



EUROPEAN COMMISSION

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SENSITIVE* : *COMP Operations*

**Subject: State Aid SA.58105 (2020/N) – Poland
COVID-19: Aid scheme for agricultural producers who are at risk of liquidity loss as a result of agricultural market restrictions due to COVID-19**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 20 July 2020, Poland notified aid in the form of limited amounts of aid “COVID-19: Aid scheme for agricultural producers who are at risk of liquidity loss as a result of agricultural market restrictions due to 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”).¹
- (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 1/1958² and to have this Decision adopted and notified in English.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

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 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, 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 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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 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 confirmed 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 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

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

2.2. Legal basis

- (7) The legal basis for the measure is a draft Regulation amending the Regulation of the Council of Ministers of 27 January 2015 laying down the detailed scope and arrangements for implementing certain tasks of the Agency for the Restructuring and Modernisation of Agriculture³.

2.3. Administration of the measure

- (8) The Agency for Restructuring and Modernisation of Agriculture [*Agencja Restrukturyzacji i Modernizacji Rolnictwa*] is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is approx. PLN 420 million (approx. EUR 95 million).
- (10) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are SMEs⁴ active in the agricultural sector (primary production) in Poland. The estimated number of beneficiaries is 60 000.

³ Official Journal of the Republic of Poland of 2015, pos. 187, as amended.

⁴ As defined in Annex I to 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.

- (12) Aid may not be granted under the measure to medium-sized⁵ enterprises that were already in difficulty within the meaning of the Agricultural Block Exemption Regulation (“ABER”)⁶ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the ABER⁷ 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 aid⁸ or restructuring aid⁹.

2.6. Sectoral and regional scope of the measure

- (13) The measure is open to the primary agricultural production sector. It applies to the whole territory of Poland.

2.7. Basic elements of the measure

- (14) The objective of the measure is to address the risk of losing financial liquidity of agricultural undertakings and thus reduce the negative economic impacts on business operations of beneficiaries, caused by emergency measures undertaken further to the outbreak of the coronavirus pandemic.
- (15) The Polish authorities have explained that, in consequence of trade restrictions and lack of outlets due to COVID-19, primary agricultural producers face a serious threat of liquidity shortage. The crisis has a negative impact on the economic viability of many, in principle healthy, enterprises, in the short and medium term and in a long term may threaten their survival. As explained by the Polish authorities, those agricultural producers who are still experiencing the financial consequences of the adverse climatic events that hit the Polish farming sector hard in 2019 are in a particularly difficult situation. Their difficulties have been further aggravated as a result of COVID-19 crisis related measures.
- (16) The present measure is therefore restricted to those producers which are at risk of losing financial liquidity due to the COVID-19 outbreak and which continue to suffer the financial consequences of last year’s drought, hurricane, hail, rainstorm, spring frost and floods, without having received aid under other schemes. The loss of liquidity is understood as the inability to repay liabilities due on time. The farmers concerned may submit aid applications to the granting authority, which will, if necessary, request further documents confirming the threat of liquidity shortage due to COVID-19.
- (17) Aid under this scheme will not be fixed on the basis of the price or quantity of products put on the market.

⁵ As defined in Annex I to Commission Regulation (EU) No 702/2014.

⁶ As defined in Article 2(14) of the ABER.

⁷ As defined in Article 2(14) of the ABER.

⁸ 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.

⁹ 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.

- (18) The Polish authorities confirm that the aid will be granted in compliance with the conditions relating to the maximum amount of aid granted to one undertaking as set out in Section 3.1 of the Temporary Framework. The overall nominal value of aid, including other aid granted to the same beneficiary pursuant to Section 3.1 of the Temporary framework, will not exceed EUR 100 000 per undertaking active in the primary production of agricultural products.

2.8. Cumulation

- (19) The Polish authorities confirm that aid granted under the measure may be cumulated with aid under the de minimis Regulation¹⁰ or the ABER, provided the provisions and cumulation rules of those Regulations are respected.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) Moreover, 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 for each activity is not exceeded per undertaking.

2.9. Monitoring and reporting

- (24) 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 10 000 granted under the measure on the comprehensive national State aid website¹¹ within 12 months from the moment of granting¹²).

¹⁰ 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).

¹¹ <https://srpp.minrol.gov.pl/>

¹² Referring to information required in Annex III to the ABER.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (26) 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.
- (27) The measure is imputable to the State, since it is administered by a State legal person (the Agency for Restructuring and Modernisation of Agriculture) and it is based on the Regulation of the Council of Ministers. It is financed through State resources, since it is financed by public funds.
- (28) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (29) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in agricultural primary production.
- (30) 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.
- (31) 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

- (32) 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.
- (33) 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*”.
- (34) 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”.

- (35) The measure aims at ensuring sufficient liquidity of agricultural primary producers 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.
- (36) 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 ensuring sufficient liquidity for running activities of primary producers is widely accepted. 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).
- (37) 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 (recital (6)).
 - 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 will not be granted to medium-sized undertakings that were already in difficulty on 31 December 2019, while 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 (recital (12)). The measure therefore complies with points 22(c) and 22(c)bis of the Temporary Framework;
 - Aid will be granted under the measure no later than 31 December 2020 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework;
 - The overall nominal value of aid, including other aid granted to the same beneficiary pursuant to Section 3.1 of the Temporary framework will not exceed EUR 100 000 per undertaking active in the primary production of agricultural products (recital (18)). The measure therefore complies with point 23(a) of the Temporary Framework;
 - Aid granted under this scheme will not be fixed on the basis of the price or quantity of products put on the market (recital (17)). The measure therefore complies with point 23(b) 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 800 000 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 120 000 is not exceeded per undertaking (recital (23)). The measure therefore complies with point 23bis of the Temporary Framework.

- (38) The Polish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (24)). 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 (19)-(21)).
- (39) 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