EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.62472 (2021/N) – Poland
COVID-19: Leasing guarantees combined with the Pan-European Guarantee Fund in response to COVID-19

Excellency,

1. PROCEDURE

(1) By electronic notification of 24 March 2021, Poland notified aid in the form of leasing guarantees in the name *"Leasing guarantees granted under the Pan-European Guarantee Fund in response to COVID-19"* (the "measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").[1]

[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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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(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 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 affects 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.

(4) 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.

(5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2, 3.1 and 3.4 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of guarantees on financial leasing and leasing loans.

(7) The aid will be channelled indirectly through leasing companies.

2.2. Legal basis

(8) Pursuant to the Act on guarantees and sureties granted by the State Treasury and by certain legal persons ("Act") dated 8 May 1997 (Journal of Laws of 2020, items 122, 568, 1086, 1747 and 2127, the Minister for public finance shall specify, detailed conditions and procedures for granting public aid in the form of sureties or guarantees of Bank Gospodarstwa Krajowego ("BGK"). Article 34a(1) of that Act, entitles BGK to provide sureties or guarantees. Poland summited a draft "Regulation of the Minister of Finance, Funds and Regional Policy on the granting of State aid by Bank Gospodarstwa Krajowego in the form of guarantees for leasing transactions in connection with the effects of COVID-19", which establishes the detailed parameters of the notified measure.

2.3. Administration of the measure

(9) The national development bank, Bank Gospodarstwa Krajowego ("BGK") – which is fully State-owned entity- is responsible for administering the measure. BGK provides the measure through the dedicated National Guarantee Fund.

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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.

2.4. Budget and duration of the measure

(10) The estimated budget of the measure is PLN 1.35 billion (approximately EUR 300 million).

(11) Aid may be granted under the measure as from the notification of the Commission's approval until no later than 31 December 2021. This means that the eligible transactions guaranteed under the measure have to be concluded between the leasing company and the final beneficiary no later than 31 December 2021.

2.5. Beneficiaries

(12) The final beneficiaries of the measure are small and medium-sized enterprises ("SMEs")[3] active in Poland. Financial institutions are excluded as eligible final beneficiaries. Firms larger than SMEs are excluded as eligible beneficiaries.

(13) Aid may not be granted under the measure to SMEs that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER"), the Agricultural Block Exemption Regulation ("ABER") or the Fisheries Block Exemption Regulation ("FIBER") on 31 December 2019[4].

(14) The aid granted under the measure will be channelled through leasing companies. The measure is open for all leasing companies with activities in Poland. The lessors will be obliged to transfer the benefit to the final beneficiary.

2.6. Sectoral and regional scope of the measure

(15) 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

(16) The measure will be financed by national resources. The measure is connected to a similar measure, already approved by the Commission: BGK will benefit from a counter-guarantee by the Pan-European Guarantee Fund[5] to cover part of its risk. The total value of the guarantees related to these measures amounts to PLN 4.5 billion (approximately EUR 1 billion). The maximum counter-guarantee from the

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[3] 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.

[4] 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, Article 2(14) of 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, and Article 3(5) of 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.

[5] As authorised by State aid decision State Aid SA.58218, SA.58219, SA.58221, SA.58222, SA.58224-SA.58230, SA.58232, SA.58233, SA.58235-SA.58239, SA.58242-SA.58244 – Pan-European Guarantee Fund in response to COVID-19 (OJ C 84, 12.3.2021, p. 4-18).

Pan-European Guarantee Fund to BGK amounts to PLN 3.15 billion (approximately EUR 700 million).

(17) Both measures share the objective to respond to the economic impact of the COVID-19 pandemic by ensuring that companies in Poland have sufficient liquidity available to weather the resulting crisis.

(18) The measure provides aid in the form of guarantees on leasing products. The measure covers finance lease. This means any hire-purchase where substantially all risks and rewards from the leased asset(s) accrue to the final beneficiary granted by the lessor under the lease agreement (in Polish zloty or in a foreign currency). This also includes leasing loans granted by the lessor under a loan agreement (in Polish zloty or a foreign currency) for the purchase of assets related to the entrepreneur's business activity conducted and indicated in the loan agreement.

(19) The maximum duration of the guarantee is 120 months.

(20) The BGK guarantee rate for the final beneficiary is up to 80% of the outstanding principal on each guaranteed transaction. The measure subject of the present decision provides 30% guarantee coverage on each guarantee. The EIF counter guarantee coverage on each guarantee is 70%. The aid will be channelled indirectly through leasing companies.

(21) The Leasing Companies will be obliged to pass-on the benefit under the guarantee agreement signed with BGK. When covered by the BGK guarantee, each leasing company will be contractually required to provide more favourable conditions (compared to the relevant lessors' standard policies and practices) on transactions with the final beneficiary, which shall include one or more of the following*:*

(a) a lower margin;

(b) a lower commission;

(c) a grace period in repayment;

(d) an increase of the lease amount;

(e) a longer maturity;

(f) a decrease in collateral;

(g) entering into a transaction that under market conditions - i.e. without the support of the guarantee – would have not be financed.

