EUROPEAN COMMISSION

Brussels, 11.3.2021
C(2021) 1756 final

Subject: State Aid SA.61825 (2021/N) – Poland
Subsidy schemes to industries affected by the COVID-19

Excellency,

1. Procedure

(1) By electronic notification of 5 February 2021, Poland notified aid in the form of direct grants and exemption from payment of social security contributions ‘Subsidy schemes to industries affected by the COVID-19’ (“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”). Poland provided additional information on 24 February 2021.

(2) The Polish authorities exceptionally agree to waive their 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.

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

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2. DESCRIPTION OF THE MEASURE

(3) Poland considers it necessary to introduce a measure under the Temporary Framework in order to provide support to enterprises operating in industries that found themselves in a difficult situation due to the COVID-19 safety rules or bearing costs related to sanitary restrictions resulting in a decrease in attendance. The measure is aimed at counteracting negative economic effects and maintaining jobs.

(4) The Polish authorities confirm 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.

(5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure, which includes four sub-measures, provides aid in the form of direct grants and an exemption from payment of social security contributions.

2.2. Legal basis

(7) Legal basis for all four sub-measures is the Ordinance of the Council of Ministers of 19 January 2021 on support for participants in business transactions affected by the COVID-19 pandemic. The measure entered into force on 1 February 2021.

2.3. Administration of the measure

(8) The aid granting authority is the director of the voivodeship labour office for sub-measure 1, the Social Insurance Institution Zakład Ubezpieczeń Społecznych (ZUS) for sub-measures 2 and 4, and the county executive for sub-measure 3.

2.4. Budget and duration of the measure

(9) The measure is financed from the Counteracting COVID-19 Fund, the Labour Fund and the Guaranteed Employee Benefits Fund. The estimated budget of the measure is subdivided into PLN 776.7 million (EUR 173 million) for sub-measure 1; PLN 963.7 million (EUR 215 million) for sub-measure 2; PLN 1.4 billion (EUR 0.3 billion) for sub-measure 3 and PLN 1.9 billion (EUR 0.4 billion) for sub-measure 4.

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3 Rozporządzenie Rady Ministrów z dnia 19 stycznia 2021 r. w sprawie wsparcia uczestników obrotu gospodarczego poszkodowanych wskutek pandemii COVID-19, Dz.U. 2021 poz.152.

4 Zakład Ubezpieczeń Społecznych (ZUS) is a State organisational unit. Its tasks are defined in the Act of 13 October 1998 on the social insurance system. ZUS also fulfils various functions empowered by virtue of other laws.

5 Exchange rate of 10 January 2021: 1 EUR = PLN 4.48
The Polish authorities confirm that aid has been granted under all four sub-measures after the entry into force of the measure on 1 February 2021. Aid will be granted until no later than 31 December 2021.

2.5. Beneficiaries

The beneficiaries of sub-measures 1, 2 and 4 are SMEs and large enterprises. Under sub-measure 3, the beneficiaries are micro-entrepreneurs and small entrepreneurs. The Polish authorities estimated that approximately 890,000 undertakings may benefit from the notified measure in total. Financial institutions are excluded as eligible final beneficiaries.

The Polish Authorities confirm that SMEs are defined in line with Annex I of the GBER.

Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019 within the meaning of the GBER, the Agricultural Block Exemption Regulation (“ABER”), or of the Fisheries Block Exemption Regulation (“FBER”).

Aid may be granted to micro and small enterprises that were already in difficulty on 31 December 2019, provided that these enterprises, at the moment of granting of the aid, are not subject to collective insolvency procedure under national law and that they have not received rescue aid or restructuring aid.

2.6. Sectoral and regional scope of the measure

The measure applies to the entire territory of the Republic of Poland. The eligible sectors for all sub-measures are more precisely referred to by reference to the

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6 As referred to in Art. 7 sec. 1 point 1 and 2 of the Act of 6 March 2018 - Entrepreneurs' Law (Ustawa z dnia 6 marca 2018 r. - Prawo przedsiębiorców, Dz. U. 2018 poz. 646).


