EUROPEAN COMMISSION

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PUBLIC VERSION

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**Subject:** **State Aid SA.58102 (2020/N) – Poland**
**COVID-19 support to tour operators and other undertakings active in tourism and culture**

Excellency,

## 1. PROCEDURE

(1) By electronic notification of 21 August 2020, Poland notified 3 measures, (i) subsidized interest rates for loans to tour operators ('Measure 1'), (ii) the Standstill Benefit ('Measure 2') and (iii) exemption from contributions ('Measure 3') (collectively "the measures") 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) By emails of 21 and 27 August 2020, 1 September 2020, 8 September 2020 and 11 September 2020, the Commission requested additional information on the

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 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,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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measures. Poland replied by emails of 27 August 2020, 1 September 2020, 4 September 2020 and 11 September 2020.

(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[2] and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURES

(4) Poland considers that the COVID-19 outbreak has started to affect the real economy. The measures form part of an overall package of measures and aim 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.

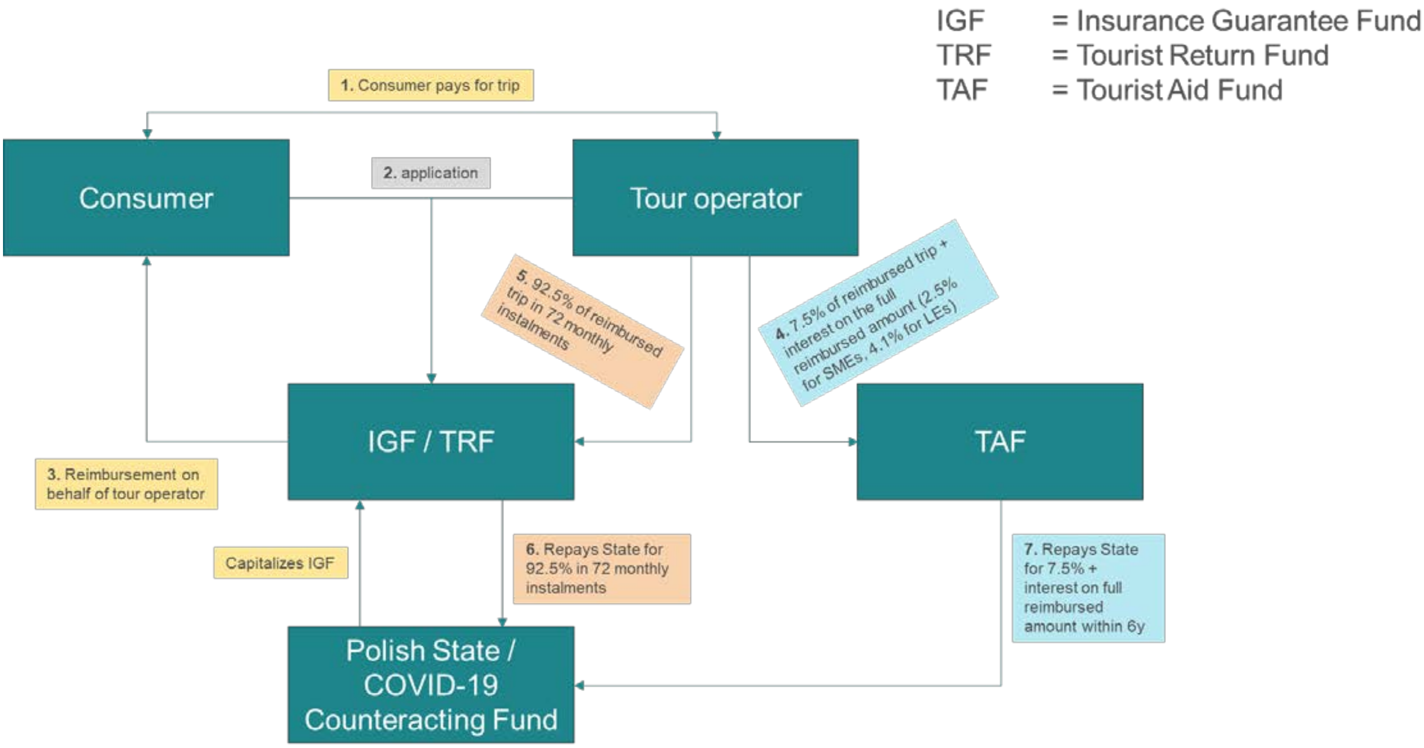
(5) Poland confirmed that the aid under the measures is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

