EUROPEAN COMMISSION

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Subject: **State aid / Poland**
SA.107026 (2023/N)
Premium subsidies for crops and livestock insurance and partial refinancing of compensation indemnities paid to agricultural producers as a result of drought (reinsurance)

Excellency,

The European Commission ('the Commission') wishes to inform Poland that, having examined the information supplied by your authorities on the support referred to above, notified as a scheme (recitals (11) and (51)), it has decided not to raise any objections to the relevant scheme ('the scheme') as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ('TFEU').

The Commission has based its decision on the following considerations:

1. PROCEDURE

(1) By letter of 21 February 2023, registered by the Commission on the same day, Poland notified the above-mentioned scheme in accordance with Article 108(3) TFEU. The Commission sent requests for additional information to the Polish authorities on 21 March 2023, 14 and 25 April 2023, to which the Polish authorities responded, respectively, on 5, 18 and 27 April 2023.

Jego Ekscelencja Zbigniew Rau
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
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POLSKA/POLAND

(2) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958[1] and to have this decision adopted and notified in English.

2. DESCRIPTION

2.1. Title

(3) Premium subsidies for crops and livestock insurance and partial refinancing of compensation indemnities paid to agricultural producers as a result of drought (reinsurance).

2.2. Objective

(4) The objective of the scheme is to encourage agricultural producers to insure their basic crops as well as their most important livestock species in Poland, by reducing the cost of insuring agricultural production against the effects of losses caused by adverse climatic events. Therefore, the scheme helps preserving stable incomes for agricultural holdings.

2.3. Legal basis

(5) The legal basis of the scheme is the Law of 22 February 2019 amending the Law on subsidies to crop and livestock insurance (‘*obwieszczenie marszałka sejmu rzeczypospolitej polskiej z dnia 22 lutego 2019 r.w sprawie ogłoszenia jednolitego tekstu ustawy o ubezpieczeniach upraw rolnych i zwierząt gospodarskich*’) (‘the Law’) and the draft Act amending the Law on crop and livestock insurance of 27 April 2023.

2.4. Duration

(6) From the date of the notification of the Commission decision approving the scheme until 31 December 2027.

2.5. Budget

(7) The overall budget for the scheme is PLN 6 billion (approximately EUR 1.282 billion[2]), which is financed by the State budget.

2.6. Beneficiaries

(8) The Polish authorities confirm that the beneficiaries of the scheme are undertakings active in agricultural primary production in Poland. The beneficiaries are small and medium sized firms as well as large companies.

(9) The number of beneficiaries is estimated to be more than 1 000.

(10) Under the scheme at hand, no aid will be granted to undertakings, which are:

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

[2] All amounts are based on the official exchange rate of the ECB for 26 April 2023: EUR 1 = PLN 4.5928.

a) in difficulty within the meaning of point 33(63) of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas[3] (‘the Guidelines’);

b) subject to an outstanding recovery order following a previous Commission decision declaring an aid unlawful and incompatible with the internal market.

2.7. Description of the scheme

(11) Poland notified the measure as a scheme.

Premium subsidies for crops and livestock insurance

(12) This scheme is the continuation of an initial scheme approved on 17 February 2015, SA.39562 (2014/N) ‘Premium subsidies for crops and livestock insurance and partial refinancing of compensation indemnities paid to agricultural producers as a result of drought (reinsurance)’[4], as modified by the schemes SA.45148 (2016/N)[5], SA.47824 (2017/N)[6] and SA.52145 (2018/N)[7].

(13) Prior to the initial introduction of the scheme, in 2005, the agricultural producers concluded 36 000 agricultural insurance contracts for a surface area of around 300 000 hectares. In 2022, agricultural producers concluded 218 795 insurance contracts for 4 072 000 hectares of agricultural crops and 882 livestock insurance contracts.

(14) Therefore, according to the Polish authorities, this scheme aims at increasing the area of insured crops and the number of livestock animals insured. The final target is that 50 % of the Polish agricultural area will be insured. Due to the high cost of insurance, the Polish authorities explain that agricultural producers would not be willing to purchase insurance policies without support from the State budget covering part of the insurance premium.

