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Subject: State Aid SA.57306 (2020/N) – Poland
COVID-19: Financial shield for large enterprises: Liquidity loans

Excellency,

1. PROCEDURE

(1) By electronic notification of 18 May 2020, Poland notified aid in the form of subsidised interest rates for loans (Financial shield for large enterprises – liquidity loans, "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] The Polish authorities submitted further information on 21 and 23 May 2020.

(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.

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1 Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, 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. 1-9 and 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. 3-15.

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 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.

(4) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Section 3.3 of the Temporary Framework.

2.1. The nature and form of aid

(5) The measure provides aid in the form of subsidised interest rates for loans.

2.2. Legal basis

(6) The legal basis for the measure comprises *inter alia* the following instruments:

(a) the Polish Act of 4 July 2019 on the system of development institutions (Journal of Laws, item 1572), as amended by the Act of 31 March 2020 amending the Act on the system of development institutions (Journal of Laws, item 569), and

(b) the Resolutions of the Polish Council of Ministers of 27 April 2020 establishing the financial support programme entitled “Financial shield for large enterprises”, as amended.

2.3. Administration of the measure

(7) The Polish Development Fund S.A. (Polski Fundusz Rozwoju S.A., “PFR”) is responsible for administering the measure. Funds granted under the measure will be distributed directly by PFR.

2.4. Budget and duration of the measure

(8) Poland estimates that the total nominal amount of loans for which aid is granted under the measure will be PLN 10 billion (approximately EUR 2.2 billion). The measure is part of a larger programme “Financial shield for large enterprises”. Poland indicated that it may reallocate up to 20% of the budget to other measures under the programme, which are the subject of separate notifications, and vice versa.

(9) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

(10) The final beneficiaries of the measure are enterprises (przedsiębiorcy) within the meaning of Article 4 of the Polish Entrepreneurs Law dated 6 March 2018 (Journal of Laws of 2019, item 1292, as amended) which fall within the following categories:

(a) Large enterprises which: (i) employ more than 249 employees[3] (on 31 December 2019), excluding the owner, and/or (ii) had an annual turnover in 2019 of more than EUR 50 million and a balance sheet for 2019 of more than EUR 43 million; and

(b) small and medium-sized undertakings ("SMEs")[4] that are not large enterprises but exceed a certain size, namely which employ over 150 employees (on 31 December 2019), excluding the owner, and their annual turnover in 2019 exceeds PLN 100 million, as long as: (i) their financing gap under the financial projections exceeds PLN 3.5 million, and the undertaking has exhausted the maximum financing possibilities of the Polish Development Fund programme "Financial Shield of the Polish Development Fund for SMEs"; and/or (ii) their financing concerns the Sectoral Programme in relation to Covid-19 epidemic in the form of, e.g., a financing programme regarding medical technologies.[5]

(11) Aid may be granted under the measure to undertakings meeting all of the following criteria:

(a) Enterprises which conducted a business activity on 31 December 2019;

(b) Enterprises which, on the date of submission of the application or on the date of signing a financing agreement, were not subject to bankruptcy, liquidation or restructuring proceedings under Polish law;

(c) Enterprises which, on 31 December 2019 or on the date of signing the loan agreement, were not in arrears with the payment of taxes and social security contributions, whereby: (i) the payment of instalments or deferrals, or (ii) the delay in the payment of taxes and social security contributions which does not exceed the tripled amount of the fee collected by the designated operator within the meaning of the Postal Law for treating a postal item as a registered mail are not considered as arrears;

(d) Enterprises which have successfully passed a simplified due diligence analysis, including the "know your client" analysis, carried out by the PFR (or its advisers). However, this can take the form of a confirmatory due diligence analysis or vendors' due diligence;

(e) Under the measure, aid may not be granted to enterprises active in the following economic activities and sectors:

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3 For the purposes of establishing the status of the beneficiary, an employee is understood as a person employed based on employment contract, provided that employees on maternity, parental, childcare leaves and employed to obtain occupational training are excluded.

4 SMEs are defined in line with Annex I of the 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 (O.J. L 187/1 from 26.6.2014).

5 For the purposes of assessing the status of the beneficiary in its relations as partner or linked enterprise the 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 26.6.2014 L 187/1) applies.

– Credit institutions, cooperative savings and credit unions, investment firms, lending institutions, insurance companies, reinsurance companies, pension funds, investment funds and other collective investment undertakings, asset management entities, providers or payment services and other financial institutions, as well as rating agencies;

– Manufacturing and/or selling of products, and services providers, in the case that their economic activities result in restricting or breaching individual freedoms and/or human rights, and

– Testing on animals, gambling and similar activities, production and distribution of tobacco products and similar stimulants, and production and distributions of narcotics.

– Activities in commercial property and real estate developers;

(f) Enterprises which: (i) have their tax residence on the territory of the European Economic Area; (ii) are registered on the territory of the Republic of Poland; and (iii) whose main beneficial owner does not have a tax residence in a so called "tax haven" within the meaning of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (2020/C 64/03, OJ C 64, 27.2.2020, p. 8-14). Derogation from this rule is possible if the undertaking and/or its main beneficial owner is obliged to move its tax residence to the European Economic Area within nine months of the grant of the loan;

(g) Enterprises which meet one of the following conditions:

– recorded a decline in revenue of at least 25% in any given month after 1 February 2020 as compared with a preceding month or an analogous month from a previous year in relation with the economic disruptions caused by Covid-19;

– have lost their capacity to produce goods, provide services, or to receive goods or services provided by contractors in relation to the unavailability of components and resources caused by Covid-19;

– did not receive sales payments in excess of 25% of the due amounts as a result of Covid-19;

– do not have access to the capital market or credit limits for new contracts due to financial market disruptions;

– are participants in sectoral programmes[6] entailing the provision of funds which are significant in light of combating the Covid-19

[6] Sectoral programmes implement the Polish Act on the National Development Plan adopted on 20 April 2004 (Journal of Laws of 2019, item 1465) and are prepared by the Minister responsible for the development of a particular sector that is important for the Polish and the EU economies, including research and development, IT, smart systems and innovative technologies in medicine and pharmaceuticals. Sectoral programmes are dedicated to undertakings or groups of undertakings active in a given sector.

epidemic in the form of, e.g., a financial programme with respect to medical technologies.

(h) Financing granted to a partnership (*spółka osobowa*), may depend on its transformation into a company (*spółka kapitałowa*) for the purposes of other elements of the "financial shield for large enterprises" programme.

(12) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER"),[7] the Agricultural Block Exemption Regulation ("ABER"),[8] or the Fisheries Block Exemption Regulation ("FIBER")[9] on 31 December 2019.

2.6. Sectoral and regional scope of the measure

(13) The measure is open to undertakings operating in all sectors of the economy except the financial sector and the exclusions listed in recital (11)(e) above. It applies to the whole territory of Poland.

2.7. Basic elements of the measure

2.7.1. Nature of eligible instruments

(14) The measure provides for financing in the form of subsidised loans relating to investment and/or working capital needs with a maximum duration of four years.

2.7.2. Maximum amount of eligible instruments

(15) The overall amount of the loans per beneficiary shall not exceed PLN 1 billion (approximately EUR 221 million) and, in any event, shall not exceed:

(a) double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

(b) 25% of the beneficiary's total turnover in 2019; or

(c) based on self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the

[7] 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 of 26.6.2014, p. 1.

[8] As defined in 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 of 1.7.2014, p.1).

[9] As defined in 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 of 24 December 2014, p. 37).

moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

(16) The Polish authorities confirm that the alternative third option in the previous recital, related to the beneficiary's liquidity needs based on self-certification and assessed on a case-by-case basis, is intended to apply in situations where an eligible undertaking can justify why the limits provided under the other ceilings are not appropriate proxies to forecast their liquidity needs in the next months. In this light, the Polish authorities submit that they will resort to this alternative especially in relation to undertakings which are in the early stage of their development and undertakings in the venture segment.[10]

2.7.3. Remuneration

(17) The loans under the measure are granted at reduced interest rates which are at least equal to the base rate (1 year WIBOR) applicable on 30 April 2020 plus the credit risk margins as set-out in the table below:

Type of recipient	Credit risk margin for 1st year	Credit risk margin for 2nd to 3rd year	Credit risk margin for 4th year
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

2.7.4. Additional provisions

(18) Loans granted under the measure may be used to settle: (i) commercial obligations, including the purchase of goods and materials (including advance payments for the purchase of goods and materials) and other operational costs incurred to produce a product or to provide a service, (ii) wages, including social charges, (iii) public law liabilities, and/or (iv) other purposes related to the financing of current operations set out in the loan agreement.

(19) Loans granted under the measure may not be used for: (i) making any distributions to the owners or affiliated entities; (ii) acquiring shares for the purpose of redemption; (iii) mergers and acquisitions; and/or (iv) refinancing or early repayment of current financial debts of the beneficiary.

2.8. Cumulation

(20) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations[11] or the Block Exemption

[10] *E.g.*, for new or early stage enterprises or undertakings focussed on research and developments activities, given the structural imbalance between the turnover compared to the investment costs of these undertakings and the limited relevance of the wage bill for growing undertakings.

[11] 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

Regulations provided the provisions and cumulation rules of those Regulations are respected.

(21) The Polish authorities confirm that aid under the 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.

(22) 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.

(23) The Polish authorities confirm that aid granted under Section 3.2 of the Temporary Framework shall not be cumulated with aid granted for the same underlying loan principal under Section 3.3 of that framework and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.

(24) A beneficiary may benefit in parallel from multiple schemes under Section 3.3 of the Temporary Framework provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 27(d) and (e) of the Temporary Framework.

2.9. Monitoring and reporting

(25) 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 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[12]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(26) By notifying the measure before putting it into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

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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 of 26.4.2012, p. 8).

[12] Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable loans, the nominal value of the underlying instrument shall be inserted per beneficiary.

3.2. Existence of State aid

(27) 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.

(28) The measure is financed through State resources and is imputable to the State, since it is administered and financed by the PFR (the Polish Development Fund is a development institution, its legal form is a joint stock company wholly owned by the Polish State Treasury) and it is based on the instruments set out in recital (6).

(29) The measure confers an advantage on its beneficiaries in the form of subsidised interest rates on loans. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(30) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that meet the conditions set out in recitals (10) to (12), excluding the financial sector.

(31) 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.

(32) 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

(33) 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.

(34) 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*".

(35) 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*".

(36) The measure aims at lowering the cost of access to external finance for undertakings at a time when the normal functioning of credit 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.

(37) 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 particular, the measure aims at supporting eligible undertakings facing a sudden acute liquidity shortage, as a result of the COVID-19 outbreak, by subsidising public loans. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of subsidised interest rates for loans*") described in Section 3.3 of the Temporary Framework.

(38) 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 applicable interest rates for loans granted under the measure are composed of a base rate and a credit risk margin. The credit margin is set at least at 25 basis points for the 1st year, 50 basis points for the 2nd and 3rd years and 100 basis points for the 4th year for SMEs and 50 basis points for the 1st year, 100 basis points for the 2nd and 3rd years and 200 basis points for the 4th year for large enterprises (recital (17)). The measure therefore complies with the minimum credit risk margins set out in point 27(a) of the Temporary Framework. In contrast, the base rate is set at the 1 year WIBOR applicable on 30 April 2020, which deviates from the reference date set by point 27(a) of the Temporary Framework. By fixing the reference date for the IBOR at 1 January 2020, point 27(a) seeks to protect aid beneficiaries from increases in the base rate as a result of the economic consequences of the Covid-19 outbreak. However, unlike the IBOR applicable in most Member States, the WIBOR has declined steeply – by 100 basis points – between 1 January 2020 and 30 April 2020. Moreover, market participants commonly use the most recent reference rate when contracting a loan. Taking into account the steep decline in the IBOR in Poland since the COVID-19 outbreak therefore fits within the objective of point 27(a) of the Temporary Framework when it comes to setting the reference date of the measure.

- The loan contracts are signed by 31 December 2020 at the latest and are limited to a maximum of four years (recitals (9) and (14)). The measure therefore complies with point 27(c) of the Temporary Framework.

- The maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (15)). More specifically, the Commission considers that the reference to the liquidity needs under point 27(d)(iii) of the Temporary Framework is justified in the present case, since it is intended to apply only exceptionally in situations where an eligible undertaking, given its specific situation, can certify why the limits provided under the ceilings of points 27(d)(i) and 27(d)(ii) of the Temporary Framework are not appropriate (recital (16)). The Polish authorities have therefore appropriately justified the use of this alternative option to define the maximum loan amounts. The measure therefore complies with point 27(d) of the Temporary Framework.

- Loans granted under the measure relate to investment and working capital needs (recital (14)). The measure therefore complies with point 27(f) of the Temporary Framework.
- Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the measure (recital (12)). The measure therefore complies with point 27(g) of the Temporary Framework.
- The cumulation rules set out in point 26bis of the Temporary Framework are respected (recitals (23) and (24)).

(39) The Commission also notes that the Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (25)). 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 (20) to (22)).

(40) 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

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION