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2022/0311 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2020/1353 granting temporary support under Regulation (EU) 2020/672 to the Republic of Poland to mitigate unemployment risks in the emergency following the COVID-19 outbreak

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EU) 2020/672 (“SURE Regulation”) lays down the legal framework for providing Union financial assistance to Member States, which are experiencing, or are seriously threatened with, a severe economic disturbance caused by the COVID-19 outbreak. Support under SURE serves for the financing, primarily, of short-time work schemes or similar measures aimed at protecting employees and the self-employed and thus reducing the incidence of unemployment and loss of income, as well as for the financing, as an ancillary, of some health-related measures, in particular in the workplace.

On 6 August 2020, Poland requested financial assistance from the Union and on 25 September 2020, with its Implementing Decision (EU) 2020/1353, the Council granted financial assistance to Poland with a view to complementing its national efforts to address the impact of the COVID-19 outbreak and respond to the socioeconomic consequences of the outbreak for workers and the self-employed.

On 19 September 2022, Poland requested the Union to extend the list of measures in Council Implementing Decision (EU) 2020/1353.

In accordance with Article 6(2) of the SURE Regulation, the Commission has consulted the Polish authorities to verify the sudden and severe increase in actual and planned expenditure directly related to Polish labour market measures and health-related measures caused by the COVID-19 pandemic. In particular, this pertains to new measures:

- (a) financing the performance of PCR diagnostic tests. The Minister of Health instructed the National Health Fund to conclude with interested laboratories contracts on performing diagnostic RT-PCR tests for SARS-CoV-2. The costs of tests were financed from the state budget and they were commensurate to the number of people applying for testing;
- (b) granting additional monthly cash benefit for medical professionals and one-off additional cash benefit for other healthcare workers fighting COVID-19. The benefit was granted to persons who participated in the provision of health services and had direct contact with patients infected and suspected of being infected with SARS-CoV-2 virus in organizational units of medical entities. The Minister of Health ordered the National Health Fund to transfer to medical entities performing medical activities funds intended for granting the benefits.

Poland provided the Commission with the relevant information.

Taking into account the available evidence, the Commission proposes to the Council to adopt an Implementing Decision to extend the list of measures for which the Council already granted financial assistance in Council Implementing Decision (EU) 2020/1353.

Health-related measures, as requested by Poland on 19 September 2022, amount to EUR 1 672 546 359.

- **Consistency with existing policy provisions in the policy area**

The present proposal is fully consistent with Council Regulation (EU) 2020/672, under which the proposal is made.

The present proposal comes in addition to another Union law instrument to provide support to Member States in case of emergencies, namely Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (EUSF) (“Regulation (EC) No 2012/2002”). Regulation (EU) 2020/461 of the European Parliament and of the Council, which amends that instrument to extend its scope to cover major public health emergencies and to define specific operations eligible for financing, was adopted on 30 March 2020.

- **Consistency with other Union policies**

The proposal is part of a range of measures developed in response to the current COVID-19 pandemic such as the “Coronavirus Response Investment Initiative”, and it complements other instruments that support employment such as the European Social Fund and the European Fund for Strategic Investments (EFSI)/InvestEU. By making use of borrowing and lending in this particular case of the COVID-19 outbreak for supporting Member States, this proposal acts as a second line of defence to finance short-time work schemes and similar measures, helping protect jobs and thus employees and self-employed against the risk of unemployment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this instrument is Council Regulation (EU) 2020/672.

- **Subsidiarity (for non-exclusive competence)**

The proposal follows a Member State request and shows European solidarity by providing Union financial assistance in the form of temporary loans to a Member State affected by the COVID-19 outbreak. As a second line of defence, such financial assistance supports the government’s increased public expenditure on a temporary basis in respect of short-time work schemes and similar measures to help them protect jobs and thus employees and self-employed against the risk of unemployment and loss of income.

Such support will help the population affected and helps to mitigate the direct societal and economic impact caused by the present COVID-19 crisis.

- **Proportionality**

The proposal respects the proportionality principle. It does not go beyond what is necessary to achieve the objectives sought by the instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Due to the urgency to prepare the proposal so that it can be adopted in a timely manner by the Council, a stakeholder consultation could not be carried out.