*Description of Measure 1*

(6) As a result of the COVID-19 outbreak and travel restrictions implemented on a worldwide scale starting in March 2020, travel operators have been forced to cancel an unprecedented number of travel packages or travellers have terminated such contracts. Travel operators are obliged to provide travellers with a full refund in such cases. Refunding all cancelled packages would cause massive strain on the liquidity position of these travel operators to an extent where many would face insolvency. Moreover, with the stagnation on the market of tourist services for several months, tour operators did not have an opportunity to generate adequate funds to cover payments for cancelled package tours.

(7) Under Measure 1, the Polish State will reimburse travellers affected by such cancellations on behalf of tour operators. The tour operators, eventually, repay the Polish State in full, including a reduced interest rate. The reimbursement of travellers and repayment of the State takes place via a set-up that involves different entities and funds, see the figure below.

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




(8) In the end, it is however ensured that the State will be reimbursed in line with the Temporary Framework, partly directly by the tour operators and partly by the so-called "Tourist Aid Fund", which is itself financed by the tour operators. The function and role of the Tourist Aid Fund and the other entities and funds that play a role is explained more in detail in Section 2.2.7.

(9) Because reimbursements to travellers for cancelled package tours do not have to be repaid immediately by the tour operators, the measure seeks to strengthen the liquidity position of the tour operators. The Polish authorities consider that taking over the reimbursement obligations from the tour operators and, subsequently, asking for repayment with a reduced interest rate is necessary, because in many cases it will protect tour operators from falling into a state of insolvency.

*Description of Measure 2*

(10) Measure 2 corresponds to a "standstill benefit" granted to undertakings operating in the sectors of tourism and culture that could not provide services due to the consequences of the COVID-19 outbreak (i.e. those companies came to an economic 'standstill').

*Description of Measure 3*

(11) Under Measure 3 the Polish authorities want to avoid that undertakings belonging to the tourism and cultural sector, which are unable to pay the Social Insurance Institution ("ZUS") fees, would have to cease their activities. This could lead to unemployment and losses in tax revenue for the State. Due to the nature of the activities of these sectors, it is likely that the undertakings active in this industry have not been able to generate income over the period of June until the end of August 2020. High fixed costs are linked with these sectors, for example related to equipment leasing. Therefore, exemptions from payment of contributions to ZUS may bring significant relief to these undertakings. The exemption from

contributions will enable these undertakings to survive on the market during the period in which they are unable to provide services due to the extraordinary circumstances that arose following the COVID-19 outbreak. Measure 3 will notably exempt undertakings from paying the following contributions: social security contributions, health insurance contributions, contributions to the Labour Fund, the Solidarity Fund, the Guaranteed Employee Benefits Fund, or the Bridging Pension Fund[3], all due for the period from 1 June 2020 to 31 August 2020.

(12) The estimated number of final beneficiaries are:

- for Measure 1, approximately 4,800 undertakings;
- for Measure 2, approximately 24,150 undertakings and
- for Measure 3, approximately 28,000 undertakings.

(13) The compatibility assessment of the measures is based on Article 107(3)(b) TFEU, in light of sections 3.1 (for Measures 2 and 3) and 3.3 of the Temporary Framework (for Measure 1).

## 2.1. Measures covered by section 3.1 of the Temporary Framework (Measures 2 and 3)

### *2.1.1. The nature and form of aid*

(14) The measures provide aid in the form of direct grants (Measure 2) and exemptions from the obligation to pay certain contributions such as for social security[4] (Measure 3). Their purpose is to enable entrepreneurs to survive on the market during the period in which they are unable to provide services due to the extraordinary circumstances.