8 As defined in Article 2(18) of the GBER.


12 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.

13 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.
PKD codes (Polish equivalent of the NACE codes) in the national legal basis, the Ordinance of the Council of Ministers of 19 January 2021 (recital (7)). Sub-measure 1 is open to sectors of the tourism industry, in particular hotels, camping sites, tour agents and tour operators. Sub-measures 2, 3 and 4 are open to a list of sectors, including for example: retail sale, taxi operations, hotels, restaurants, education, paramedical, sport and entertainment sector.\(^{14}\)

### 2.7. Basic elements of the measure

(16) Sub-measure 1 aims to mitigate the negative effects caused by the prolonged state of the epidemic for entities\(^{15}\) operating in sectors of the tourism industry (in particular hotels, camping sites, tour agents and tour operators). The director of the voivodeship labour office grants subsidies to the employee's salaries from the Guaranteed Employee Benefits Fund in the amount of PLN 2 000 (EUR 446) per month per employee for a maximum period of 3 months. Aid cannot be granted for the months in which the entrepreneur benefits from other state's support in the form of co-financing of employees' salaries. The beneficiary shall submit an application to the voivodeship labour office by 31 March 2021.

(17) Sub-measure 2 consists in an aid that takes the form of a direct grant. Aid can be granted once\(^{16}\) or twice\(^ {17}\) and applies to beneficiaries who declare a decrease in operating income in one of the two months preceding the month of submitting the application by at least 40% in comparison to the income obtained in the previous month or in the corresponding month of the previous year. The beneficiaries shall submit an application to ZUS no later than 3 months from the month in which the ongoing state of the COVID-19 outbreak, which was declared in March 2020, is lifted in Poland. The maximum amounts of those direct grants are PLN 2 080 (EUR 464) for beneficiaries receiving the grant once, and PLN 4 160 (EUR 928) for beneficiaries receiving the grant twice.

(18) Sub-measure 3 applies to micro entrepreneurs and small entrepreneurs.\(^{18}\) The county executive grants aid in the form of ‘one-off direct grant’ in an amount of up to PLN 5 000 (EUR 1 116) from the Labour Fund. The beneficiaries have to submit an application by 31 March 2021.

(19) Sub-measure 4 consists in an exemption from payment of contributions for social security, health insurance, the Labour Fund, the Solidarity Fund, the Guaranteed

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\(^{14}\) For all such sub-measures, beneficiaries can also be undertakings in the primary agriculture, the fishery and aquaculture sectors, to the extent that they are engaged in the activities covered by the sub-measures.

\(^{15}\) As referred to in art. 4 par. 1 and 2 of the Act of 6 March 2018 - Entrepreneurs' Law (Ustawa z dnia 6 marca 2018 r. - Prawo przedsiębiorców, Dz. U. 2018 poz. 646).

\(^{16}\) The beneficiaries that can benefit from the grant once are those operating in sectors listed in § 4 sec. 1 point 1 of the national legal basis by reference to the PKD codes (Polish equivalent of the NACE codes).

\(^{17}\) The beneficiaries that can benefit from the grant twice are those operating in sectors listed in § 4 sec. 1 point 2 of the national legal basis by reference to the PKD codes (Polish equivalent of the NACE codes), which are different from the sectors listed in footnote 16.

\(^{18}\) As referred to in art. 7 sec. 1 points 1 and 2 of the Act of 6 March 2018 - Entrepreneurs' Law (Ustawa z dnia 6 marca 2018 r. - Prawo przedsiębiorców, Dz. U. 2018 poz. 646).
Employee Benefits Fund or the Bridge Pension Fund. It applies to beneficiaries whose operating income in one of the two months preceding the month of submitting the application was at least 40% lower than the income obtained in the previous month or in the corresponding month of the previous year. Depending on their sector and when they were declared as contribution payers, these beneficiaries are exempted from paying contributions for the period 1 December 2020 or 1 January 2021 to 31 January 2021. The applications shall be submitted to ZUS no later than 31 March 2021.