- **Impact assessment**

Due to the urgent nature of the proposal, no impact assessment was carried out.

4. BUDGETARY IMPLICATIONS

The Commission should be able to contract borrowings on the financial markets with the purpose of on-lending them to the Member State requesting financial assistance under the SURE instrument.

In addition to the provision of Member State guarantees, other safeguards are built into the framework in order to ensure the financial solidity of the scheme:

- A rigorous and conservative approach to financial management;
- A construction of the portfolio of loans that limits concentration risk, annual exposure and excessive exposure to individual Member States whilst ensuring sufficient resources could be granted to Member States most in need; and
- Possibilities to roll over debt.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak¹, and in particular Article 6(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Further to a request from Poland on 6 August 2020, the Council, by means of Implementing Decision (EU) 2020/1353², granted financial assistance to Poland in the form of a loan amounting to a maximum of EUR 11 236 693 087 with a maximum average maturity of 15 years, and with an availability period of 18 months, with a view to complementing Poland's national efforts to address the impact of the COVID-19 outbreak and respond to the socioeconomic consequences of that outbreak for workers and the self-employed.
- (2) The loan was to be used by Poland to finance the short-time work schemes and similar measures, as referred to in Article 3 of Implementing Decision (EU) 2020/1353.
- (3) The COVID-19 outbreak has immobilised a substantial part of the labour force in Poland. This has led to a still sudden and severe increase in public expenditure in Poland in respect of new measures, namely PCR testing and cash benefits for healthcare workers fighting COVID-19.
- (4) The COVID-19 outbreak and the extraordinary measures implemented by Poland in 2020, 2021 and 2022 to contain that outbreak and its socioeconomic and health-related impact had and still have a dramatic impact on public finances. In 2020, Poland had a general government deficit and debt of 6.9% and 57.1% of gross domestic product (GDP) respectively, which narrowed to 1.9% and 53.8% respectively at the end of 2021. According to the Commission's 2022 spring forecast, Poland is forecast to have a general government deficit and debt of 4.0% and 50.8% of GDP respectively by the end of 2022. According to the Commission 2022 summer forecast, Poland's GDP is projected to increase by 5.2% in 2022.

¹ OJ L 159, 20.5.2020, p. 1.

² Council Implementing Decision (EU) 2020/1353 of 25 September 2020 granting temporary support under Regulation (EU) 2020/672 to the Republic of Poland to mitigate unemployment risks in the emergency following the COVID-19 outbreak, OJ L 314, 29.9.2020, p. 45.

- (5) On 19 September 2022, Poland requested the Union to extend the list of measures for which financial assistance was already granted by Implementing Decision (EU) 2020/1353 with a view to continuing to complement its national efforts undertaken in 2020, 2021 and 2022 to address the impact of the COVID-19 outbreak and respond to the socioeconomic consequences of the outbreak for workers and the self-employed ('the request'). In particular, Poland introduced a series of health-related measures to address the COVID-19 outbreak set out in recitals 6 to 7.
- (6) Based on the 'Act of March 2, 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them'³, the Minister of Health instructed the National Health Fund to conclude with interested laboratories contracts on performing diagnostic RT-PCR tests for SARS-CoV-2. The costs of tests were financed from the state budget and they were commensurate to the number of people applying for testing. As referred to in the request, only expenditure executed in 2020 and 2021 is requested to be financed under SURE. The measure is new and was implemented from end of April 2020 to end of March 2022.
- (7) Based on the 'Act of March 2, 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them'⁴ and the 'Act of August 14, 2020 on amending certain acts in order to ensure the functioning of health protection in connection with the COVID-19 epidemic and after it has ceased'⁵, the Minister of Health ordered the National Health Fund to transfer to medical entities performing medical activities funds intended for granting the cash benefits for healthcare workers fighting COVID-19, as referred to in the request. The measure consists of covering the costs of granting additional monthly cash benefit for medical professionals and one-off additional cash benefit for other healthcare workers. The benefit was granted to persons who participated in the provision of health services and had direct contact with patients infected and suspected of being infected with SARS-CoV-2 virus in organizational units of medical entities. Only expenditure executed in 2020 and 2021 is requested to be financed under SURE. The measure is new and was implemented from September 2020 to end March 2022.
- (8) Poland fulfils the conditions for requesting financial assistance set out in Article 3 of Regulation (EU) 2020/672. Poland has provided the Commission with appropriate evidence that the actual and planned public expenditure has increased by EUR 11 826 003 428 as of 1 February 2020 due to the national measures taken to address the socioeconomic effects of the COVID-19 outbreak. This constitutes a sudden and severe increase because it is also related to the new health-related measures to address the COVID-19 outbreak that cover a significant proportion of undertakings and of the labour force in Poland. Poland intends to finance EUR 9 100 000 of the increased amount of expenditure due to the new health-related measures through Union funds from the EU budget and EUR 580 210 341 through its own financing.