(22) The Polish authorities confirm that the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted.

(23) The Polish authorities confirm that the guarantee will be granted for transactions that have been newly offered no earlier than from the notification of the Commission's approval of the measure and until 31 December 2021.

(24) The Polish authorities confirm that the overall nominal value of guarantees shall not exceed EUR 1.8 million per undertaking. The Polish authorities confirm that the overall nominal value of the guarantees on leasing products 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.

(25) The Polish authorities confirm that 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.

(26) The Polish authorities confirm that 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.

(27) The Polish authorities confirm that aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

(28) The Polish authorities confirm that 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.

2.8. Cumulation

(29) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations[6], the GBER, the ABER and the FIBER, provided the provisions and cumulation rules of those Regulations are respected.

(30) 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.

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[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).

(31) 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 and/or directly under the Treaty, provided the provisions in those specific sections and/or decisions are respected.

(32) 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, will be respected. Aid granted under the measure and/or other measures approved by the Commission under section 3.1 of the Temporary Framework which has been reimbursed before 31 December 2021 shall not be taken into account in determining whether the relevant ceiling is exceeded.

2.9. Monitoring and reporting

(33) 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 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[7]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(34) By notifying the measure and providing for it to be put into effect after the notification of the Commission decision , the Polish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(35) 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.

(36) The measure is imputable to the State, since it is administered by BGK, a State-owned entity. As BGK is a public development bank (recital (9)), the measure is financed by public funds and, therefore, through State resources.

(37) The measure confers an advantage on its beneficiaries in the form of non-market conform guarantees on leasing loans. The measure thus confers an advantage on those beneficiaries to whom the leasing loans would not have been given or relieves

[7] 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 to Commission Regulation (EU) No 1388/2014. *For guarantees the nominal value of the underlying instrument shall be inserted per beneficiary.*

those beneficiaries of costs which they would have had to bear under normal market conditions, respectively.

(38) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular SMEs, excluding the financial sector.

(39) 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.

(40) 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

(41) 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.

(42) 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*".

(43) 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*".

(44) The measure aims at enhancing the access of SMEs to leasing transactions 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.

(45) 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 enhance access to leasing transactions for SMEs, which are main drivers of economic growth and employment, is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire 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 and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.

(46) 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:

(a) The aid takes the form of guarantees on financial leasing and leasing loans (recital (6)).

(b) The overall nominal value of guarantees 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. The measure therefore complies with point 22(a) of the Temporary Framework.

(c) Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 22(b) of the Temporary Framework.

(d) Aid may not be granted under the measure to SMEs[8] that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 22(c) of the Temporary Framework.

(e) Aid will be granted under the measure no later than 31 December 2021 (recital (11)). The measure therefore complies with point 22(d) of the Temporary Framework.

(f) The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (22)).

(g) The measure introduces safeguards in relation to the possible indirect aid in favour of the financial intermediaries, i.e. the leasing companies, to limit undue distortions to competition. In particular, each leasing company will be required to provide more favourable conditions for the transaction with the final beneficiary covered by the BGK guarantee (compared to the relevant lessors standard policies and practices), which shall include one or more of the following: (a) a lower margin, (b) a lower commission, (c) a grace period in repayment, (d) an increase of the lease amount, (e) a longer maturity, (f) a decrease in collateral, (g) entering into a transaction that under market conditions - i.e. without the support of the guarantee – would have not be financed (recital (21)).

(h) The safeguards thus ensure that the leasing companies, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recitals (21) to (22)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

(i) Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned

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.

(recital (27)). The measure therefore complies with point 22(e) of the Temporary Framework.

(j) The overall nominal value of the guarantees on leasing products does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector (recital (24)) or EUR 225 000 per undertaking active in the primary production of agricultural products (recital (24)). The measure therefore complies with point 23(a) of the Temporary Framework.

(k) 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 (26)). The measure therefore complies with point 23(b) of the Temporary Framework.

(l) 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 (recital (28)). The measure therefore complies with point 23(c) of the Temporary Framework.

(m) 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 (recitals (24) to (25)). The measure therefore complies with point 23bis of the Temporary Framework.

(47) 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 (recital (4)). The measure therefore complies with point 16-ter of the Temporary Framework.

(48) The Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (33)). 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 (and/or the specific decision) and the cumulation rules of the relevant Regulations are respected (recitals (29) to (31)). The measure therefore complies with point 20 of the Temporary Framework.

(49) The Commission notes that the measure will be open to all financial intermediaries, the leasing companies with activities in Poland (recital (14)). This ensures competition between the providers of leasing services which also contributes to the benefits from the guarantee being passed on to the largest extend possible to the final beneficiaries.

(50) 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. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

(51) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[9], in the event that an institution benefiting from the measure meets the conditions for the application of that Directive, the Commission notes that the measure does not appear to violate intrinsically linked provisions of the BRRD.

(52) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[10] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD.

(53) Moreover, as indicated in recital (21) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(54) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

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9 OJ L 173, 12.6.2014, p. 190.

10 Points 6 and 29 of the Temporary Framework.

5. 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

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION