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Subject: State Aid SA.102555 (2022/N) – Poland
the TCF - Aid to agricultural producers in connection with the increase in fertilizer prices following the aggression against Ukraine by Russia

Excellency,

1. PROCEDURE

(1) By electronic notification of 7 April 2022, Poland notified aid in the form of limited amounts of aid ("the TCF - Aid to agricultural producers in connection with the increase in fertilizer prices following the aggression against Ukraine by Russia”, the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”).

(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

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Communication from the Commission on the Temporary Crisis Framework for state aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131 I of 24.3.2022, p.1).

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2. DESCRIPTION OF THE MEASURE

(3) Poland considers that the Russian aggression against Ukraine, the sanctions imposed by the Union and its international partners and the counter-measures taken by Russia (‘the current crisis’) so far affects the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agricultural, forestry and fisheries and aquaculture sectors, and in particularly fertilizer prices. Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken by Russia.

(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 1 and 2.1 of the Temporary Crisis Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of direct grants.

2.2. Legal basis


(9) The national legal basis includes a standstill clause and the aid can be granted as from the notification of the Commission’s decision approving the measure.

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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).
2.3. **Administration of the measure**

(10) President of the Agency for Restructuring and Modernization of Agriculture (“Prezes Agencji Restrukturyzacji i Modernizacji Rolnictwa”) is responsible for administering the measure.

2.4. **Budget and duration of the measure**

(11) The estimated budget of the measure is PLN 3 900 000 000 (app. EUR 835 500 000). It will be financed from the national budget.

(12) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2022.

(13) The scheme is not co-financed by the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF), European Union Solidarity Fund (EUSF) or the Coronavirus Response Investment Initiative (CRII).

2.5. **Beneficiaries**

(14) The final beneficiaries of the measure are micro, small and medium-sized undertakings active in the primary agricultural sector. Large undertakings, credit institutions or other financial institutions are excluded as eligible final beneficiaries. The estimated number of beneficiaries will be over 1 000.

(15) Poland confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to:

(a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;

(b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or

(c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.

(16) Poland confirms that the measures may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable

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3 The European Commission’s official monthly accounting rates for the euro on 7 April 2022, 1 PLN = 0.21423 EUR.

regulations\textsuperscript{5}. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from any such measures.

2.6. **Sectoral and regional scope of the measure**

(17) The measure is open to the primary agricultural sector for undertakings that have purchased mineral fertilisers. The financial sector is excluded (recital (14)). It applies to the whole territory of Poland.

2.7. **Basic elements of the measure**

(18) The aim of the measure is to ensure food security and grant financial assistance to the undertakings active in the agricultural primary production that are at a risk of losing financial liquidity due to the increased fertiliser prices. The aid is granted only for those undertakings that have purchased fertilizers. The application must be attached with copies of invoices documenting fertilizer purchases.

(19) The overall nominal value of the direct grants does not exceed EUR 35 000 per undertaking active in the primary production of agricultural products, all figures are gross, that is, before any deduction of tax or other charges.

(20) The measure provides a direct grant (recital (16)).

(21) The direct grant is

(a) PLN 500 (app. EUR 107) per hectare (ha) of agricultural land with the exclusion of grass on arable land, grassland and pasture; or

(b) PLN 250 (app. EUR 53) per ha of grassland and pasture and grass on arable land.

(22) The direct grant is paid up to

(a) 50 ha; or

(b) a monetary ceiling that is based on the amount and costs of fertilizers actually bought.

(23) Areas that are under an absolute ban on fertilising due to measures covered by the Rural Development Programme in force, are not eligible for the aid.

(24) Poland confirms that aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market.

2.8. **Cumulation**

(25) The Polish authorities confirm that aid granted under the measure will not be cumulated with any other aid; the aid will not be cumulated with aid under de minimis Regulations\textsuperscript{6} or the Agricultural Block Exemption Regulation\textsuperscript{7}.

The Polish authorities confirm that aid under the measure will not be cumulated with aid under measures approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (COVID-19 Temporary Framework).

The Polish authorities confirm that aid granted under the measure will not be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework.

