as the ratio between (i) the turnover of any given calendar month falling within the period from 31 December 2019 to the day preceding the date of the application for aid, and (ii) the turnover of the previous month;
- and

⁸ See, to this effect, recital (22)(a) below on how the amount of fee reduction will be proportionately calculated.

⁹ 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, 26.6.2014, p. 1.

¹⁰ A month shall also be deemed to be 30 consecutive calendar days where the two-month comparison period begins on a day other than the first day of that calendar month.

- (b) They are not in arrears in the payment of tax liabilities, social security contributions and health insurance payments, by the end of the third quarter of 2019.
- (16) Credit and financial institutions are excluded as eligible beneficiaries under the measure.
- (17) Aid may not be granted under the measure to undertakings, whatever their size, that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”),¹¹ the Agricultural Block Exemption Regulation (“ABER”),¹² or the Fisheries Block Exemption Regulation (“FIBER”),¹³ respectively, on 31 December 2019. The Polish authorities confirmed that micro or small enterprises that were already in difficulty on 31 December 2019 will not be eligible for aid under the measure.
- (18) Failure by the aid applicant to meet any of the eligibility conditions will result in a refusal to grant the aid and, thus, in the obligation to pay the concerned fee in full.

2.6. Sectoral and regional scope of the measure

- (19) The measure is open to all sectors except the financial sector.
- (20) The measure applies to the whole territory of Poland as regards real estate owned by the State, or limited to the local territory of cities and municipalities as regards real estate owned by the local government units.

2.7. Basic elements of the measure

- (21) The nominal value of the measure shall not exceed the following ceilings:
 - (a) EUR 100 000 per undertaking active in the primary production of agricultural products;¹⁴
 - (b) EUR 120 000 per undertaking active in the fishery and aquaculture sector;¹⁵

¹¹ 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, 26.6.2014, p. 1.

¹² 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, 1.7.2014, p.1.

¹³ 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, 24.12.2014, p. 37.

¹⁴ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

¹⁵ As defined in Article 2(1) of 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.

- (c) EUR 800 000 per undertaking active in other sectors.
- (22) The amount of aid shall be calculated as follows:
- (a) for the form of aid stated in recital (7)(a): the amount of aid equals the amount of perpetual usufruct fees due in proportion to the number of days of the state of epidemic in 2020; and
 - (b) for the form of aid set out in recital (7)(b): the amount of aid equals the amount of rent, lease rent or usufruct fees due for a period of 3 months in 2020, following the month when the application was made by the beneficiary.
- (23) Where the beneficiaries are undertakings active in the processing and marketing of agricultural products,¹⁶ the aid is not partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
- (24) Additionally, for the agricultural, fisheries and aquaculture sectors, the Polish authorities confirm that:
- (a) aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
 - (b) aid to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014; and
 - (c) where an undertaking is active in several sectors to which different maximum amounts apply, Poland shall ensure, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the overall maximum amount is not exceeded in total.

2.8. Cumulation

- (25) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁷ and/or the GBER, the ABER

¹⁶ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

¹⁷ 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, 26.4.2012, p. 8).

or the FIBER, provided the provisions and cumulation rules of those Regulations are respected.

- (26) The Polish authorities confirm that aid under the 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.
- (27) 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.
- (28) The Polish authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, shall be respected.

2.9. Monitoring and reporting

- (29) 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 above EUR 100 000 granted under the measure and EUR 10 000 in the agricultural and fisheries sector on the comprehensive national State aid website within 12 months from the moment of granting).¹⁸ In particular, the Polish authorities specify that such information will be published via “SUDOP” (the Polish system of State aid reporting, a database commonly available for both granting authorities and undertakings).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (30) 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

- (31) 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.
- (32) The measure is imputable to the State, since it is administered by the different Polish authorities identified in recital (10) and it is based on the Polish Act of 2 March 2020, as stated in recital (9). It is financed through State resources, since it

¹⁸ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014, Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

is financed by public funds as a result of the income foregone from perpetual usufruct, and/or usufruct, rent and lease fees.

- (33) The measure confers an advantage on its beneficiaries in the forms indicated in recital (7). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (34) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings fulfilling the criteria laid down in recitals (15), (16) and (17).
- (35) 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.
- (36) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (37) 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.
- (38) 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*”.
- (39) 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*”.
- (40) The measure aims at ensuring that sufficient liquidity remains available for undertakings by reducing the burdens arising from perpetual usufruct fees and from rent, lease and usufruct fees that they have to bear 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.
- (41) The measure is one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in their economy. The importance of the measure to ensure that sufficient liquidity remains available in the market during the crisis resulting from the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Polish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in Section 3.1 of the Temporary Framework.

(42) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, since it meets all the conditions of Section 3.1 of the Temporary Framework. In particular:

- The aid takes the form of: (i) a reduction of the annual fee for perpetual usufruct; and (ii) an exemption of the rent, lease rent or usufruct fees (see recital (7)).
- The overall nominal value of the measure shall not exceed EUR 800 000 per undertaking (see recital (21)(c)). The measure therefore complies with point 22(a) of the Temporary Framework;
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (11). The measure therefore complies with point 22(b) of the Temporary Framework;
- Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (see recital (17)). The measure therefore complies with point 22(c) of the Temporary Framework.
- Aid will be granted under the measure no later than 31 December 2020. As explained in recital (14), although the latest date until which beneficiaries can submit applications for aid will be 30 January 2021, the aid measure (i.e. the proportional reduction of the fee) will only apply to burdens from perpetual usufruct fees that must have arisen no later than 31 December 2020, thereby alleviating only burdens pertaining to the year 2020. The measure therefore complies with point 22(d) of the Temporary Framework;
- Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (see recital (23)). The measure therefore complies with point 22(e) of the Temporary Framework.

Additionally, regarding the agriculture, aquaculture and fisheries sectors:

- The overall nominal value of the measure does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector (see recital (21)(b)) or EUR 100 000 per undertaking active in the primary production of agricultural products (see recital (21)(a)). The measure therefore complies with point 23(a) of the Temporary Framework;
- Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (see recital (24)(a)). The measure therefore complies with point 23(b) of the Temporary Framework;
- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (see

recital (24)(b)). The measure therefore complies with point 23(c) of the Temporary Framework.

- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, Poland will ensure, by appropriate means such as separation of accounts, for each of these activities that the relevant ceiling is respected and that the overall maximum amount is not exceeded in total (see recital (24)(c)). The measure therefore complies with point 23bis of the Temporary Framework.

(43) The Polish authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (see recital (29)). 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 (see recitals (25) to (28)).

(44) 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.

4. CONCLUSION

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

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION