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Subject: State Aid SA.107291 (2023/N) – Poland
TCTF: Aid to reduce the cost of purchasing diesel oil used for agricultural production

Excellency,

1. PROCEDURE

- (1) By electronic notification of 28 April 2023, Poland notified aid in the form of limited amounts of aid (TCTF: “*Pomoc na zmniejszenie kosztów zakupu oleju napędowego wykorzystywanego do produkcji rolnej*”, “the measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) ⁽¹⁾. On 4 and 5 May 2023, Poland submitted complementary information.
- (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

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1) (‘Temporary Crisis Framework’), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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Article 3 of Regulation N° 1/1958 ⁽²⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Poland considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia have economic repercussions on the entire internal market (“the current crisis”). According to the Polish authorities, the current crisis has 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 fertilisers, highly relevant for the agricultural sector. Those effects taken together have caused a serious disturbance of the economy in all Member States. The current crisis has affected specifically the prices of raw materials and caused perturbations on the market. The current exceptional situation has a direct impact on energy markets and causes the prices of energy resources to increase significantly ⁽³⁾. Agricultural producers bear a significant burden of the increase in prices, limiting the volume of purchases of agricultural fuel that has had an important increase of price ⁽⁴⁾. This situation threatens to collapse the agricultural production market and increase food prices. Thus, the measure aims at remedying the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (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 European Economic Area (“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), point (b), TFEU, in light of Sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (6) The measure provides aid on the basis of a scheme in the form of direct grants.

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

⁽³⁾ According to the FADN (Farm Accountancy Data Network, <https://fadn.pl/>) data, the aggregated energy costs, which include the prices of fuels, electricity and heating fuel, account for approximately 13% of total intermediate consumption and 9.5% of total costs.

⁽⁴⁾ The average price of diesel in 2016-2021 did not exceed PLN 5.35/l. A comparison of the average price of diesel from April 2021 to April 2023 shows a 27.3% increase in price (an increase of PLN 1.42 per litre of diesel) (FADN data).

2.2. Legal basis

- (7) The legal basis for the measure is the Article 3 of the draft act amending the act on the refund of excise duty included in the price of diesel oil used for agricultural production ⁽⁵⁾.

2.3. Administration of the measure

- (8) The Commune head/mayor or president of the city competent for the area where the agricultural land is located is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget is PLN 561.6 million (approx. EUR 122.6 million) ⁽⁶⁾ financed from the State budget.
- (10) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure ⁽⁷⁾ until no later than 31 December 2023.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are undertakings ⁽⁸⁾ active in the primary agricultural production that are affected by the current crisis (the "beneficiaries"). The estimated number of beneficiaries is over 1 000.
- (12) Poland confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (13) Poland confirms that the measure 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 regulations ⁽⁹⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

⁽⁵⁾ *Art. 3 projektu ustawy o zmianie ustawy o zwrocie podatku akcyzowego zawartego w cenie oleju napędowego wykorzystywanego do produkcji rolnej.*

⁽⁶⁾ Official exchange rate of the ECB for 28 April 2023: EUR 1 = PLN 4.5815.

⁽⁷⁾ As provided in Article 3(2) of the draft act amending the act on the refund of excise duty included in the price of diesel oil used for agricultural production.

⁽⁸⁾ As defined in Article 1 of Annex I to the Commission Regulation (EU) 2022/2472 of 14 December 2022 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 on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1).

⁽⁹⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to SMEs active in the primary agricultural production (see recital (11)). It applies to the whole territory of Poland. Poland confirms that credit institutions or other financial institutions are excluded from being beneficiaries of the aid.

2.7. Basic elements of the measure

- (15) The crisis following the Russian aggression against Ukraine has a particular impact on agriculture. High energy prices translate into higher agricultural fuel. Rising prices of agricultural fuel in connection with the exceptionally large increase in the price of nitrogen fertilizers caused a sharp increase in agricultural production costs, as mentioned in recital (3). The aid for agricultural producers aims to guarantee the use of agricultural fuel at a level enabling the production of crops of plants ensuring food security.
- (16) The aid will be equal to PLN 0.54 (approx. EUR 0.12) per litre of diesel oil purchased in the period from 1 February 2023 to 31 July 2023 on the base of the VAT invoices, constituting the proof of purchase of the diesel oil. The aid will be granted to the agricultural producers who will submit an application for a tax refund in the period from 1 August to 31 August 2023.
- (17) However, the overall nominal value of the direct grants under the measure will not exceed EUR 250 000 per undertaking per Member State, at any given point in time; all figures are gross, that is, before any deduction of tax or other charges.
- (18) The Polish authorities confirm that the aid is not fixed on the basis of the price or quantity of products put on the market.

2.8. Compliance with relevant provisions of Union law

- (19) The Polish authorities confirm that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law.

