

Commission Decision of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Częstochowa SA (notified under document number C(2005) 1962) (Only the Polish version is authentic) (Text with EEA relevance) (2006/937/EC)

- Article 1 (1) The measures which Poland has implemented for the restructuring...
- Article 2 The state aid which Poland awarded for R&D amounting to...
- Article 3 (1) The state aid which Poland awarded to Huta Częstochowa...
- Article 4 The Commission approves the proposed change in the Polish National...
- Article 5 This Decision is addressed to the Republic of Poland.
Signature

ANNEX

Information regarding enforcement of Commission Decision 2006/937/EC

1. Calculation of the amount to be recovered
 - 1.1. Please provide the following details on the amount of unlawful...
 - 1.2. Please explain in detail which is the interest rate your...
 - 1.3. Please explain in detail how the interest to be paid...
2. Measures planned and already taken to recover the aid
 - 2.1. Please describe in detail what measures have already been taken...
 - 2.2. By what date will recovery of the aid be completed?...
3. Recovery already effected
 - 3.1. Please provide the following details on the amounts of aid...
 - 3.2. Please attach information documenting the repayment of the aid amounts...

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- (1) [OJ L 236, 23.9.2003, p. 948.](#)
- (2) [OJ C 204, 12.8.2004, p. 6.](#)
- (3) For details see: COMP/ECSC 1351 Usinor/Arbed/Aceralia, Commission decision of 21 November 2001, para. 88.
- (4) Rurexpol is specialised in the production of seamless tubes, products used for drilling applications and boilers. It has a capacity of 60,0 tonnes. Its sales in 2003 and 2004 exceeded PLN 200 million annually.
- (5) On the assumption that EUR 1 is about PLN 4,75. This was the average exchange rate in May 2004 when Poland joined the EU and the opening decision was taken.
- (6) Parts of the text have been deleted in order to protect confidential information. These parts are indicated by square brackets: [...]
- (7) Legal Gazette No 111, item 1196.
- (8) For more information on LNM holdings see Commission Decision PHS/LNM of 5 February 2004 in case COMP/M 3326, which clarified the acquisition of a Polish steel company under the Merger Regulation.
- (9) The other recipients are the following seven steel-producing companies: Huta Bankowa, Huta Buczek, Huta Lucchini-Warszawa, Huta Labędy, Huta Pokój, Huta Andrzej and Huta Batory. The last two have since been declared bankrupt.
- (10) In fact the Council took two decisions, one in July 2002 prolonging the grace period under the conditions of a credible restructuring programme and individual business plans pursuant to Article 8(4) of Protocol 2 of the Europe Agreement and one in June 2003 endorsing the plans submitted in April 2003, with the result that the grace period to grant state aid was prolonged until the end of 2003.
- (11) Normally state aid to the steel sector is not allowed in the EU; see Communication from the Commission on Rescue and Restructuring aid and closure for the steel sector ([OJ C 70 of 19.3.2002, p. 21](#)). Regional investment aid is also prohibited; see point 27 of the Multisectoral framework on regional aid for large investment projects ([OJ C 70 of 19.3.2002, p. 8](#)).
- (12) Law of 30 October 2002, Legal Gazette No 213 item 1800, amended by the Act of 14 November 2003, Legal Gazette No 229, item 2271.
- (13) This Act is the basis for several restructuring cases in Poland. A detailed description of the Act is provided inter alia in the Commission decision of 1 June 2005, cases C(2005) 17 and 18, opening a formal investigation procedure under Article 88(2) EC on restructuring aid for Polish shipyards Gdynia and Gdansk, [OJ C 220 of 8.9.2005, p. 7](#). If application of the law varies slightly from one case to another, this is due to the description of the Polish authorities, as it concerns a matter of national law.
- (14) The following are non-restructurable: pension insurance contributions and those parts of social security contributions which are employee contributions and are connected to salary payments (contributions have two main components which normally make up 50 % each). This is because part of the contribution which should be paid by the employee is a liability of the employee (and not the employer), even if the employer has to pay it to ZUS. Hence the company remains fully liable for employees' contributions. In addition, if the amounts are overdue they result in statutory interest being charged. However, this interest, together with the above-mentioned social security contributions paid by the insured party or pension insurance contributions may be deferred for 24 months (Article 32b of the Act of 30.10.2002).
- (15) On 31 March 2004 the OCCP submitted a paper to the Commission indicating why, in its opinion, the restructuring would pass the private creditor test.
- (16) However, the decision still did not comply with all the conditions introduced by the amendments to the Act of 30.10.2002, as it neither contained a detailed description of the public liabilities subject to the special restructuring scheme nor explained why assets would be transferred to the Operator (although that information is contained in the restructuring plan). The Polish authorities have stated that this information will be provided in a new version which is scheduled for end-June 2005 and will reflect decisions taken by public institutional creditors.
- (17) The company ATEST 'Zakład Usług Doradczych i Technicznych' has been active on the Polish market since 1992 and specialises in valuations of companies, commercial real estate and