(15) Aid under the scheme is provided in the form of a grant out of the State budget for premiums under insurance agreements concluded as regards basic agricultural crops (cereals, maize, rape, agrimonies/colza, hops, tobacco, field vegetables, fruit trees and bushes, strawberries, potatoes, sugar beet and grain legumes) and the most important livestock species (cattle, horses, sheep, goats, pigs and poultry) in Poland.

(16) For plant production, the insured risks comprise hurricanes, floods, heavy rain, hail, lightning strikes/ thunderstorm, landslides, avalanches, droughts and negative effects of wintertime or spring frost.

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3 OJ C 485, 21.12.2022, p. 1.
4 That aid scheme was approved by Commission decision C(2015)741 final of 17 February 2015.
5 That aid scheme was approved by Commission decision C(2016)5152 final of 12 August 2016.
6 That aid scheme was approved by Commission decision C(2017)2393 final of 19 April 2017.
7 That aid scheme was approved by Commission decision C(2019)87 final of 8 January 2019.

(17) For animal production, the insured risks comprise hurricanes, floods, heavy rain, hail, lightning strikes/ thunderstorm, landslides, avalanches and emergency slaughter.

(18) The aid under the scheme amounts to a maximum of 65 % of the premium for livestock insurance, provided that the insurance companies set insurance premium rates not exceeding 0.5 % of the insured value. Where the insurance premium rate set by the insurance company exceeds this percentage, no aid will be granted.

(19) In case of crop production, farmers will be entitled to receive aid up to 65 % of the insurance premiums, provided that the insurance companies set insurance premium rates not exceeding 9 % of the insured value of the agricultural crops and, in case of:

a) crops grown on an agricultural area of class V (poor arable soils), not exceeding 12 % of the insured value; and
b) crops grown on an agricultural area of class VI (the weakest arable soils), not exceeding 15 % of the insured value. The Polish authorities explain that higher insurance premiums are allowed for crops grown on agricultural land classes V and VI, as these are lands on which the risk of crop losses is considerably higher.

(20) As regards insurance covering a full risk package or a combination of selected risks or a single risk for most common agricultural crops (cereals, maize, rape, agrimonies, hops, tobacco, field vegetables, potatoes, sugar beet and grain legumes):

- Where the insurance companies set insurance premium rates exceeding 9 %, 12 % and 15 % of the insured value of most common agricultural crops, premium subsidies will be reduced in proportion to the percentage of the premium rates' increase above the mentioned levels of 9 %, 12 % or 15 %.
- The resulting reduced premium subsidy may in no event be bigger than that calculated in case where the insurance companies set insurance premium rates not exceeding 9 %, 12 % and 15 %.

(21) As regards insurance covering a full risk package or a combination of selected risks or a single risk for fruit trees, fruit bushes and strawberries:

- Where the insurance companies set insurance premium rates exceeding 9 %, 12 % and 15 % of the insured value of fruit trees, fruit bushes and strawberries, the subsidies to farmers' premiums will be granted for those percentages of the insured sum, whereas any excess will be borne by the farmer in full.

(22) The maximum amounts for the insured value of each crop and each animal are defined annually, by 30 November, by the Minister of Agriculture by means of a Regulation with a view to ensuring an adequate level of insurance cover for crops and livestock and the possibility for the State budget to apply subsidies for insurance premiums in a given year.

(23) The maximum insured amounts are calculated on the basis of the data provided by the Central Statistical Office for the year preceding the year in which the insurance sums are determined and the first half of the year in which these amounts are determined, and the data provided by the Institute of Agricultural and Food

Economics – National Research Institute for the previous year and forecasts for the following years. The sum insured per crop group or species is the product of the maximum market prices for the crop group or species concerned and the maximum yield achieved in Poland for a given crop or crop group or the average market value of an animal. In accordance with the Law, the amount of the insurance for each crop and livestock is determined by negotiation in the insurance contract by the agricultural producer with the insurance company, without exceeding the maximum amounts set in the regulation. According to the Polish authorities, the purpose of setting maximum insurance amounts is to provide agricultural producers with adequate insurance cover against insurance companies overestimating the value of the insured crop or livestock.

(24) The Minister of agriculture concludes agreements on insurance subsidies with insurance companies. According to the information received from the Polish authorities, the insurance companies are selected in an objective and transparent manner on the basis of an open call for offers, as regulated in the Law. The Polish authority confirm that agreements on insurance subsidies are concluded with all the insurance companies that submit an offer in accordance with the provisions of the Law. Property insurance companies interested in concluding agreements on subsidies submit bids including crop and livestock insurance conditions to the Minister of agriculture, by 15 November of the year preceding the year for which the agreements will be concluded. The bids are assessed by a Bid Evaluation Commission, attached to the Minister of agriculture. The Bid Evaluation Commission checks in particular if the financial standing of the respective insurance company ensures that it will be able to guarantee insurance under the bid conditions. Agreements with selected insurance companies are concluded by 31 December of the year for the following calendar year. They lay down in particular: insurance conditions, insurance premium rates, the limits of any subsidies, conditions for damage liquidation and conditions for repayment of subsidies when used a manner that is incompatible with their objectives. The Minister of agriculture controls the performance of the agreements with respect to compliance with the Law and the public finances’ provisions.

(25) The actual insurance contracts are concluded between agricultural producers and insurance companies who have concluded agreements on insurance subsidies with the Minister of agriculture. The Polish authorities confirm that agricultural producers will be free to choose the insurance company from among the selected insurance companies to sign the contract with. The insurance agreements are concluded for a period of up to 12 months.

(26) The Polish authorities ensure that the aid is not limited to insurance provided by a single insurance company or group of companies and that the aid is not conditional on the insurance contract being concluded with a company established in Poland. There is no restriction regarding the participation of insurance companies in the bidding process, and each year a new decision is taken as to the insurance companies with which an agreement on insurance subsidies will be concluded.

(27) Furthermore, the Polish authorities confirm that the insurance payments will be limited so that they compensate for no more than the cost of making good the damage caused by the concerned events (listed in recitals (16) and (17)) and that the insurance payments will not require or specify the type or quantity of future production.

Partial refinancing of compensation indemnities paid to agricultural producers as a result of drought (reinsurance)

(28) In 2014, the Polish authorities introduced a reinsurance mechanism in case of drought in order to partially refinance the compensation indemnities to agricultural producers. This State aid mechanism was approved by the European Commission in the decision SA.39562 (2014/N).

(29) In 2018 the Polish authorities introduced the possibility for agricultural producers to purchase insurance policies covering the risk of drought, under which the compensation payment is reduced by 20 %, 25 % or 30 % of the insured amount, in exchange for lower purchase costs of the respective insurance policy. This change was approved by the Commission in the decision SA.52145 (2018/N). The so-called 'deductible franchise' (*franszyza redukcyjna*) should allow for lowering the risk for insurance companies and in consequence for lowering the premium rates in case of insurance policies covering the risk of drought. For all other risks, the insurance companies will continue to be obliged to sell subsidised insurance policies where the compensation payment cannot be reduced by more than 10 % of the amount of damage.

(30) In case of agricultural crops harvested in 2018, only 227 insurance contracts covering the risk of drought were concluded, whereas in 2021, after the introduction of the deductible franchise, 837 contracts were concluded to insure agricultural crops against the risk of drought, covering almost 30 000 hectares. Compensation for losses caused by drought in 2021 amounted to PLN 1783 000[8].

(31) The Polish authorities consider that the risk of drought is the least insurable risk for both agricultural producers (due to high prices of insurance policies) and insurance companies (due to a high risk of serious damage). According to the Polish authorities, insurance companies are not prepared to offer cover against the risk event drought due to a lack of reinsurance possibilities on the market.

(32) Therefore, the Polish authorities consider that the State reinsurance mechanism is indispensable for commercial insurance companies to be able to offer insurance against damages caused to crops by drought without having to expose themselves to the risk of bankruptcy.