(20) The Polish authorities confirm that where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid is not being 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.

(21) The Polish authorities confirm that aid to undertakings active in the primary production of agricultural products is not fixed based on the price or quantity of products put on the market.

(22) They also confirm that aid to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1) (a) to (k) of Commission Regulation (EU) No 717/2014.

(23) Aid may be granted provided that the total nominal value, including other aid granted in accordance with section 3.1 of the Temporary Framework, does not exceed the following amounts (all figures used being expressed in gross):

(a) EUR 225 000 for undertakings operating in the primary production sector of agricultural products, or

(b) EUR 270 000 for undertakings operating in the fisheries and aquaculture sector, or

(c) EUR 1.8 million for other undertakings.

2.8. Cumulation

(24) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations or the Block Exemption

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


Regulations\textsuperscript{22} provided the provisions and cumulation rules of those Regulations are respected.

(25) 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.

(26) The Polish authorities confirm 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.

(27) The Polish authorities also 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, will be respected.

(28) Finally, any aid approved by the Commission under Article 107(3)(b) TFEU or the Temporary Framework which is granted for or attributable to specific eligible costs, will not be cumulated with aid under Article 107(2)(b) TFEU for the same eligible costs.

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 primary agriculture and in the fisheries sectors, on the comprehensive national State aid website or Commission’s IT tool within 12 months from the moment of granting\textsuperscript{23}).

3. ASSESSMENT

3.1. Lawfulness of the measure

(30) The Commission observes that the measure entered into force on 1 February 2021 and that the Polish authorities started to grant the aid before the Commission has approved the notified scheme. The Commission regrets that Polish authorities put the aid according to the notified scheme into effect, in breach of Article 108(3) TFEU. The notified measure thus constitutes unlawful aid.

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

\textsuperscript{22} I.e. the GBER, ABER and FBER, as referred to in footnotes 7, 9 and 10.

\textsuperscript{23} Referring to information required in Annex III to the GBER, Annex III to the ABER and Annex III to the FBER.
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 Polish authorities (recital (8)) and it is based on the legal act mentioned in recital (7). It is financed through State resources, since it is financed by the national budget (recital (9)).

(33) The measure confers an advantage on its beneficiaries, in so far as they are engaged in economic activities, in the form of direct grants and exemption from payment of social security contributions (recital (6)). The measure thus relieves those beneficiaries of costs that 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 active in certain sectors (recital (15)) and excludes the financial sector (recital (11)).

(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 preserving the viability of the undertakings at a time when the normal functioning of the markets, including the credit market is severely disturbed by the consequences of the COVID-19 outbreak and when that outbreak and consequences are 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 preserve employment and economic continuity 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.

The Commission accordingly 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. In particular:

- The aid takes the form of direct grants and exemption from payment of social security contributions (recital (6)). The overall nominal value of the aid and of the other measures granted under section 3.1 of the Temporary Framework shall not exceed EUR 1.8 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (23)). 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 (9). The measure therefore complies with point 22(b) of the Temporary Framework;

- Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019 (see recital (13)). The measure therefore complies 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 or restructuring aid (see recital (14)). The measure therefore complies with point 22(c)bis of the Temporary Framework;

- Aid will be granted under the measure no later than 31 December 2021 (recital (10)). 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 are 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 (recital (20)). The measure therefore complies with point 22(e) of the Temporary Framework;

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24 As defined in Annex I to the GBER.

25 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.

26 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.
• The overall nominal value of aid does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector or EUR 225 000 per undertaking active in the primary production of agricultural products (recital (23)). 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 Temporary Framework is respected (recital (27)). 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 (recital (21)). 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 (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (22)). 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, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23 (a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking (recital (23)). The measure therefore complies with point 23bis of the Temporary Framework.

(43) The Polish authorities confirm 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 Poland. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).

(44) The Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (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 (recitals (24) et sequitur).

(45) 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