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- production assets. It has carried out valuations of a number of companies for the purposes of obtaining debt bank financing, privatisation and mergers between companies.
- (18) The restructuring plan initially stated that the assets received by Operator had a book value of about PLN 203,3 million. In fact, the exact breakdown of the assets to be transferred to Operator had been renegotiated as representatives of Operator were focusing on assets which would be easy to sell.
 - (19) BRE Corporate Finance S.A. is a 100 % subsidiary of BRE Bank S.A., one of the largest banks in Poland, which is quoted on the Warsaw Stock Exchange. Management control over BRE Bank is held by Commerzbank AG of Germany, which has over 72 % of the shares. BRE Corporate Finance is involved in investment banking, M&A, restructuring and corporate finance activities. Poland confirms that the company has been involved in many large privatisation and M&A deals in Poland on behalf of private clients as well as the Treasury. These projects have usually involved valuations of these companies using various methods.
 - (20) This is an estimate taking into account proceeds as at March 2005 of PLN [...] million (see table 3 below), plus about PLN [...] million of monthly interest until October 2005, plus payment of about PLN [...] million for the receivables of those public creditors that have rejected restructuring.
 - (21) Figures are estimates for end-June 2005.
 - (22) PWC's analysis is based on a simulation under the Bankruptcy and Restructuring Act of 28 February 2003.
 - (23) On the basis of the Environmental Protection Act of 31 January 1980, Legal Gazette 1994/49, item 196.
 - (24) By Decision No FEO/72752/E/97/TT under Articles 8(1) and 4(1) of the Employment and Rehabilitation (Disabled) Act of 9 May 1991 (Legal Gazette No 46, item 201 with amendments).
 - (25) Within the meaning of the Environmental Protection Act of 31 January 1980 (Legal Gazette 1994/49, item 196).
 - (26) By Decision of the Province No GKN.IV.7224/653/98 under Article 219(1) of the Real Estate Management Act of 21 August 1997 (Legal Gazette No 115, item 741).
 - (27) By Decision of the Board of FGSP No 205/99 under Article 4(1) of the Protection of Employees' Claims (Bankrupt Companies) Act of 29 December 1993 (Legal Gazette 1994/1, item 1).
 - (28) By Decision of the Head of the Tax Office (No DUS-PP-733/12/99) under Article 67 of the Tax Ordinance of 29 August 1997 (Legal Gazette No 137, item 926 with amendments).
 - (29) On the basis of an agreement concerning the restructuring of HCz's debt resulting from non-payment of real estate tax.
 - (30) Under Article 36(1) of the 1999 Budget Act of 17 February 1999 (Legal Gazette 1999/17, item 154).
 - (31) By Decision No 2/2000 under Article 67 of the Tax Ordinance of 29 August 1997 (Legal Gazette No 137, item 929 with amendments).
 - (32) Under Article 36(1) of the 2000 Budget Act of 21.01.2000 (Legal Gazette No 7, item 85).
 - (33) Under Article 36(1) of the 2000 Budget Act of 21.01.2000 (Legal Gazette No 7, item 85).
 - (34) By Decision No II — 3130/4/01 under Article 67 of the Tax Ordinance of 29 August 1997 (Legal Gazette No 137, item 929 with amendments).
 - (35) Under Article 36(1) of the 2001 Budget Act of 1.3.2001 (Legal Gazette No 21, item 246).
 - (36) Under Article 36(1) of the 2000 Budget Act of 14 March 2002 (Legal Gazette No 30, item 275) and the Restructuring (Iron and Steel Industry) Act of 24 August 2001 (Legal Gazette No 111, item 1196).
 - (37) Of these costs, PLN 606,8 was allotted to industrial research; the rest went into pre-competitive development activity. The Academy of Sciences now has commercial rights to the R&D programmes.
 - (38) A State scientific institution which is the main scientific advisory body and is purely state funded.
 - (39) Of these costs, PLN 3 870 000 was allotted to industrial research and PLN 4 050 000 went into pre-competitive development activity. All payments from KBN were made to the Institute of Metallurgy.

