EUROPEAN COMMISSION

Brussels, 15.12.20
C(2020) 9315 final

PUBLIC VERSION

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Subject: State Aid SA.59715 (2020/N) – Poland

Excellency,

1. **PROCEDURE**

(1) By electronic notification of 24 November 2020, Poland notified modifications concerning the following existing aid schemes (“the existing aid schemes”) which the Commission has previously approved (“the initial decisions”) in light of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”)


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(b) SA.56922: Polish anti-crisis measures – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes related to COVID-19, which the Commission approved by Decision C(2020) 2686 of 23 April 2020.


(e) SA.57015: State aid in the form of grants or repayable assistance under operational programmes for 2014 – 2020 to support the Polish economy in connection with the occurrence of the COVID-19 pandemic outbreak, which the Commission approved by Decision C(2020) 2782 of 24 April 2020.

(f) SA.57054: COVID-19: The Polish anti-crisis measures – aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak, which the Commission approved by Decision C(2020) 3656 of 29 May 2020. The extension of the scheme only concerns the applicability of the loan on the basis of section 3.3 of the Temporary Framework, and leaves the compensation part based on Article 107(2)(b) of the Treaty unaffected.


(h) SA.57191: State aid in the simplified repayable form from financial engineering instruments resources subject to re-use and from financial instruments under operational programmes for 2014-2020 perspective to support the Polish economy in connection with the COVID-19 pandemic outbreak, which the Commission approved by Decision C(2020) 3163 of 11 May 2020.


SA.57726: 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, which the Commission approved by Decision C(2020) 5280 of 28 July 2020. Since that scheme was the subject of a separate notification, concerning both its prolongation and amendment, and a decision has been adopted on that basis (SA.59915, Decision C(2020) 9176 of 11 December 2020), Poland confirmed that there is no need to decide on this prolongation request anymore.

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 and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

On 13 October 2020, the Commission adopted a Communication prolonging the validity of the Temporary Framework. Section 3.11 thereof, which enables recapitalisation support, was prolonged until 30 September 2021. The other sections of the Temporary Framework were prolonged until 30 June 2021.

Following the prolongation of the Temporary Framework, the Polish authorities notified their intention to extend the duration of the following existing aid schemes until 30 June 2021: SA.56876, SA.56922, SA.56979, SA.56996, SA.57015, SA.57054, SA.57055, SA.57191, SA.57306, SA.57452, SA.57519 and SA.57726. The modification of the scheme SA.56922 concerns only the measures 1 – 7 and the measure 11.

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


4 For this last case see recital (1)(l).
The Polish authorities notified their intention to extend the duration of the existing aid scheme SA.57055: *Anti-crisis measures – COVID-19 – equity instruments*, approved under section 3.11 of the Temporary Framework, until 30 September 2021.

In addition, Poland wishes to amend its scheme, which would be reflected in a revised recital 23 of the decision SA.57452 (2020/N) as follows: “Poland distinguishes guarantees that are active for up to one year and up to two years, but their validities are always 3 months longer, so that the factor provider has the possibility to make a claim. In the first case, the maximum factoring limit maturity is 12 months, in the latter case, the maximum factoring limit maturity is 24 months. This period consists in both cases of the period for presentation of invoices, the payment due date of maximum 6 months and a soft-collection period.”

The same clarification should also be added to recital 24 of that decision, which should read accordingly as follows: "Therefore, the maximum activity of the guarantee is 24 months, which covers the maximum maturity of the factoring limit. The additional period of 3 months in which a claim can be made is added to this timeframe, as it does not form part of the maturity of the underlying factoring limit."

Finally, recital (29) of that decision should be adjusted to read in line with the above and the proposed prolongation as follows: "The guarantee is granted by 30 June 2021 at the latest. This is therefore also the latest date when a factoring agreement could be contracted that benefits from the guarantee coverage. As stated above in recital (23) any such contract may have a maximum maturity of 24 months."

The Polish authorities confirmed that all other conditions of the existing aid schemes remain unchanged.

The modifications will only be put into effect after the Commission’s approval.

3. **ASSESSMENT**

3.1. **Lawfulness of the measure**

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**

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.
The existing aid schemes constitute State aid within the meaning of Article 107 (1) TFEU for the reasons set out in the initial decisions. The proposed modifications do not affect that conclusion. The Commission therefore refers to the respective assessment of the aforementioned decisions and concludes that the schemes as modified constitute State aid in the meaning of Article 107 (1) of the TFEU.

3.3. Compatibility

The Commission assessed the existing aid schemes based on Article 107 (3)(b) and Article 107 (3)(c) of the TFEU in light of the Temporary Framework and concluded that they were compliant with the compatibility conditions set out in that Framework.

The Commission refers to its analysis of compatibility as set out in the initial decisions.

The Commission has examined the notified amendments and concludes that they do not alter the conclusions on compatibility as set out in the initial decisions.

The extension of the duration of the schemes until 30 June 2021 is in line with the Temporary Framework. In addition, the conditions of the measure SA.57452 approved by the initial authorising decision SA.57452 (2020/N) remain unchanged. The modifications concerning recitals (23), (24) and (29) of the decision SA.57452 (2020/N) merely clarify that the maximum duration of the actual guarantee may not exceed 24 month and that the 3 month period provided under the scheme in which a claim may be brought are not part of this duration, so that the maximum timespan of the guarantee plus the time in which a claim can be made is 27 month. This does not in any way change the assessment of the initial decision, because the duration of the underlying factoring agreements on which the guarantees are provided and the corresponding rates do not change.

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Apart from the amendments referred to in recitals (4) – (8), the Commission notes that there are no other alterations to the existing aid schemes.

The Commission therefore considers that the measures, as modified, are necessary, appropriate, and proportionate to remedy a serious disturbance in the economy of the Member State pursuant to Article 107(3)(b) TFEU. The measure in case SA.57519, as modified, contributes to the development of certain economic activities, is appropriate and necessary to address the health crisis pursuant to Article 107(3)(c) TFEU and does not affect trading conditions and competition to an extent contrary to the common interest.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the modifications to aid schemes SA.56876, SA.56922, SA.56979, SA.56996, SA.57015, SA.57054, SA.57055, SA.57191, SA.57306, SA.57452 and SA.57519. The above-enumerated schemes are compatible with the internal market pursuant to Article 107(3)(b) and Article 107(3)(c) of the Treaty on the Functioning of the European Union as interpreted by the Temporary Framework.

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