### *2.1.2. Legal basis of Measures 2 and 3*

(15) The legal bases for Measure 2 and 3 are Articles 15zs and 31zo respectively of the Act amending the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts.

### *2.1.3. Administration of Measures 2 and 3*

(16) The Social Insurance Institution (Zakład Ubezpieczeń Społecznych or ‘ZUS’) is responsible for administering Measures 2 and 3.

[3] “na ubezpieczenie zdrowotne, na Fundusz Pracy, Fundusz Solidarnościowy, Fundusz Gwarantowanych Świadczeń Pracowniczych lub Fundusz Emerytur Pomostowych”

[4] See recital (11).

### 2.1.4. *Budget and duration of Measures 2 and 3*

(17) The estimated budget of the Measure 2 is PLN 150.9 million (approximatly EUR 34.23 million[5]).

(18) The estimated budget of the Measure 3 is PLN 401 million (approximately EUR 90.97 million[6]).

(19) Aid may be granted under Measures 2 and 3 as from their approval until no later than 31 December 2020.

(20) The Polish authorities have confirmed that the overall maximum aid amount per undertaking as laid down in paragraph 22(a) of the Temporary Framework is respected.

### 2.1.5. *Beneficiaries of Measures 2 and 3*

(21) The final beneficiaries of Measures 2 and 3 are SMEs and large enterprises[7] active in Poland. Financial institutions are excluded as eligible beneficiaries.

(22) Aid may not be granted under the measure to medium[8] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[9] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[10] or restructuring aid[11].

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5 PLN 1 = EUR 0.22686 in August 2020, taken from: https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en.

6 PLN 1 = EUR 0.22686 in August 2020, taken from: https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en.

7 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.

8 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.

9 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

10 Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

11 Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

### *2.1.6. Sectoral and regional scope of Measures 2 and 3*

(23) Measures 2 and 3 are open to the tourism and cultural sector. More specifically, the beneficiaries are active in the following sectors:

(24) For Measure 2:

- land transport;
- tourist agents;
- tour pilots and tour guides;
- artists performing at events;
- activities supporting the organization of events;
- renting and leasing of other machines and devices;
- other entertainment business activity.

(25) For Measure 3:

- land transport;
- tourist agents
- tour pilots and tour guides;
- organization of fairs, exhibitions and congresses;
- hotels and similar forms of accommodation
- artists performing at events;
- activities supporting the organization of events;
- other entertainment business activity;
- renting and leasing of other machines and devices.

(26) Both measures 2 and 3 apply to the whole territory of Poland.

### *2.1.7. Basic elements of Measures 2 and 3*

(27) According to Measure 2, aid in the form of direct grants will be paid to undertakings operating in the tourism and culture sector. Aid under Measure 2 will be granted so as to ensure that the COVID-19 outbreak does not undermine the viability of the beneficiaries and may be granted up to three times to each beneficiary following an application which must be submitted to ZUS. Applications for the benefit under Measure 2 may be submitted no later than 3 months from the month in which the declared state of the outbreak is lifted in Poland. Aid under the measure may be granted to beneficiaries who declare a decrease in income by at least 80%.

(28) The activity of tour pilots and tour guides is very often seasonal. They often suspend their activities after the holiday season ends in Poland, which is around 31 August each year. Tour pilots and guides who suspended their activity during the pandemic or right before it began, in practice could not benefit from support, because in a situation of suspended activity they could not prove a decrease in revenue. Taking this into account, these persons will also have the possibility to take advantage of the standstill benefit, but only if their activity was suspended after 31 August 2019 and has been conducted seasonally for no longer than nine months a year.

(29) Measure 3 will provides for an exemption from the obligation to pay certain type of contributions such as those for social security[12], due for the period from 1 June 2020 to 31 August 2020. According to Measure 3, the beneficiary shall submit a request to ZUS no later than 30 November 2020. Condition for granting aid under Measure 3 is to have a decrease in income of the beneficiary by at least 80%.