2.9. Cumulation

- (20) The Polish authorities informed that aid granted under the measure may be cumulated with aid granted under the exempted scheme SA.102866 (2022/X) provided that the maximum aid intensities indicated in the relevant Regulation are respected⁽¹⁰⁾. The Polish authorities confirm that aid granted under the measure will not be cumulated with support under *de minimis* Regulations⁽¹¹⁾ or other aid under the Block Exemption Regulations⁽¹²⁾.

⁽¹⁰⁾ SA.102866 (2022/X) *Zwrot części podatku akcyzowego zawartego w cenie oleju napędowego wykorzystywanego do produkcji rolnej z uwzględnieniem stawki minimalnej określonej w Dyrektywie 2003/96/WE* (Refund of part of the excise tax included in the price of diesel oil used for agricultural production, taking into account the minimum rate specified in Directive 2003/96/EC).

⁽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

- (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 under the measure will not be cumulated with aid under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak⁽¹³⁾ (“COVID-19 Temporary Framework”).
- (23) 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 and Transition Framework.
- (24) Poland confirms that for aid granted under Section 2.1 of the previous Temporary Crisis Framework and the Temporary Crisis and Transition Framework, the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework are respected at any point in time.
- (25) The Polish authorities confirm that if a beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, as set out in points 61(a) or in 62(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under Section 2.1 of the previous Temporary Crisis Framework or of the Temporary Crisis and Transition Framework which has been reimbursed before granting of new aid under that section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.10. Monitoring and reporting

- (26) The Polish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 10 000 granted under the measure 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) 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).

- (12) 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) and Commission Regulation (EU) 2022/2472.
- (13) 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

comprehensive national State aid website or Commission's IT tool within twelve months from the moment of granting ⁽¹⁴⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (27) By notifying the measure before putting it into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU (recital (10)).

3.2. Existence of State aid

- (28) 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.
- (29) The measure is imputable to the State, since it is administered by the Commune head/mayor or president of the city competent for the location of the agricultural land (recital (8)) and it is based on Article 3 of the draft act amending the act on the refund of excise duty included in the price of diesel oil used for agricultural production (recital (7)). It is financed through State resources since it is financed by public funds (recital (9)).
- (30) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (31) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings active in the agricultural production sector, excluding the financial sector (recital (14)).
- (32) 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.
- (33) Therefore, 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

- (34) 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.

⁽¹⁴⁾ Referring to information required in Annex III to Commission Regulation (EU) 2022/2472.

- (35) 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*”.
- (36) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in Section 1) that the current crisis has 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 sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Poland. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (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 current crisis.
- (37) The measure aims at providing liquidity to certain undertakings active in the primary production of agricultural products at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Poland.
- (38) The measure is one of a series of measures conceived at national level by the Polish authorities to remedy a serious disturbance in the Polish economy. The importance of the measure to ensure sufficient liquidity of the beneficiaries that face cost increases of fertilisers, fuel, and other production inputs 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 2.1 of the Temporary Crisis and Transition Framework.
- (39) 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 and Transition Framework. In particular:
- the aid takes the form of direct grants (recital (6));
 - the overall nominal value of the grants does not exceed EUR 250 000 per undertaking active in the primary production of agricultural products per Member State; all figures used are gross, that is before any deduction of tax or other charges (recital (17)). If the beneficiary receives aid on several occasions under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, as set out in points 61(a) or 62(a) of that framework, will be respected (recital (25)). The measure therefore complies with point 62(a) of the Temporary Crisis and Transition Framework;
 - aid is granted under the measure on the basis of a scheme (recital (6)) with an estimated budget, as indicated in recital (9). The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework;

- aid will be granted under the measure no later than 31 December 2023, as indicated in recital (10). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework;
 - aid will be granted only to undertakings affected by the current crisis (recitals (3), (11) and (15)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework;
 - aid granted is not fixed on the basis of the price or quantity of products put on the market (recital (18)). The measure therefore complies with point 62(b) of the Temporary Crisis and Transition Framework.
- (40) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market¹⁵.
- (41) Poland confirms that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market (see recital (19)).
- (42) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (43) Poland confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under Section 2.1 of the previous Temporary Crisis Framework and the Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework at any point in time (see recital (24)).
- (44) The Polish authorities confirm that, pursuant to point 51 of the Temporary Crisis and Transition 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 52 of the Temporary Crisis and Transition 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 (recitals (12) and (13)).

⁽¹⁵⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

- (46) The Polish authorities confirm that the monitoring and reporting rules laid down in Section 3 of the Temporary Crisis and Transition Framework will be respected (recital (26)). 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 Crisis and Transition Framework and the cumulation rules of the relevant Regulations are respected (recitals (20) to (23)).
- (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), point (b), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition 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), point (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

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Executive Vice-President