(33) The present scheme also provides for a dedicated State aid for a partial financing of compensation payments due by insurance companies offering cover against the risk event of drought. This reinsurance mechanism includes a State cover of 60 % of the difference between the compensation payments paid to agricultural producers by an insurance company for damage caused by drought in a given calendar year and 90 % of the cumulated premiums received in that year for insurance cover against this risk event.

(34) The Polish authorities explain that the algorithm for calculation of the reinsurance scheme was adopted through negotiations with the insurance companies, because without drought risk reinsurance, it would not be possible to conclude insurance contracts against this risk, despite the application of subsidies to the insurance premium. Therefore, only payments effected by insurance companies beyond the

8 Around EUR 381 000

threshold of 90 % of premiums paid in connection with the risk event drought will be covered by the State re-insurance at a rate of 60 %. In this context, the Polish authorities also confirm that the operating expenses of insurance companies active in this segment of insurance business consistently amount to more than 10 % of the earned premiums.

(35) The Polish authorities ensure that, even for insurance against the risk event drought for which the reinsurance scheme applies, the intensity of the aid for an individual beneficiary will not go beyond 65 %.

Common features

(36) The Polish authorities confirm that the aid does not contain elements that are incompatible with European Union (‘EU’) law. The support shall be compatible with the functioning of the agricultural market organisation. Aid for insurance premiums and reinsurance shall relate to agricultural crops covered by the common organisation of agricultural markets.

(37) The Polish authorities consider that the scheme is closely related to the Common Agricultural Policy (‘CAP’) and helps achieving the general and specific objectives of Regulation (EU) 2021/2115[9]. The scheme will contribute to the general objective set out in Article 5 of Regulation (EU) 2021/2115 of fostering a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security by ensuring that the production income from insured crops and livestock is generated at least at levels resulting from the insured amount. The Polish authorities also affirm that this scheme has a cross-cutting objective to support fair farm incomes and the resilience of the agricultural sector across the Union in order to enhance long-term food security and diversity in agriculture and to ensure the economic stability of agricultural production in the Union. Ensuring that agricultural producers obtain a certain level of income from their agricultural production strengthens the incentive to carry out this production, and insurance for this production significantly reduces the risk of loss of income in the event of an adverse climatic event.

(38) The Polish authorities ensure that the scheme is not aid granted for a rural development-like aid measure financed exclusively from national funds, while at the same time the same intervention is provided for in the relevant CAP Strategic Plan.

(39) The Polish authorities explain that the agricultural producers need State intervention on grounds of market failure regarding the high costs for concluding insurance policies, which prevent agricultural producers to conclude this type of agreements (recitals (14) and (31)). The Polish authorities ensure that the effectiveness of the scheme will be subject to an ex-post evaluation. They submitted a preliminary outline of the programme’s ex-post evaluation plan, which will be further developed and presented to the Commission for approval.

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9 Regulation (EU) 2021/2115 of 2 December 2021, establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

(40) According to the Polish authorities, the grant is the most appropriate form of aid because the premium is paid after the agricultural producer concluded the insurance contract with its chosen insurance company, chosen on the basis of the most favourable conditions for insuring crops or livestock. Moreover, as insurance is not an investment activity, the Polish authorities explain that it is not possible to use a different form of aid other than the grant.

(41) The Polish authorities confirm that the eligible costs are the costs of insurance premiums for insurance to cover the damage caused by natural disasters, adverse climatic events which can be assimilated to a natural disaster and other adverse climatic events, as well as the costs associated with a reinsurance scheme. Damage caused by environmental incidents is not covered by the scheme.

(42) The Polish authorities also confirm that the maximum aid intensity and aid amount will be calculated by the granting authority when granting the aid, that the eligible costs will be supported by documentary evidence, which is clear, specific and contemporary, and that all figures will be taken before any deduction of tax or other charge.

(43) Value added tax ('VAT') will not be eligible for aid.

2.8. Cumulation

(44) The aid cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs.

2.9. Incentive effect

(45) The scheme requires that aid applications include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.

(46) The insurance contracts mentioned in recital (25) will be concluded only after the submission by agricultural producers of an application for subsidised insurance to the insurance companies who concluded agreements on insurance subsidies with the Minister of agriculture. The Polish authorities confirmed that aid shall not be granted before the agricultural producer concludes an insurance contract.

(47) As the aid would also be granted to large undertakings, those companies should clearly demonstrate in the counterfactual scenario the incentive effect. The granting authority will carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. SMEs, when signing an insurance contract, specify the scope and scale (total insurance).

2.10. Transparency

(48) The information mentioned in point 112 of the Guidelines will be published in the following web page: https://webgate.ec.europa.eu/competition/transparency/public/search/home/, after the decision to grant the aid has been taken. It will be kept for at least 10 years and be available for the general public without restrictions.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

(49) According to Article 107(1) TFEU, '*[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*'.

(50) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(51) Since the notified measure is governed by an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined in a general and abstract manner (recital (5)), the Commission considers that this measure constitutes an aid scheme within the meaning of point 33(13) of the Guidelines.

(52) The scheme is imputable to the State as it is based on the legal acts described in recital (5) and administered by a public authority, i.e. the Polish Ministry of Agriculture (recitals (22) and (24)).

(53) The scheme is financed through State resources because it is financed by the State budget (recital (7)).

(54) The scheme confers an advantage on its beneficiaries, in the form of grants (recitals (15) and (33)). It thus confers an advantage on those beneficiaries, which they would not have otherwise obtained under normal market conditions.

(55) That advantage is selective because other undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, within the agriculture sector, are not eligible for aid and thus will not receive the same advantage. The scheme therefore gives only certain undertakings (recital (8)) a selective economic advantage, by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit, which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition[10].

(56) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade[11]. The beneficiaries of aid operate in the agriculture sector where intra-EU trade takes place. The sector concerned is open to competition at

[10] Judgment of 17 September 1980, Philip Morris Holland BV v Commission, C-730/79, ECLI:EU:C:1980:209.

[11] See in particular the judgment of 13 July 1988, French Republic v Commission, C-102/87, ECLI:EU:C:1988:391.

EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the scheme is liable to distort competition and to affect trade between Member States.

(57) Therefore, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the scheme constitutes State aid within the meaning of that Article. The Polish authorities do not contest that conclusion. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

(58) The scheme was notified to the Commission on 21 February 2023. According to the draft legal basis (see recital ((5))), aid under the scheme can only be granted after the notification to Poland of a positive decision by the Commission on the compatibility of the measure with the internal market. Therefore, Poland has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

(59) The Commission has assessed the scheme on the basis of Article 107(3)(c) TFEU.

(60) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, compatible aid under that provision of the Treaty must fulfil two conditions (i) the measure should contribute to the development of certain economic activities or of certain economic areas and (ii) it should not distort competition in a way contrary to the common interest.

3.3.2. Application of the Guidelines

(61) As regards the scheme, Part II, Chapter 1, Section 1.2.1.6 of the Guidelines regarding aid for '*the Payment of Insurance Premiums*' is applicable.

(62) It follows from point 402 of the Guidelines that the Commission will consider aid in favour of farmers for the payment of insurance premiums compatible with the internal market under Article 107(3)(c) TFEU, if it complies with Part I, Chapter 3 and the relevant provisions of the above-mentioned section of the Guidelines.

(63) In this context, the Commission will determine whether the scheme facilitates the development of a certain economic activity or certain economic areas (first condition) and whether it adversely affects trading conditions to an extent contrary to the common interest (second condition).

3.3.2.1 First condition: the aid must facilitate the development of an economic activity or certain economic areas

A) Facilitation of the aided economic activity

(64) As mentioned in recital (4), the scheme aims to encourage agricultural producers to insure the basic crops as well as the most important livestock species in Poland by reducing the cost of insuring agricultural production against the effects of losses caused by adverse climatic events. Therefore, it helps preserving stable incomes for agricultural holdings facilitating therefore the development of the agricultural primary production activities.

(65) According to point 43 of the Guidelines, the Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity. The Polish authorities explained that the increase of insured areas will have a positive effect by fostering a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security by ensuring that the production income from insured crops and livestock is generated at least at levels resulting from the insured amount. The Polish authorities also affirm that this scheme has a cross-cutting objective to support fair farm incomes and the resilience of the agricultural sector across the Union in order to enhance long-term food security and diversity in agriculture and to ensure the economic stability of agricultural production in the Union (recital (37)). Therefore, the scheme facilitates the development of the agricultural primary production activities and the provisions of point 43 of the Guidelines are complied with.

(66) According to point 44 of the Guidelines, Member States must also describe whether and, if so, how the aid will contribute to the achievement of the objectives of the CAP and within that policy to the objectives of Regulation (EU) 2021/2115 and describe more specifically the expected benefits of the aid. The Polish authorities provided a description of that contribution and those benefits, summed up in recital (37). Therefore, the provisions of point 44 of the Guidelines are complied with.

B) Incentive effect

(67) According to point 47 of the Guidelines, the scheme has an incentive effect if it changes the behaviour of undertakings in such a way that they engage in additional activity contributing to the development of the sector, in which they would have normally not engaged in without aid or would have engaged in a different or restricted manner. Given the fact that farmers would not be willing to purchase insurance policies without aid from the State budget covering part of the insurance premium (recitals (14) and (31)), the State intervention has an incentive effect.

(68) According to points 50 and 51 of the Guidelines, the project should not start before an application for aid is lodged and this application must include at least the name of the applicant, its size, a description and location of the project, the duration, the aid needed and the eligible costs. Those requirements are fulfilled (recitals (45) and (46)). As the aid would also be granted to large undertakings, those companies should clearly demonstrate in the counterfactual scenario the incentive effect in line with point 52 of the Guidelines (recital (47)).

C) No breach of relevant provisions and general principles of Union law

(69) According to point 62 of the Guidelines, the Commission will not authorise State aid which is incompatible with the provisions governing the common organisation of the market or which would interfere with the proper functioning of the common

organisation. As explained under recital (36), it does not go against the provisions nor interfere with the proper functioning of the common organisation of the market.

(70) According to point 63 of the Guidelines, State aid cannot be declared compatible with the internal market where the award of aid is subject to the obligation for the beneficiary undertaking to use national products or services. The scheme does not provide for such an obligation.

(71) According to point 64 of the Guidelines, the Commission will not authorise State aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities. Premium subsidies for crops and livestock insurance and partial refinancing of compensation indemnities paid to agricultural producers as a result of drought (reinsurance) do not constitute export aid. The scheme does not provide for such aids.

3.3.2.2 Second condition: the aid must not unduly affect trading conditions to an extent contrary to the common interest

A) Need for State intervention

(72) According to points 70 of the Guidelines, State aid is necessary for achieving the intended outcome if it is targeted towards the correction of market failures. As mentioned in recitals (14) and (31), the Polish authorities identified the market failure regarding the insurance area. The market failure is corrected by means of granting the most appropriate form of aid in relation to the counterpart provided by the beneficiary. Therefore, point 70 of the Guidelines is complied with.

(73) As provided for in point 71 of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of the Guidelines. The scheme fulfils the specific requirements laid down in Section 1.2.1.6 of Part II of the Guidelines (recital (92)). Therefore, in line with point 71 of the Guidelines, the Commission considers that there is a need for State intervention.

B) Appropriateness of aid

Appropriateness among alternative policy instruments

(74) As provided for in point 73 of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sector which fulfils the specific conditions laid down in the relevant Section of Part II of the Guidelines is an appropriate policy instrument. The scheme fulfils the specific requirements laid down in Section 1.2.1.6 of Part II of the Guidelines (recital (92)). Therefore, the scheme is an appropriate policy instrument.

(75) Point 74 of the Guidelines is not relevant in the present case, in light of the explanations given by the Polish authorities (recital (38)), according to which they have not put in place a rural development-like aid measure financed exclusively from national funds, when at the same time the same intervention is provided for in the relevant the CAP Strategic Plan.

Appropriateness among different aid instruments

(76) According to point 75 of the Guidelines, aid may be granted in various forms. However, Member States should ensure that the aid is granted in a form that is least likely to distort trade and competition. In the present case, the Polish authorities explained that direct grants would be the only possible form of aid as insurance is not an investment activity (recital (40)). The Commission accepts the explanation of the Polish authorities.

C) Proportionality of aid

(77) Point 83 of the Guidelines states that aid is considered proportionate if the amount of aid per beneficiary is limited to the minimum necessary. According to point 84 of the Guidelines, for aid to be proportionate, the amount of aid should not exceed the eligible costs, with some exceptions. The maximum aid intensity under the scheme will be 65 % which is in line with point 411 of the Guidelines (recitals (18), (19) and (35)).

(78) According to point 86 of the Guidelines, the proportionality criterion is respected if the eligible costs are calculated correctly and if the maximum aid intensities laid down in Part II are respected. The Polish authorities confirmed that the eligible costs are correctly calculated (recitals (23) and (34)). Furthermore, the maximum aid intensity as provided for in point 411 of the Guidelines is respected.

(79) According to point 87, the maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which should be clear, specific and contemporary. For the purposes of calculating the aid intensity and the eligible costs, all figures used must be taken before any deduction of tax or other charge. Those requirements are fulfilled (recital (42)).

(80) According to point 88 of the Guidelines, VAT is not eligible for aid, except where it is not recoverable under national VAT legislation. That provision is complied with, as VAT is not eligible under the scheme (recital (43)).

(81) Based on those elements, the Commission considers that the aid provided for in the scheme is proportionate.

D) Avoidance of adverse negative effects on competition and trade

(82) According to point 116 of the Guidelines, for an aid to be compatible, its negative effects in terms of distortions of competition and impact on trade between Member States must be minimised. According to point 118 of the Guidelines, if the aid is well targeted, proportionate and limited to the net extra costs, its negative impact is softened and the risk that it will adversely distort competition is more limited. Moreover, the Commission establishes maximum aid intensities or aid amounts and the greater the positive effects the aided project is likely to give rise to the higher the cap on aid intensity. In the present case, the aid provided for by the scheme is well targeted (recitals (5) and (8)) and proportionate (recital (81)). It is limited to the next extra costs (recital (27) and (41)). Therefore, the Commission considers that adverse negative effects on competition and trade are kept to the minimum. Moreover, according to point 137 of the Guidelines, in principle, due to its positive effects on the development of the sector, the Commission considers that where an

aid fulfils the conditions and does not exceed the relevant maximum aid intensities or maximum aid amounts, laid down in the applicable Sections of Part II, the negative effect on competition and trade is limited to the minimum. The aid provided under the scheme does not exceed the aid intensities related to insurance premiums and the reinsurance mechanism.

E) Cumulation

(83) Cumulation of aid under the scheme is not possible, as mentioned in recital (44). The requirements laid down in the Guidelines (points 103-111) are thus complied with.

F) Specific assessment according to the category of aid: Section 1.2.1.6 of the Guidelines – Aid for the Payment of Insurance Premiums

(84) As provided under point 402 of the Guidelines, the Commission considers that aid in favour of farmers for the payment of insurance premiums is compatible with the internal market under Article 107(3), point (c) TFEU if it complies with Part I, Chapter 3, of the Guidelines and with the conditions set out in Section 1.2.1.6 thereof.

(85) As explained under recital (8), the scheme applies to undertakings active in the primary agricultural production, in line with point 403 of the Guidelines.

(86) In line with point 404 of the Guidelines, the Polish authorities explained that this scheme would not constitute a barrier to the operation of the internal market for insurance services. In particular, the aid must not be limited to insurance provided by a single insurance company or group of companies nor be made conditional on the insurance contract being taken out with a company established in the Member State concerned (recitals (24), (25) and (26)).

