

Commission Decision of 6 November 2008 on State aid C 19/05 (ex N 203/05) granted by Poland to Stocznia Szczecińska (notified under document C(2008) 6770) (Only the Polish text is authentic) (Text with EEA relevance) (2010/3/EC)

- Article 1 The State aid described in recitals 187-201, which was unlawfully...
- Article 2 With regard to the loans obtained from various public bodies...
- Article 3 With regard to the advance payment guarantees granted by KUKI...
- Article 4 Article 3 also applies, mutatis mutandis, to any advance payment...
- Article 5 With regard to the unenforced liabilities to various public bodies...
- Article 6 With regard to the capital injections from various public bodies...
- Article 7 (1) Poland shall recover the aid from the beneficiary as...
- Article 8 (1) Recovery of the aid referred to in Article 1...
- Article 9 (1) Within two months of notification of this Decision, Poland...
- Signature

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ANNEX

INFORMATION REGARDING THE IMPLEMENTATION OF THE PRESENT DECISION

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 how the interest to be paid...
2. Measures planned and already taken to recover the aid
  - 2.1. Please describe in detail what measures are planned and what...
  - 2.2. What is the timetable for the recovery process? When will...
3. Recovery already effected
  - 3.1. Please provide the following details on the amounts of aid...
  - 3.2. Please attach proof of the repayment of the aid amounts...

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- (1) [OJ C 23, 1.2.2007, p. 20.](#)
- (2) [OJ C 222, 2.9.2005, p. 7.](#)
- (3) Article 5(1) and (3) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 ([OJ L 210, 31.7.2006, p. 25](#)).
- (4) Commission Decision 2006/596/EC of 4 August 2006 drawing up the list of Member States eligible for funding from the Cohesion Fund for the period 2007-2013 ([OJ L 243, 6.9.2006, p. 47](#)).
- (5) Letter of 9 January 2008.
- (6) Judgment of the Court of First Instance in Case T-109/01 *Fleuren Compost v Commission* [2004] ECR II-127.
- (7) Minutes of the Council of Ministers of 25 January 2005 and 5 October 2005 published on its website.
- (8) Letter of 13 March 2006.
- (9) 'First version of the SSN restructuring plan with business plan for SSN for 2008-2012 taking into account the information obtained in the course of the due diligence process carried out in the shipyard' and 'Additional explanations, outline of the restructuring programme and declared commitments concerning the purchase of SSN submitted by Amber' of 29 February 2008.
- (10) Parts of this text have been deleted in order not to divulge confidential information; they are indicated by a series of dots between square brackets.
- (11) Letter of 11 July 2007.
- (12) Letter of 9 January 2008.
- (13) Letter of 9 January 2008, p. 15.
- (14) Letter of 17 February 2006.
- (15) A strategy for the shipbuilding sector (maritime construction shipyards) in Poland 2006-2010, adopted in August 2006, p. 30.
- (16) Annex 1 to letter of 6 June 2008.
- (17) Letter of 26 June 2008.
- (18) The list of these guarantees was provided by Poland in Annex 11 to the restructuring plan of Mostostal submitted on 26 June 2008.
- (19) See, also, Commission Decision of 18 July 2007 in case N 105/07, Guarantee scheme for export contracts, summary notice ([OJ C 214, 13.9.2007, p. 3](#)).
- (20) Judgment of the Court of First Instance in Case T-109/01 *Fleuren Compost v Commission*, cited above, paragraph 74.
- (21) Opinion of Advocate-General Jacobs in Case C-256/97 *DM Transport* [1999] ECR I-3915; Case C-480/98 *Spain v Commission* ('*Magefesa*') [2000] ECR I-8717.
- (22) Judgment of the Court of First Instance in Case T-109/01 *Fleuren Compost v Commission*, paragraph 74.
- (23) This measure was included in part A of the Annex to the decision to initiate the formal investigation procedure as a measure put into effect before accession.
- (24) Opinion of Advocate-General Jacobs, Case C-256/97, *DM Transport* [1999] ECR I-3915, Case C-480/98, *Spain v Commission* ('*Magefesa*') [2000] ECR I-8717.
- (25) [OJ C 273, 9.9.1997, p. 3.](#)
- (26) A strategy for the shipbuilding sector (maritime construction shipyards) in Poland 2006-2010, adopted in August 2006, p. 7.
- (27) Decision in case N 105/07.
- (28) Article 3(1)(1) of Resolution 111/2006 of the Export Insurance Policy Committee of 20 December 2006.