### 2.2. Measure covered by section 3.3 of the Temporary Framework (Measure 1)

#### *2.2.1. The nature and form of aid*

(30) Measure 1 provides aid in the form of subsidised interest rates on loans.

#### *2.2.2. Legal basis of Measure 1*

(31) The legal basis for Measure 1 is the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them as amended in particular by an Act of 14 August 2020[13], which is still to enter into force, and will amend, amongst other acts, the Act of 2 March , and in particular Articles 15ka, 15kb, and 15kc thereof.

#### *2.2.3. Administration of Measure 1*

(32) The Insurance Guarantee Fund ('IGF') is responsible for administering Measure 1.[14] The principles and functioning of the IGF were defined in the Act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau. More detail on the activities and functioning of the IGF is provided in recital (37).

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[12] See recital (11).

[13] U S TAWA z dnia 14 sierpnia 2020 r.o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw

[14] The IGF is a public-private entity. The private aspect of IGF is related to the source of its financing. The public-law nature of the IGF is related to the establishment of the IGF by means of an act and the imposition of statutory obligations on it and their performance on behalf of the Minister responsible for tourism.

### 2.2.4. *Budget of Measure 1*

(33) The estimated budget of Measure 1 is PLN 300 million (approximately EUR 68.06 million[15]). It is financed by the State budget.

### 2.2.5. *Beneficiaries of Measure 1*

(34) The final beneficiaries of Measure 1 are tour operators active in Poland, both SMEs and large enterprises[16]. Financial institutions are excluded as eligible beneficiaries. The Polish authorities estimate that around 4 800 undertakings will benefit from Measure 1.

(35) Aid may not be granted under Measure 1 to medium[17] and large enterprises that were already in difficulty within the meaning of the GBER on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[18] or restructuring aid[19].

### 2.2.6. *Sectoral and regional scope of Measure 1*

(36) Measure 1 is open to tour operators active in Poland. It applies to the whole territory of Poland.

### 2.2.7. *Basic elements of Measure 1*

(37) Under Measure 1 several entities and funds are relevant, each with their own role and function. See recital (7).

(a) Insurance Guarantee Fund ('IGF') – The IGF is involved in the performance of the guarantee function related to the motor insurance market Civil Liability and Agricultural Liability, including the payment of compensation and benefits to victims of road accidents and collisions caused by uninsured vehicle owners and uninsured farmers. The Insurance Guarantee Fund also controls compliance with the insurance obligation and imposes charges on the uninsured for non-compliance with this

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15 PLN 1 = EUR 0.22686 in August 2020, taken from: https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en.

16 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.

17 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.

18 Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

19 Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

obligation. The IGF serves as an umbrella organization for the following funds:

– Tourist Aid Fund ('TAF') – The TAF constitutes a separate bank account managed by IGF. This means that the TAF will not function as a separate entity, but will be established within the organizational structure of the IGF. TAF will provide tour operators with payments to cover the reimbursement of travellers' payments for package tours that have not been or will not be implemented due to the announcement or the occurrence of unavoidable and extraordinary circumstances, not related to COVID-19[20], on the territory of the Republic of Poland or in the place that the package tour takes place. The TAF is to be financed in the future by contributions by the tour operators.

– Tourist Return Fund ('TRF') – The TRF is another separate bank account and will handle payments to travellers who have not received or agreed to receive a voucher for realizing future package tours within one year from the date on which the package tour was to take place. TRF, contrary to TAF, only reimburses customers whose trip was cancelled due to the COVID-19 outbreak.

(b) The COVID-19 Counteracting Fund – a State budget fund that finances the TRF and to which the repayment from the tour operator in the amount of 100% is issued after 6 years via the TAF and TRF.

(38) Under Measure 1, reimbursements for travellers whose package tours had to be cancelled because of the COVID-19 outbreak and did not agree to accept a voucher from the tour operator for a future, replacement package tour to be organised within one year from cancellation, are paid on behalf of the tour operators by the TRF after tour operators and travellers have applied for reimbursement with the IGF. IGF normally verifies the applications within 30 days from the date of receipt. If the application is approved, the TRF reimburses travellers within a period of 14 days.

(39) The reimbursements to travellers made by the TRF are financed from the COVID-19 Counteracting Fund (i.e. the State budget). 7,5% of the amount reimbursed by the State to the traveller and interest on the full amount is paid directly upfront by the tour operators to the TAF. Tour operators refinance the IGF to cover 92,5% of the payments it has made over a period of 72 months (i.e. six years), in equal monthly instalments starting in April 2021. The IGF, in turn, repays the State, on behalf of the tour operators, within a period of six years, in equal monthly instalments starting April 2021. The TAF transfer the 7.5% and the interest on the full loan within six years to the State budget.

[20] Within the meaning of Art. 47 paragraph 4 and paragraph 5 point 2 of the Act of November 24, 2017 on package tours and related tourist services. The TAF will cover exceptional circumstances <u>not related</u> to the COVID-19 outbreak.

(40) The interest on the full loan is also paid to the TAF in the amount of 2,5% for tour operators that are micro, small or medium undertakings and 4,1% for tour operators that are large undertakings.

(41) The interest rates referred to in recital (40) were calculated on the basis of the base rate (1 year WIBOR, Warsaw Interbank Offer Rate) applicable on 21 August 2020 (date of notification) plus the credit risk margins as set-out in the table below:

| Type of recipient | Credit risk margin for 1st year | Credit risk margin for the 2nd-3rd year | Credit risk margin for the 4th-6th year |
|---|---|---|---|
| SMEs | 25bps | 50bps | 100bps |
| Large enterprises | 50 bps | 100bps | 200bps |

(42) The calculation mentioned in in recital (41) ensures that the total interest paid upfront by the tour operators is the same as when they would have paid by applying the methodology described in section 27(a) of the TF on an annual basis.

(43) The loan contracts between IGF and the tour operators are signed by 31 December 2020 at the latest and will not exceed a duration of six years. Moreover, the loans shall relate to working capital needs.

(44) The loans will have a maturity going beyond 31 December 2020 and therefore the Polish authorities confirmed that the overall amount of the loan 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 in 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.

### 2.3. Cumulation

(45) The Polish authorities confirm that aid granted under the measures may be cumulated with aid under *de minimis* Regulations[21] or the GBER[22] provided the provisions and cumulation rules of those Regulations are respected.

[21] 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) 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).

(46) The Polish authorities confirm that aid granted under the measures 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 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) of that framework, will be respected.

(48) The Polish authorities have underlined that the aid approved by the Commission under Article 107(2)(b) TFEU in Decision SA.57054 is targeted only for large enterprises. In the present case, the standstill benefit and the exemption from contributions is mainly targeted at a specific group of beneficiaries (e.g. tour guides, activities related to staging and artistic performances, activities supporting the staging of artistic performance, other entertainment and recreation activities), which are usually self-employed entrepreneurs or micro-enterprises. Therefore, it is considered to be very improbable that the aid approved under SA.57054 can be cumulated with measure 2 or 3. However, in the unlikely event that this would happen, the Polish authorities will verify that beneficiaries of damage compensation under SA.57054 can only benefit from measure 2 or 3 if they still have effective liquidity needs..

(49) The Polish authorities confirm that aid granted under section 3.2 of the Temporary Framework will 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.

(50) A beneficiary may benefit in parallel from multiple schemes under section 3.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 27(d) of the Temporary Framework.

### 2.4. 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 above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[23]).

[22] 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.

[23] Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014. For loans, the nominal value of the underlying instrument shall be inserted per beneficiary.

## 3. ASSESSMENT

### 3.1. Lawfulness of the measure

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

### 3.2. Existence of State aid for Measure 1, 2 and 3

(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 measures are imputable to the State, since they are administered by the Social Insurance Institution (measure 2 and 3) and the IGF[24] (measure 1) and they are based on the Act amending the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts. All three measures are financed through State resources, since they are financed by public funds.

(55) The measures confer an advantage on its beneficiaries in the form of direct grants (Measure 2), exemptions from the obligation to pay contributions such as those for social security (Measure 3) and subsidised interest rates (Measure 1). The measures thus relieve those beneficiaries of costs which they would have had to bear under normal market conditions.

(56) The advantage granted by the measures is selective, since it is awarded only to certain undertakings, in particular the undertakings listed in recitals (24), (25) and (34), excluding the financial sector.

(57) The measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect 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 measures constitute aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

### 3.3. Compatibility

(59) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measures are compatible with the internal market.

[24] See recital (32).

(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*".

#### *3.3.1. Measures 2 and 3*

(62) The measures aim to ensure that the COVID-19 outbreak does not undermine the viability of undertakings active in the tourism and culture sector that have been severely affected by the COVID-19 outbreak and as a consequence face liquidity shortages 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 measures are part 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 measures to preserve employment and economic continuity is shown by the already visible consequences in the tourism and cultural sector. Moreover, the measures are of a scale that can be reasonably anticipated to produce effects across the entire Polish tourism and cultural sector. Furthermore, the measures have 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.

(64) The Commission accordingly considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework. In particular:

- The aid takes the form of direct grants as regards measure 2 (recital (14)) and an exemption of certain contributions such as social security contributions as regards measure 3 (recital (11)).

- The overall nominal value of the grants and the exemptions of certain contributions under measure 2 and 3 shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (see recital (20)). The measures therefore comply with point 22(a) of the Temporary Framework;

- Aid is granted under the measures on the basis of a scheme with an estimated budget as indicated in recitals (17) and (18). The measures therefore comply with point 22(b) of the Temporary Framework;

- Aid may not be granted under the measures to medium[25] and large enterprises that were already in difficulty on 31 December 2019 (see recital (22)). The measures therefore comply with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[26] or restructuring aid[27] (see recital (22)). The measures therefore comply with point 22(c)bis of the Temporary Framework;

- Aid will be granted under the measures no later than 31 December 2020. The measure therefore complies with point 22(d) of the Temporary Framework;

### *3.3.2. Measure 1*

(65) Since also measure 1 involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Like for measure 2 and 3, the compatibility assessment for measure 1 is based on Article 107(3)(b) TFEU (see recitals (60) and (61)).

(66) Measure 1 aims at ensuring the necessary liquidity for tour operators and to avoid a further deterioration of the travel industry in Poland and thereby remedying a serious disturbance in the Polish economy at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak.

(67) 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.

(68) The Commission 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 based on the following considerations:

- The interest rate paid upfront by tour operators is in line with point 27(a) of the Temporary Framework (see recitals (40)-(42)).

- The loan contracts are signed by 31 December 2020 at the latest and are limited to a maximum of 6 years (recital (42)). The measure therefore complies with point 27(c) of the Temporary Framework.

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[25] 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.

[26] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

[27] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (44)).

- Loans granted under the measure relate to working capital needs (recital (42)). The measure therefore complies with point 27(f) of the Temporary Framework.

- Aid may not be granted under the measure to medium[28] and large enterprises that were already in difficulty on 31 December 2019 (see recital (35)). The measure therefore complies with point 27(g) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[29] or restructuring aid[30] (see recital (35)). The measure therefore complies with point 27(g)bis of the Temporary Framework.

- The cumulation rules set out in point 26bis of the Temporary Framework are respected (see recital (49)).

(69) For all three measure, the Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (51)). The Polish authorities further confirm that the aid under the measures 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 (45) to (50)).

(70) The Commission therefore considers that the three measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.

[28] 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.

[29] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

[30] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

## 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid scheme 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

Martine DEPREZ
Director of the Registry
EUROPEAN COMMISSION