(87) Point 405 provides that reinsurance schemes should be examined on a case-by-case basis, without any specific conditions relating to the beneficiary’s own contribution to the losses. As explained by the Polish authorities, the reinsurance scheme consists in a deductible franchise in case of insurance covering the risk of drought. They explained that it is appropriate and necessary to effectively increase the accessibility of the insurance for Polish farmers (recitals (29), (31) and (32)). The Commission agrees with this explanation.

(88) As requested under point 406 of the Guidelines, the eligible costs should be the costs of insurance premiums for insurance to cover the damage caused by natural disasters or exceptional occurrences including adverse climatic events. The Polish authorities confirmed that the scheme complies with this point (recital (41)).

(89) As mentioned under recital (27) and in line with point 407 of the Guidelines, the insurance will only compensate the cost of making good the damage referred to in point 406 and may not require or specify the type or quantity of future production.

(90) As mentioned in recital (41), the scheme does not cover damage caused by environmental incidents. Therefore, points 408, 409 and 410 of the Guidelines do not apply.

(91) The Polish authorities confirmed that the aid intensity would not exceed 65 %, which is in line with point 411 of the Guidelines (recitals (18) and (19)) In addition, the Polish authorities explain that the sum insured may not exceed a maximum insured amount specified in the Regulation by the Minister for Agriculture and Rural Development. This maximum insured amount is the result of an appropriate calculation as explained under recitals (22) and (23) and therefore in line with point 412 of the Guidelines.

(92) Therefore, the Commission considers that the scheme complies with the specific provisions of Section 1.2.1.6 of Part II, Chapter 1 of the Guidelines.

G) Duration of the scheme

(93) Pursuant to point 638 of the Guidelines, the Commission only authorises aid measures of a limited duration. Aid measures other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (6) that this requirement is met.

H) Transparency

(94) The transparency requirements are fulfilled, as shown in recital (48).

I) Evaluation plan

(95) As the budget exceeds EUR 750 million over the total duration of the scheme, the Polish authorities submitted the general direction on an ex-post evaluation plan in line with point 640 of the Guidelines and commit to notify it to the Commission (recital (39)).

J) Weighing up the positive and the negative effects of the aid (balancing test)

(96) According to point 135 of the Guidelines, in cases where the proposed aid measure does not address a well-identified market failure in an appropriate and proportionate way, the negative distortive effects on competition will tend to outweigh the positive effects of the measure and the Commission is likely to conclude that the proposed aid measure is incompatible. In the present case, the scheme addresses an identified market failure (recitals (14) and (31)) in an appropriate and proportionate way (subsections B and C).

(97) According to point 136 of the Guidelines, as part of the assessment of the positive and negative effects of the aid, the Commission will consider the impact of the aid on the achievement of the general and specific objectives of the CAP set out in Articles 5 and 6 of Regulation (EU) 2021/2115. Based on recital (37), the Commission concludes that the relevant objectives of the CAP set out in Regulation (EU) 2021/2115 are complied with.

(98) The negative effect on competition and trade is limited to the minimum, in line with point 137 of the Guidelines (recital (82)).

(99) According to point 139 of the Guidelines, all State aid notifications should contain an assessment on whether or not the aided activity is expected to have any environmental and/or climate impact, taking into account environmental protection

legislation, and the standards of good agricultural and environmental condition (GAEC) under Regulation (EU) 2021/2115. Where it is demonstrated that aid has positive environmental and climate impact, the Commission will consider that the positive effects of such aid have been established. In the present case, the scheme will have a positive impact by diversifying agricultural sector ensuring long-term food security, as explained under recitals (37) and (65).

(100) Therefore, the positive effects of the scheme outweigh its negative effects on competition and trade.

(101) The Commission also notes that in compliance with point 23 of the Guidelines aid will not be granted to undertakings in difficulty and, in compliance with point 25 of the Guidelines, with undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid unlawful and incompatible with the internal market (recital (10)).

3.3.3. *Conclusion with regard to the compatibility of the scheme*

(102) Considering the above, the Commission concludes that the scheme facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers that the scheme is compatible with the internal market based on Article 107(3)(c) TFEU as interpreted by the relevant provisions of Guidelines.

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)(c) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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Directorate-General Competition
State Aid Greffe
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President