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- (40) The results of the research were passed on by the Polish Academy of Science to a number of other industrial plants which face the problem of having to use cooling water from sources containing large amounts of organic substances which damage the heat exchangers.
- (41) The purpose of the project was to develop technology for casting and rolling thick plate steel with a homogenous alloy structure across the whole depth of the plate. These types of steel were required by the shipbuilding industry and had not previously been made in Poland. The results of the research were also made available to other companies and a number of clients.
- (42) The aid was mainly paid to the Institute of Metallurgy.
- (43) The Polish authorities have also indicated that in 2003 the percentage of public creditors' claims recovered as a result of restructuring was between 46 % and 72 % (on average 61 %) whereas the reduction in the case of private creditors was between 46 % and 58 % (on average 54 %).
- (44) Community framework for state aid for research and development, [OJ C 45 of 17 February 1996, p. 5](#).
- (45) See Decision of 14 December 2004, Restructuring aid to the Czech steel producer Třinecké Železářny a.s, [OJ C 22 of 27 January 2005, p. 2](#), which is based on Protocol 2 to the Accession Treaty concerning the restructuring of the Czech steel industry.
- (46) [OJ L 83, 27.3.1999, p. 1](#).
- (47) Case C-342/96 Spain v Commission, paragraph 46; Case C-256/97 DMT, paragraph 24, Opinion of the Advocate General in Case C-256/97 DMT, paragraph 38; Case T-152/99 Hamsa, paragraph 167.
- (48) Case T-152/99 Hamsa, paragraph 168: 'When a firm faced with a substantial deterioration of its financial situation proposes an agreement or series of agreements for debt arrangement to its creditors with a view to remedying the situation and avoiding liquidation, each creditor must make a decision having regard to the amount offered to it under the proposed agreement, on the one hand, and the amount it expects to be able to recover following possible liquidation of the firm, on the other. Its choice is influenced by number of factors, including the creditor's status as the holder of a secured, preferential or ordinary claim, the nature and extent of any security it may hold, its assessment of the chances of the firm being restored to viability, as well as the amount it would receive in the event of liquidation. If it turned out, for example, that in the event the firm was liquidated, the realisation value of its assets was only sufficient to cover mortgage and preferential claims, ordinary claims would have no value. In such a scenario, acceptance by an ordinary creditor of the cancellation of a major part of its claim would not really be a sacrifice'.
- (49) In fact there are four in 2005, but this is not of relevance in this case as they had already agreed to restructuring in 2003.
- (50) The Commission is also not concerned by the fact that also other creditors could have rejected the restructuring, as these other creditors had clearly benefited from restructuring and did not want to jeopardise this process.
- (51) Case T-152/99 Hamsa, paragraph 168 (author's emphasis).
- (52) Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ([OJ C 71, 11.3.2000, p. 14](#)).
- (53) [OJ C 244, 1.10.2004, p. 2](#).
- (54) See Commission Decision Anon of 26 July 2004, C(2004)1813 fin, point 47, not yet published, in which the Commission accepts a premium of 0,6 %.
- (55) Advocate General Opinion in Case C-276/02 Spain v Commission, paragraph 40.
- (56) Reference and recovery rates in the field of state aid, [OJ C 48, 24.2.2005, p. 2](#).
- (57) [OJ L 338, 28.12.1996, p. 42](#).
- (58) Protocol No 8 applies only to restructuring aid in the steel sector, which is any aid that is not compatible under the other EC state aid rules.
- (59) Page 38.
- (60) See Commission letter to Poland dated 13.08.2004, which did not raise any objections to the notified measures, including the Polish regional aid map (C(2004)3230/5).

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- (61) [OJ C 72, 10.3.1994, p. 3](#), applied in accordance with Article 3 of the Steel Aid Code (since replaced by [OJ C 37 of 3.2.2001, p. 3](#)). In particular it is not aid for waste management or energy savings.
- (62) [OJ L 10, 13.1.2001, p. 30](#).
- (63) Decision of 3 March 2005, C(2005) 424 — Postponement of capacity reduction of VPFM.
- (64) See Article 3(1)(b) of Council Regulation 139/2004, [OJ L 24, 29.1.2004, p. 1](#).

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