

COMMISSION DECISION**of 26 September 2006****on aid measure No C 49/2005 (ex N 233/2005) for Chemobudowa Kraków S.A.***(notified under document number C(2006) 4214)***(Only the Polish version is authentic)****(Text with EEA relevance)***(2006/950/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments ⁽¹⁾ pursuant to those provisions and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) The planned aid to Chemobudowa Kraków S.A. ('Chemobudowa Kraków' or 'the recipient'), a State-owned building company, was notified to the Commission by letter dated 29 April 2005, registered on 2 May 2005. On 20 June 2005, the Commission asked Poland to submit certain missing documents. These were provided by letter dated 9 August 2005 registered on 11 August 2005. The Commission requested further information by letter dated 15 September 2005, to which Poland replied by letter dated 26 October and registered on 27 October 2005.
- (2) On 21 December 2005, the Commission decided to initiate the Article 88(2) procedure in respect of two notified measures and two non-notified measures granted after Poland's accession to the EU because of doubts as to their compatibility with the common market. The Commission decision to initiate the procedure was published in the Official Journal of the European Communities on 28 June 2006 ⁽²⁾. The Commission called on interested parties to submit their comments on the aid measures. No comments were submitted.
- (3) By letter dated 25 January 2006, registered on the following day, Poland informed the Commission that it had withdrawn the notification. By letter dated 7 February 2005 the Commission called on Poland to comment on the two state aid measures granted after accession without prior

notification to the Commission. By letter of 7 March 2006, registered on 9 March 2006, Poland submitted its comments on these two measures and asked for the rectification of some incorrect data in the decision to initiate the Article 88(2) procedure. By letter dated 12 September 2006, registered on the following day, the Polish authorities provided further clarifications on the two aforementioned aid measures.

II. DETAILED DESCRIPTION**1. The aid recipient**

- (4) ChK is a large company created in 1949, which in 2004 employed 919 workers, 343 of whom in branches of the company located abroad (in the Czech Republic and Germany).
- (5) ChK is the parent company of Towarzystwo Budownictwa Społecznego Krak-System S.A. ('TBS'), in which it owns 78 % of shares. Its activity consists in building apartment blocks and renting them out. According to the Polish authorities its turnover is insignificant.
- (6) The recipient has a market share of 0,13 % of the Polish building market. It has branches in Germany and the Czech Republic and 42 % of its turnover comes from those two branches.

2. The aid measures

- (7) The Polish authorities have given notice that they intend to grant two measures for the restructuring of Chemobudowa Kraków. First, the recipient was supposed to receive a loan of about PLN 10 million (EUR 2,57 million). The loan was to be secured by a mortgage on real estate evaluated at PLN 17,35 million (about EUR 4,46 million). Second, Chemobudowa Kraków was to benefit from deferral of payments to the 'State Fund for Rehabilitation of Disabled Persons' ('PFRON') and these payments were to be made in instalments. The deferred amount was to be equal to PLN 693 000 (about EUR 178 000).

⁽¹⁾ OJ C 150, 28.6.2006, p. 51.

⁽²⁾ See footnote 1.

- (8) In addition to the above notified measures, the Polish authorities have informed the Commission of 18 measures in favour of Chemobudowa Kraków granted between December 2001 and May 2004. According to the Polish authorities, the nominal value of these measures is PLN 8,511 million (EUR 2,19 million). Poland has requested that these measures not be treated as state aid, claiming that some of them are *de minimis* aid and that the others pass the private creditor test. The Commission concluded that two of these eighteen measures had been granted after accession without the Commission's approval and therefore had to be treated as potential new unlawful aid.
- (9) The first measure granted after Poland's accession, i.e. on 12 May 2004, is an agreement for payment of debts of PLN 3,164 million (EUR 0,81 million) to the Social Insurance Fund (hereinafter 'ZUS') to be made in instalments. According to the Polish authorities, the amount of the aid is PLN 147 322 (EUR 37 874). Even before the decision to initiate the Article 88(2) procedure, the Polish authorities informed the Commission that the arrangement had been annulled because Chemobudowa Kraków did not meet the relevant conditions. The Commission had doubts as to whether the above-mentioned debts had been honoured by the recipient and whether failure to enforce the debts might not constitute additional state aid.
- (10) The second measure granted after accession on 20 May 2004 was granted by the Head of Małopolska Treasury Office and consisted of an agreement for debts of PLN 280 000 (EUR 71 979) to be paid in instalments.

3. Grounds for initiating the procedure

- (11) The Commission wished to clarify whether the eighteen measures referred to above constituted state aid as, in order to assess the compatibility of measures granted after accession, it had to take into account all aid measures granted in the context of restructuring, especially with a view to determining whether aid was limited to the necessary minimum. Moreover, two of the eighteen measures were granted after accession. The Commission has analysed this aid in the light of the 2004 Guidelines on rescue and restructuring aid for firms in difficulty.
- (12) The Commission decided to initiate the Article 88(2) procedure because it doubted whether all the conditions for approving restructuring aid had been met, and in particular whether:
- the restructuring plan would restore the recipient's long-term viability, given that its main focus was financial restructuring;
 - the recipient's contribution to restructuring costs was significant, as the Commission lacked sufficient information on its source;

- the company was eligible for restructuring aid as the recipient had managed to generate operating profits of PLN 5,4 million (EUR 1,388 million) in 2004.

III. COMMENTS FROM THE POLISH AUTHORITIES

- (13) In their letter of 25 January 2006 the Polish authorities informed the Commission that they had withdrawn the notification of the measures referred to in paragraph 7 above.
- (14) With regard to the two measures granted after accession without prior notification to the Commission, Poland stated the following:
- (15) With regard to the first measure granted after accession, i.e. on 12 May 2004, described in paragraph 9 above, Poland indicated that the agreement had been annulled because Chemobudowa Kraków did not meet the relevant conditions. In addition, the company had paid off all its debts with interest.
- (16) With regard to the second measure granted after accession, i.e. on 20 May 2004, described in paragraph 10 above, Poland stated that the measure passed the private creditor test and added that if the Commission did not agree with that assessment, the measure constituted *de minimis* aid. The Polish authorities indicated that most of the aid received by the recipient during the corresponding three-year period, including the aid measure referred to in paragraph 10, was below the EUR 100 000 threshold and as such constituted *de minimis* aid.

IV. ASSESSMENT OF THE MEASURES

- (17) Poland withdrew notification of the two state aid measures referred to in paragraph 7 above. However, in order to terminate the Article 88(2) procedure, the Commission needs to assess the two non-notified measures described in paragraphs 9 and 10.
- (18) With regard to the measure described in paragraph 9, Poland has confirmed that no state aid has been granted by ZUS since accession. The Commission takes the view that as this measure was annulled and never came into force and as all debts vis-à-vis ZUS were reimbursed with interest, the measure does not constitute state aid.
- (19) Regarding the measure described in paragraph 10 above, on the basis of the information available, the Commission concludes that the measure does not constitute state aid within the meaning of Article 87(1) of the EC Treaty, since the Polish authorities have confirmed that the *de minimis* aid threshold was not exceeded.

V. **CONCLUSION**

- (20) The Commission notes that according to Article 8 of Council Regulation (EC) No 659/1999 ⁽³⁾, the Member State concerned may withdraw the notification in due time before the Commission has taken a decision on the aid. In cases where the Commission has initiated the formal investigation procedure, the Commission shall close that procedure.
- (21) Consequently, the Commission has decided to close the formal investigation procedure under Article 88(2) of the EC Treaty in respect of the notified aid measures, recording that Poland has withdrawn the notification.
- (22) With regard to the two non-notified measures, the Commission finds that they do not constitute state aid,

HAS ADOPTED THIS DECISION:

Article 1

The measures which Poland was planning to implement for Chemobudowa Kraków, amounting to PLN 10 693 000,

were withdrawn after the Commission opened the formal investigation procedure. The formal investigation procedure therefore no longer applies to these measures.

Article 2

The measure granted on 12 May 2004 was later annulled by the granting authority. The formal investigation procedure therefore no longer applies to this measure. Regarding the measure granted on 20 May 2004, the Commission concludes that it does not constitute state aid within the meaning of Article 87(1) of the EC Treaty.

Article 3

This Decision is addressed to Poland.

Done at Brussels, 26 September 2006.

For the Commission

Neelie KROES

Member of the Commission

⁽³⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.