³ Art. 10a paragraph 1 and 2, and, after the expiry of Art. 10a, Art. 11h paragraph 2 point 2 and paragraph 4. Dz.U. 2020 poz. 374, as amended

⁴ Art. 10a paragraph 1. Dz.U. 2020 poz. 374

⁵ Art. 42. Dz.U. 2020 poz. 1493

- (9) The Commission has consulted Poland and verified the sudden and severe increase in the actual and planned public expenditure directly related to short-time work schemes and similar measures, as well as the recourse to relevant health-related measures related to the COVID-19 outbreak, as referred to in the request of 19 September 2022, in accordance with Article 6 of Regulation (EU) 2020/672.
- (10) The health-related measures, as referred to in Poland's request of 19 September 2022 and in recitals (6) to (7), amount to EUR 1 672 546 359.
- (11) Financial assistance already granted by Implementing Decision (EU) 2020/1353 should therefore also cover the new measures referred to in recitals (6) to (7).
- (12) This Decision should be without prejudice to the outcome of any procedures relating to distortions of the operation of the internal market that may be undertaken, in particular pursuant to Articles 107 and 108 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 108 of the Treaty.
- (13) Poland should inform the Commission on a regular basis of the implementation of the planned public expenditure, in order to enable the Commission to assess the extent to which Poland has implemented that expenditure,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2020/1353 is amended as follows:

- (2) Article 3 is replaced by the following:

‘Article 3

Poland may finance the following measures:

- (a) a reduction in social security contributions, as provided for by Art. 31zo of the ‘Act of 2 March 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them’, for the part of expenditure related to the support of self-employed persons, all social cooperatives (regardless of the number of employees) and, for companies employing up to 50 people, the part of expenditure in respect of employees who were continuously in employment;
- (b) a downtime benefit for self-employed persons and those working under civil law contracts, as provided for by Art. 15zq and 15zua of the ‘Act of 2 March 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them’;
- (c) subsidies towards salaries and social security contributions of companies that use short-time work or voluntarily reduce working time or when the employees were continuously in employment, as provided for by Art. 15g, 15ga, 15gg, 15zzb, 15zze, 15zze² of the ‘Act of 2 March 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them’;

- (d) subsidies to self-employed persons without employees as provided for by Art. 15zzc of the ‘Act of 2 March 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them’;
- (e) loans convertible into subsidies granted to self-employed persons, micro-companies and non-government organisations, for the amount actually converted into grants, as provided for by Art. 15zzd, 15zzda of the ‘Act of 2 March 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them’;
- (f) financing the performance of PCR diagnostic tests in the laboratories that concluded contracts on performing diagnostic RT-PCR tests for SARS-CoV 2 with the National Health Fund, as provided for by Art. 10a paragraph 1 and 2, and, after the expiry of Art. 10a, Art. 11h paragraph 2 point 2 and paragraph 4 of the ‘Act of March 2, 2020 on specific solutions related to the prevention, counteraction and eradication of COVID 19, other infectious diseases and crisis situations caused by them’;
- (g) granting additional monthly cash benefit for medical professionals and one-off additional cash benefit for other healthcare workers, as provided for by Art. 10a paragraph 1 of the ‘Act of March 2, 2020 on specific solutions related to the prevention, counteraction and eradication of COVID 19, other infectious diseases and crisis situations caused by them’ and, after the expiry of Art. 10a, Art. 42 the ‘Act of August 14, 2020 on amending certain acts in order to ensure the functioning of health protection in connection with the COVID-19 epidemic and after it has ceased’.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

*For the Council
The President*