

SUMMARY INFORMATION SHEET ON AID MEASURES IN FORCE ON 1ST MAY 2004 (EXISTING AID)

1. GENERAL ASPECTS

Country: Poland

Title of the aid measure (English):

State aid in the form of sureties and guarantees granted by the State Treasury.

Title of the aid measure (Original language):

Pomoc publiczna w formie gwarancji i poręczeń udzielanych przez Skarb Państwa.

Legal basis (precise reference):

- Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and by certain legal persons (Journal of Laws of 2003 No 174, item 1689 – as amended) (enclosure No 1),
- Ordinance of the Council of Ministers of 20 February 2003 on granting by State Treasury of sureties and guarantees and commission fees from sureties and guarantees (Journal of Laws of 2003, No 41 item 348, as amended) (enclosure No 2),

Ministry or other administrative body responsible for the measure and its implementation:

Ministry of Finance;

Person(s) to contact:

Agata Mazurkiewicz,
telephone number: 48 22 55 60 144
e-mail: amazurkiewicz@uokik.gov.pl

Level at which the measure is administered (central government, regional, other)?

Central Government, regional and local authorities, Bank Gospodarstwa Krajowego

When did the measure enter into effect?

8/05/1997 – the date of entry into force of the Act on sureties and guarantees granted by the State Treasury and by certain legal persons;

What is the duration of the measure (expiry date)?

Unlimited duration;

2. DESCRIPTION OF THE MEASURE

Which transport sector is eligible (rail, aviation, maritime, etc.)?

The whole transport sector is eligible;

What are the main aim(s) and objectives of the aid?

The main aim of the measure is improvement of creditability of beneficiaries undertaking investment projects.

A precondition for the issuance of a surety or a guaranty is that the credit covered by the surety or guaranty is designed to finance investment projects, which ensure:

- 1) development or maintenance of infrastructure,
- 2) development of exports of goods and services,
- 3) environment protection,
- 4) creation of new jobs associated with a specific investment project within the framework of regional aid,
- 5) implementation of new technical or technological solutions resulting from research and development projects;
- 6) restructuring of enterprises.

A surety or guarantee may also be issued provided that the credits covered by it shall be appropriated for:

- 1) financing of purchase of materials or finished products earmarked for execution of tasks involving production of capital goods for export, of a contractual value exceeding EUR 10,000,000;
- 2) crediting funds established by virtue of separate laws, in Bank Gospodarstwa Krajowego, if funds appropriated for repayment of the credit originate from sources other than the state budget, excluding state budget funds spent on subsidies to interest on preferential credits;
- 3) creation of credit lines by banks in order to:
 - a) finance investment projects of local self-government units and of small and medium-sized entrepreneurs,
 - b) co-financing of aid programmes or projects within the framework of aid programmes of the European Union;
- 4) repayment of credits already covered by the State Treasury surety or guarantee, together with interest thereon and with other costs directly involved with that credit - may be issued only once.

The sureties or guarantees may be issued also for the fulfilment of the issuer's provision of monetary consideration with respect to issued bonds, provided that the funds obtained from the issue of bonds are appropriated for the a.m. purposes.

Form of the measure (scheme, ad hoc, individual)

Scheme;

What are the instruments (or forms) of aid?

Guarantees and sureties;

For each instrument of aid please give a short description of the conditions applying to the instrument.

1. The Council of Ministers on request of the Minister of Finance, or the Minister of Finance himself may, on behalf of the State Treasury, issue sureties or guarantees of repayment of all or part of a bank credit together with interest thereon and with other costs directly involved with that credit;
2. The Minister of Finance may issue sureties or guarantees, if the amount of a surety or guarantee exceeds an equivalent of EUR 5,000,000 however the Council of Ministers may issue a surety or guarantee up to the amount higher with respect to projects of special significance to the national economy;
3. The Council of Ministers issues sureties or guarantees, if the amount of a surety or guarantee exceeds an equivalent of EUR 30,000,000.
4. The legal persons - entities other than banks or insurance companies, which are authorised pursuant to separate regulations to issue sureties or guarantees within the scope of governmental tasks entrusted to them or within the scope of their business:
 - a) state legal persons established by virtue of law,
 - b) commercial law companies in which the State Treasury holds more than 50 % of the share capital,
 - c) co-operatives in which the shares of the State Treasury exceed 50 % of the share fund,
 - d) legal persons in which the shares of entities held by the State Treasury or legal persons referred to in letters a) - c) exceed 50 % of the share capital, or of the share fund,
 - e) foundations in which legal persons referred to in letters a) - c) act as founders;may issue sureties and guarantees up to 60% of the value of their equity (capital) specified at the end of an accounting year preceding the issuance of the surety or guaranty, provided that the amount of a surety or a guaranty issued for a single entity may not exceed 20% of the value of their equity (capital). The Minister of Finance may grant approval for the issue of sureties and guarantees in an amount higher than the one specified above, or determine, otherwise than specified above, the admissible total amount of sureties and guaranties to be issued and the admissible amount of a surety or a guaranty to be issued for obligations of a specified entity.
5. Bank Gospodarstwa Krajowego may issue a surety or guarantee if the amount thereof does not exceed the equivalent of EUR 5,000,000.

The issuance of surety or guarantee shall be subject to filing an application for surety or guarantee, containing data that allow to carry out the analysis of the risk of payment by the State Treasury on account of issued sureties and guarantees. The application should be attached by documents confirming data contained in the application, including certificates issued by appropriate authorities, concerning the performance of public legal duties by entities whose liabilities are to be covered by surety or guarantee. The application should contain:

- information on the subject, amount and period of validity of requested surety or guarantee as well as grounds for the request, together with information on actions undertaken by borrower in order to obtain the funds and on possible difficulties in their obtaining,
- general information on the borrower together with the structure of assets, information on partners and shareholders, experience of management staff, description of carried out activity, as well as names and addresses of banks, which keep current accounts of the borrower;

The request for surety or guarantee should be accompanied among others by:

- borrower's balance sheet, profit and loss account, cash flow as for the last day of the month preceding the request and for the last accounting year, and in case when the activity is carried out for less than 3 years – for all reporting periods
- declaration of borrower on existing debts, liabilities on fixed assets and pending judicial and administrative proceedings, which may influence the financial situation of borrower,
- feasibility study for the enterprise (business plan), to which the requested surety or guarantee is related, together with forecast of economic and financial situation of the borrower in the period of its performance, and during the period of realisation of obligation covered by surety or guarantee, including: balance forecast, forecast of profits and losses, forecast of cash flow account, expenses connected with the realisation of the enterprise and sources of its financing, as well as plan of crediting of the enterprise,
- certificates of competent fiscal organs concerning meeting by borrower of fiscal obligations,
- opinion of the bank – lender concerning economic and financial situation of the borrower, rating of the enterprise, to which surety or guarantee will relate, as well as viability of granting of surety or guarantee,
- conditional credit facility agreement, and in case of credit or loan granted by lender or borrower, which is non-resident – draft credit facility agreement or loan facility agreement, together with determination of amount and periods for repayment of particular installments of credit or loan and interest,
- declaration of borrower on conformity with truth of data contained in the request.

A surety or guarantee shall not be issued, if the analysis of the risk of payment by the State Treasury indicates that the entity whose obligations are to be covered by the surety or guarantee is not in a position to fulfil these obligations.

The surety and guarantee shall be granted for a fixed period of time and up to the amount determined beforehand. In case of a surety or guarantee granted to an international finance institution the Republic of Poland is a member of or has signed a co-operation agreement with, the Council of Ministers, on request of the Minister of Finance, may depart from the requirement referred to in the first sentence.

The effectiveness of a surety or guarantee shall be subject to payment of a commission fee on a surety or guarantee. The commission fee shall be levied on the amount of the obligation covered by the surety or guarantee, and in the case of sureties and guarantees granted subject to appropriation of the credit or funds obtained from the issue of bonds for repayment of credits already covered by a State Treasury surety or guaranty, together with interest thereon and with other costs directly involved with that credit - on the amount of the increase in the State Treasury obligation, being the difference between the amount of the obligation covered by the surety or guarantee, and the amount of the existing obligation under the granted surety or guarantee. The way of levying and collection of the commission fee on surety or guarantee and the level of this fee is specified in the Ordinance of the Council of Ministers dated 20 February 2003 on granting by State Treasury of sureties and guarantees and commission fees from sureties and guarantees (Journal of Laws of 10 March 2003)

Budget: give the overall budget made available for the measure (in local currency and Euros).

Budget is prepared annually for sureties and guarantees granted by State Treasury in the budget law and covers limit of sureties and guarantees granted by State Treasury for all sectors. In case of sureties and guarantees granted by Bank Gospodarstwa Krajowego there is not specified overall budget. The amount on sureties and guarantees depends on the amount of money collected by the National Credit Guarantee Fund.

Is the budget adopted annually? If yes, what is the average annual budget?

YES. Maximum amounts for the sureties and guarantees set in the budget law for all sectors are:

2002 - PLN 29 000 000 000, EUR 6 484 069 000

2003 – 23 000 000 000 PLN, EUR 5 142 537 000

2004 – 17 000 000 000 PLN, EUR 3 801 006 000*

* average foreign exchange rate announced by the National Bank of Poland prevailing as at the 20th August 2004 (Tabela kursów nr 163/A/NBP/2004 z dnia 2004-08-20) – 1 EUR = 4.4725 PLN;

Specify the eligible beneficiaries (i.a. their character and estimated number).

All potential beneficiaries conducting economic activity in all sectors including transport sector;

Is the aid available on non-discriminatory basis, open to all potential beneficiaries, irrespective of nationality?

Yes;

What are the eligible costs?

1. Amount of credit, interest due on this amount and other costs directly related to the credit.
2. In case of sureties or guaranties for the fulfilment of the issuer's provision of monetary consideration with respect to issued bonds the surety or guarantee may cover either the value of the issued bonds or incidental payments, or both.

What is the maximum aid intensity?

1. In case of sureties and guarantees granted by the State Treasury, they may be granted up to 60% of the principal balance to be repaid for which the surety or guarantee has been granted and up to 60% of interest due on this amount and other costs directly related to the credit. The Council of Ministers may grant the surety or guarantee up to the amount exceeding the amount mentioned above in the case of projects of special significance to the national economy.
- In case of sureties and guarantees granted by Bank Gospodarstwa Krajowego the aid intensity is specified in § 3 of the Agreement concluded on 12 March 2002 between the Treasury represented by the Minister of Finance and Bank Gospodarstwa Krajowego - consolidated text of 30 May 2002.

Specify the criteria according to which the amount of aid and/or the aid intensity has been calculated.

As above;

Does the measure provide “operating aid”? If “Yes”, please provide details.

In principle, the measure does not provide “operating aid”;

If the measure relates to services of general economic interest or public service obligations, please specify by what means this task has been entrusted to the undertaking and how compensation is calculated.

No;

May the aid in question be cumulated with any other aid measures in operation and if so, does the measure contain provisions limiting the cumulation of aid?

Yes, the measure in question may be cumulated with other aid measures. The Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and by certain legal persons does not contain any provisions limiting the cumulation of aid.

Does the aid measure fall within existing exemption regulations or guidelines? If so, please specify.

On the basis of the measure may be granted support for various aims. Some of the granted sureties and guarantees are designed to finance investment projects related to development and modernisation of infrastructure, access to which is equal for the benefit of all operators concerned. In this case they do not constitute State aid in the meaning of Article 87 of the EC Treaty.

The existing exemption regulations or guidelines within which the aid measures fall depend on the financed undertaking, for example sureties and guarantees granted as restructuring aid fall under the following acts:

- Community Guidelines on State aid for rescuing and restructuring firms in difficulty (*Official Journal C 288, 09.10.1999, p. 0002-0018*),
- Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (*Official Journal L 130, 15.06.1970, pages 0001-0003, as amended*) – Article 3d – until the entry into force of Community rules on access to the transport market.

The measure includes also sureties and guarantees which fulfil conditions excluding existence of State aid set in chapter 4 of Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (*Official Journal C 71, 11.03.2000, p. 14-18*).

Enclosures:

1. The Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and by certain legal persons (*Journal of Laws of 2003 No 174, item 1689 – as amended*),
2. Ordinance of the Council of Ministers of 20 February 2003 on granting by State Treasury of sureties and guarantees and commission fees from sureties and guarantees (*Journal of Laws of 2003, No 41 item 348, as amended*),