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- (29) [OJ C 71, 11.3.2001, p. 14.](#)
- (30) [OJ C 244, 1.10.2004, p. 2.](#)
- (31) [OJ C 288, 9.10.1999, p. 2.](#)
- (32) [OJ C 317, 30.12.2003, p. 12.](#)
- (33) Letter of 4 October 2005 containing Poland's comments on the decision to initiate the formal investigation procedure.
- (34) Amber indicated that its analysis showed that the yard would not become profitable after the restructuring which Amber envisaged implementing.
- (35) See point 43 of the Guidelines.
- (36) Part of these liabilities were swapped for equity in August 2008 (PLN 131,5 million; see recital 201) and part remains to be paid back (PLN 66 million).
- (37) In addition, the Commission notes that according to one of the annexes to the restructuring plan of 12 September 2008, which presents the general assumptions of the restructuring process, the value of this land was initially estimated at PLN [...] million.
- (38) This is similar to the Automobile Craiova case (case No 46/07), in which the Commission concluded that under the Automobile Craiova privatisation process the Romanian authorities had imposed certain conditions upon the buyer (with regard to minimum employment and the level of investment in the undertaking sold) in exchange for a reduced sales price, which constituted State aid to the benefit of the undertaking sold.
- (39) The Commission notes that after completing the existing contracts and implementing the planned restructuring measures, SSN Nowa is supposed to be wound up and if there is any extra cash left it is supposed to be equally divided between Mostostal and the State. The Commission considers that this might at most lead to a reduction of the State aid granted under the privatisation process, but would not alter the fact that the transfer of the assets at below their market value had been 'polluted' with State aid and therefore their sale cannot serve as an own contribution free of State aid.
- (40) At the meeting on 10 September 2008 it became clear that the restructuring plan was drafted by Mostostal and not Ulstein. Ulstein had not even seen the draft sent to the Commission on 3 September 2008 and was surprised to hear that its capital commitment was supposed to be PLN 114 million.
- (41) Assuming USD 1 = PLN 2,3.
- (42) Commission notice on the method for setting the reference and discount rates ([OJ C 273, 9.9.1997, p. 3](#)).
- (43) See, for example, Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2000/C 71/07) ([OJ C 71, 11.3.2000, p. 14](#)). Point 3.2 of the notice states that where, at the time the loan is granted, there is a strong probability that the borrower will default, e.g. because he is in financial difficulty, the value of the guarantee may be as high as the amount effectively covered by the guarantee.
- (44) Recital 68 of Commission Decision 2005/827/EC of 16 June 2004 on the measures implemented by Spain for Siderúrgica Añón SA ([OJ L 311, 26.11.2005, p. 22](#)); recital 42 of Commission Decision 2003/284/EC of 11 December 2002 on the State aid implemented by Spain for Sniace SA ([OJ L 108, 30.4.2003, p. 35](#)).
- (45) *Ibidem*.
- (46) See, for example, Commission Decision of 23 October 2007 on State aid C 23/06 which Poland has implemented for the steel producer Technologie Buczek Group (not yet published).
- (47) See, for example, Commission Decision 2005/652/EC of 20 October 2004 on State aid C 38/03 implemented by Spain (further restructuring aid to the public Spanish shipyards) ([OJ L 240, 16.9.2005, p. 45](#)).
- (48) See Case C-277/00 *Germany v Commission* ('SMP') [2004] ECR I-3925 and Cases C-328/99 and C-399/00 *Italy and SMI 2 Multimedia Spa v Commission* [2003] ECR I-4035.

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