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**Subject: State Aid SA.57172 (2020/N) – Poland
COVID-19: Anti-crisis measure - tax deferrals**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 26 October 2020, Poland notified an aid scheme in the form of tax deferrals (“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, 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, 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 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

- (3) Poland stated that the notification did not include confidential information.

2. DESCRIPTION OF THE MEASURE

- (4) Poland considers that the COVID-19 outbreak has started to affect the real economy. 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, 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 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.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.9 of the Temporary Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of tax deferrals (of all types of taxes). More precisely, the measure provides a legal basis for the tax administration to i) postpone the deadline of a tax payment or spread the tax payment into instalments and ii) postpone (or spread the tax payment into instalments) the payment of tax arrears or of interests (for late payment or lack of declaration).

2.2. Legal basis

- (8) The legal basis for the measure is article 15zzzh 1. 2) and 3. of the law of 2 March 2020, as amended³ and as complemented by guidelines for the tax authorities issued by the Ministry of Finance. Article 15zzzh explicitly lays down that the tax authorities must comply with the conditions set out in the Temporary Framework for the measure to be regarded as compatible State aid⁴.

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

³ The Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-24 virus and the Act of 7 October 2020 on amending certain acts to counteract the socio-economic effects of COVID-19 (Journal of laws of 2020, item 1747) amended the Act of 2 March 2020 on special solutions related to prevention, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them.

⁴ Article 15zzzh 1. 2) of the Act of 2 March 2020. This article further refers in particular to article 67a, paragraph 1, points 1 and 2, of the Act of 29 August 1997 (tax ordinance) which lays down the general possibility for the tax administrations to waive interests and defer tax payments. Poland confirmed that the notified measure only concerns taxes referred to in article 3, point 3), a) and b), of the tax ordinance (it does not apply to “fees and non-tax budgetary charges” covered by letter c) of point 3) of article 3).

2.3. Administration of the measure and granting authorities

- (9) The Ministry of Finance, the local government units and all bodies authorized to grant reliefs in the payment of public liabilities are responsible for administering the measure and granting the aid.

2.4. Budget and duration of the measure

- (10) The estimated budget of the measure is EUR 264 million (approximately PLN 1 200 million). The estimated number of beneficiaries is approximately 300 000.
- (11) Aid may be granted under the measure as from its approval by the Commission until 30 June 2021. The deadline for postponing or paying the last instalment may not be later than 31 December 2022.

2.5. Beneficiaries

- (12) The beneficiaries of the measure are all undertakings conducting a business activity experiencing a significant decrease of their turnover due to COVID-19 (see recital (14) below). Financial institutions are excluded.

2.6. Sectoral and regional scope of the measure

- (13) The measure is open to all sectors except the financial sector. It applies to the whole territory of Poland.

2.7. Basic elements of the measure

- (14) In order to benefit from the measure, undertakings need to demonstrate a decrease in their turnover due to COVID-19 by at least 25 % in any month after 31 January 2020 compared to the previous month or the same month of the previous year⁵.
- (15) Depending in particular on the situation and the request of the taxpayer, the amount of the advantage can be different (for instance the payment can be postponed for a longer time period).

2.8. Cumulation

- (16) Poland confirms that aid granted under the measure may be cumulated with aid under the *de minimis* Regulations⁶ or the block exemption Regulations⁷, provided the provisions and cumulation rules of those Regulations are respected.

⁵ See article 15 zzzh 3. of the law of 2 March 2020, as amended.

⁶ 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).

⁷ 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

- (17) Poland confirms that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (18) Poland confirms 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.

2.9. Monitoring and reporting

- (19) The Polish authorities confirm that they will respect the relevant monitoring and reporting obligations laid down in section 4 of the Temporary Framework (*e.g.*, by 30 June 2021, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (20) By notifying the measure before putting it into effect, Poland has respected its obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (21) 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 undertakings. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (22) The measure is imputable to the State, since it is administered by public authorities and based on a national law (recitals (8) and (9)). It is financed through State resources because it amounts to waiving revenue (namely interests and payments for late payment of taxes), which would otherwise have been paid to the State or other public authorities (recital (7)).
- (23) The measure confers an advantage because i) it postpones the deadline of a tax payment or spreads the tax payment into instalments and ii) it postpones (or spreads into instalments) the payment of tax arrears or of interests (for late payment or lack of declaration) (recital (7)). The notified measure confers a liquidity advantage on its beneficiaries in the form of a deferral (without interest), in instalments or in full, of tax payments or related payments (interests). Under

26.6.2014, p. 1, 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 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

the normal tax rules i.e. in the absence of the measure, the beneficiaries would have to pay interests on taxes due after the payment date expires. When interests are due, they are also due with certain dates of payments (thus interests on interests can arise). Postponing these payments (taxes and interest) to a later date (or spreading/fractioning payment in time) corresponds to the granting of an interest free loan in the amounts of the tax deferred (or the interests to be paid) and involves an economic advantage (interest not paid by comparison to the interest that would be paid on a market based loan). The measure thus relieves the beneficiaries of costs that they would have to bear under normal market conditions.

- (24) The advantage can be granted to entities offering goods or services on a market in all economic sectors (except the financial sector) and thus benefits ‘undertakings’.
- (25) The advantage granted by the measure is selective. Undertakings active in the financial sector are excluded from the outset. In addition, the terms of the deferral can be different depending on the beneficiaries. The measure is therefore liable to provide different levels of support to the beneficiaries thus favouring selectively these undertakings that receive a higher advantage. The measure thus derogates from the general rule according to which taxes and interests are to be paid on a specific date. It therefore discriminates in favour of its beneficiaries as compared to undertakings in a comparable factual and legal situation in the light of the objectives of the tax system concerned, which are subject to the normal tax rules (normal date of payment). The Polish authorities have not provided any justification for that discrimination based on the nature or the general scheme of the tax system. The Commission also observes that the advantage is awarded to undertakings experiencing a specific decrease of their turnover due to COVID-19.
- (26) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since it includes beneficiaries that are active in sectors in which intra-Union trade exists.
- (27) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Polish authorities do not contest that conclusion.

3.3. Compatibility

- (28) 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.
- (29) 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*”.
- (30) 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”.

- (31) The measure aims at easing the liquidity constraints of undertakings at a time when the normal functioning of 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.
- (32) 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 ease liquidity constraints and to preserve the continuity of the beneficiaries’ economic activities 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 (“*Aid in the form of tax deferrals*”) described in section 3.9 of the Temporary Framework.
- (33) The measure meets all the conditions of the Temporary Framework. In particular:
- The measure provides for a form of aid explicitly covered by section 3.9 of the Temporary Framework, i.e. “*deferral of taxes*”, “*granting of interest free periods*” “*deferral of payments*” and “*access to tax debt payment plans*” (spreading tax payment in instalments). Section 3.9 of the Temporary Framework is not limited to the measures explicitly mentioned in paragraph 41 thereof but applies more generally to “*measures provided for in relation to fiscal and social security obligations intended to ease the liquidity constraints faced by the beneficiaries*”. This also covers the notified measure to the extent it postpones (or spreads the tax payment into instalments) the payment of tax arrears or of interests (for late payment or lack of declaration) (recital (7)), which follows the same objective and the same logic.
 - The measure assists undertakings that are particularly affected by the COVID-19 outbreak, e.g. undertakings experiencing a substantial decrease of their turnover due to COVID-19 (recital (14)). By providing a liquidity advantage (recital (23)), the measure eases the liquidity constraints faced by those undertakings due to the COVID-19 outbreak and contributes to preserving the continuity of their economic activities.
 - Aid granted under the measure will be granted before 30 June 2021, and the end date of the deferrals will not be later than 31 December 2022 (recital (11)). The measure therefore complies with point 41 of the Temporary Framework.
- (34) The Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (19) above). The Polish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (16) to (18)).

- (35) 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