Aid granted under the measure and other measures approved by the Commission under section 2.1 of the Temporary Crisis Framework which has been reimbursed before 31 December 2022 will not be taken into account in determining whether the relevant ceiling is exceeded.

2.9. Monitoring and reporting

The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis 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).

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 (recital 9).

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

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9 Referring to information required in Annex III to the GBER, Annex III to the ABER and Annex III to the FIBER. For loans, the nominal value of the underlying instrument shall be inserted per beneficiary.
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 Agency for Restructuring and Modernization of Agriculture (recital (10)) and it is based on a decision taken by the public authorities as indicated in recitals (8) and (9). It is financed through State resources, since it is financed by public funds (recital (11)).

(33) The measure provides for a direct grant to the beneficiaries (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.

(34) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the agricultural sector (recital (17)).

(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. The Polish authorities do not contest that conclusion.

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 Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed by the EU or by its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. In particular, point 4 of the Temporary Crisis Framework recognizes how high energy prices feed into high fertilisers prices.

(40) Those effects taken together have caused a serious disturbance of the economy in Poland, in particular in the agricultural sector. The Commission considers 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 if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken by Russia.
(41) The measure aims at facilitating the access of undertakings to external finance at a time when a wide range of economic sectors are affected, the normal functioning of markets is disturbed leading to severe disturbances of the real economy of Member States, and in particular in the agricultural sector due to increased fertilizer prices. The Commission notes that aid under the measure is granted for those undertakings that have purchased fertilizers in order to ensure food security under the current crisis (recitals (17) and (18)).

(42) 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 in the agricultural sector. The importance of a measure to compensate for the severe increase in price of primary production input is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the agricultural sector of Poland. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in section 2.1 of the Temporary Crisis Framework.

(43) 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 relevant conditions of the Temporary Crisis Framework. In particular:

- The aid takes the form of direct grants, as shown in recital (6).
- The aid is granted to undertakings active in primary agriculture production (recital (17)).
- The overall nominal value of the direct grants will not exceed EUR 35 000 per undertaking active in the primary production of agricultural products, as shown in recital (19); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with points 42(a) of the Temporary Crisis Framework.
- As the aid is granted to undertakings active in primary agricultural production, and the overall maximum amount of EUR 35 000 is not exceeded per undertaking (recital (19)), the measure complies with point 43 of the Temporary Crisis Framework.
- The aid is not fixed on the basis of the price or quantity of products put on the market (recitals (21) and (24)) as the aid is paid based on hectares. The measure therefore complies with point 42(b) of the Temporary Crisis Framework.
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recitals (7) and (11). The measure therefore complies with point 41(b) of the Temporary Crisis Framework.
- Aid will be granted under the measure no later than 31 December 2022, as shown in recital (12). The measure therefore complies with point 41(c) of the Temporary Crisis Framework.
• Aid is granted under the measure to undertakings that have bought fertilizers as shown in recitals (17) and (18). Further, the aid amount is varying depending on the fertiliser needs of the type of land (recital (21)), and aid is not paid for land where fertilising is not allowed (recital (23)). The current crisis led to exceptionally large and unexpected fertilizer prices increases (recital (3)). Thus, aid will be granted to undertakings affected by the crisis. The measure therefore complies with point 41 (d) of the Temporary Crisis Framework.

• The aid is granted to undertakings active in primary production, therefore point 41(e) of the Temporary Crisis Framework is not relevant.

• The measure provides aid in the form of direct grants (recital (6)), therefore point 44 of the Temporary Crisis Framework is not relevant.

• Aid is not granted to undertakings active in the fishery and aquaculture sector, therefore the measure therefore point 42 (c) of the Temporary Crisis Framework is not relevant.

(44) The Polish authorities confirm that, pursuant to point 32 of the Temporary Crisis Framework, 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)).

(45) The Polish authorities confirm that, pursuant to point 33 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (15)).

(46) The Polish authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (29)). The Polish authorities further confirm that the aid under the measure will not be cumulated with other aid (recitals (25) to (27)).

(47) 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 Crisis 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