

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 10 December 2008

on State aid C 52/06 (ex NN 73/06, ex N 340/06) partially implemented by Poland for Odlewnia Żeliwa 'Śrem' S.A.

(notified under document number C(2008) 7049)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2009/523/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

down in Article 88(2) of the EC Treaty in respect of the measures.

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

(3) The Commission's decision to initiate the proceedings under Article 88(2) of the EC Treaty was published in the *Official Journal of the European Union*. The Commission invited interested parties to submit their comments on the proposed aid.

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 pursuant to the provisions cited above,

(4) On 31 January 2007 the Polish authorities submitted their comments on the opening of the investigation procedure. No comments were received from third parties.

Whereas:

(5) On 15 April 2008 the Commission sent a request for further information to the Polish authorities.

## I. PROCEDURE

(1) On 1 June 2006 the Polish authorities notified restructuring aid for Odlewnia Żeliwa 'Śrem' (hereinafter Odlewnia Śrem) mostly in the form of arrangements for public law liabilities to be paid in instalments. It was found that some of the aid measures had been granted after accession without the Commission's approval. Hence they were deemed to be illegal aid.

(6) On 30 April 2008 the Polish authorities replied, informing the Commission of the withdrawal of the planned measures. However, the Commission could not accept this as a withdrawal under Article 8 of Council Regulation (EC) No 659/99<sup>(1)</sup>, as the debt payment deferrals already implemented had in fact had an effect on the beneficiary, giving it a clear advantage over other companies that paid their public law liabilities on time.

(2) By letter of 6 December 2006, the Commission informed Poland that it had decided to initiate the procedure laid

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.

## II. DESCRIPTION OF THE BENEFICIARY AND THE RESTRUCTURING

### *Beneficiary*

- (7) Odlewnia Śrem started production in 1968. It produces mainly cast iron for the shipbuilding industry. Privatisation of the company began in 1999, when the State Treasury sold 85 % of its shares to CENTROZAP (44,9 %), BANK PEKAO (25,1 %) and employees (15 %). One of the reasons why the beneficiary's situation deteriorated was the difficult financial situation of the main shareholder, CENTROZAP, which at one point held 71,4 % of Odlewnia Śrem's shares. Currently Odlewnia Śrem is owned by PIOMA-ODLEWNIA, which holds 85,1 % of the shares. According to the Polish authorities, Odlewnia Śrem has a 6-8 % share of the Polish cast iron market. It is based in a region eligible for regional aid under Article 87(3)(a) of the EC Treaty.

### *National procedure*

- (8) The process of restructuring Odlewnia Śrem started in 2003. In 2004 the first restructuring programme was drawn up, and was approved by the President of the Agency for Industrial Development (ARP).
- (9) According to the Polish authorities the company wanted to take advantage of the opportunity created by amendments to the Act of 30 October 2002 on State aid for enterprises of special significance for the labour market which expanded the scope for writing off public law liabilities (Chapter 5a), but imposed additional requirements on the company, such as identifying part of its assets for transfer to an independent Operator. The Operator had to be a company wholly owned by ARP or the State Treasury. The proceeds from the sale of these assets by the Operator were to cover at least part of the public law liabilities of the company being restructured, and the remainder were to be written off when restructuring was completed. On 19 March 2006 the deadline for completing the restructuring procedure under Chapter 5a of the Act of 19 March 2006 expired, without the sale of assets by the Operator having taken place. Despite this, the President of ARP, in a decision dated 27 June 2006, declared that the restructuring had been completed as Odlewnia Śrem had recovered its viability and all that was now needed for full completion of the restructuring was the Commission's consent to the arrangement allowing the company to pay its public law liabilities in instalments. Following the unsatisfactory termination of the Chapter 5a procedure, the company contacted its five public creditors to ask them to defer the payment deadlines for its liabilities on the basis of the more generally applicable provisions of tax law, which was less advantageous for them than the arrangement provided for in Chapter 5a.

### *The restructuring*

- (10) According to the Polish authorities, the restructuring costs amount to PLN 43,6 million. The financial restruc-

turing costs make up about 75 % of the total restructuring costs, the remainder being mainly expenditure relating to modernisation of the company's infrastructure.

- (11) The restructuring plan focuses, firstly, on modernisation of the production site and investments in improving the quality of the company's administration (e.g. by introducing the SAP R/3 computer system as Odlewnia Śrem's main IT tool).
- (12) Secondly, a large part of the restructuring consists in financial restructuring, i.e. mainly arrangements for payment in instalments and write-offs of public law liabilities. A partial write-off of civil law liabilities in the amount of PLN 1,4 million was also agreed under a composition agreement with creditors signed on 17 May 2005.
- (13) Thirdly, in 2005 the company decreased the number of its employees to 1 457, down from 1 776 in 2002, and did not plan further employment restructuring. However, Poland submitted that the temporary suspension of the application of the Company Collective Bargaining Agreement constituted a reduction of employment costs as the company was temporarily not paying contributions to the Company Social Benefits Fund.
- (14) The restructuring of assets consisted in the lease of assets not related to production such as a hotel (Ośrodek Wypoczynkowy in Ostrowieczno) and other facilities for a total price of PLN 0,4 million. The sale of further assets worth approximately PLN 2,6 million is also planned but has not yet been finalised.
- (15) Before the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty, it had been informed that the company had been trying to find a new investor since 2003 and the Polish authorities had been stressing the importance of privatisation for the company's long-term viability. Poland has informed the Commission that this goal has been achieved as 85,1 % of Odlewnia Śrem's shares have been sold to the private company PIOMA-ODLEWNIA.
- (16) Odlewnia Śrem has reduced its production capacity from 57 000 to 55 000 tonnes of cast iron per year and does not envisage a further reduction, claiming that this would put the company's viability at risk. Poland has proposed two alternative compensatory measures. Firstly, the company has reduced its production of cast iron for industrial fittings by 50 % (from approximately 11 000 tonnes to 5 500 tonnes). Secondly, Poland states that the company will no longer be producing cast iron for wind power stations.

### III. DECISION TO INITIATE THE PROCEDURE UNDER ARTICLE 88(2) OF THE EC TREATY

- (17) The Commission decided to initiate the formal investigation procedure because it had doubts as to whether the restructuring aid was compatible with the common market. The doubts were based on four factors.
- (18) Firstly, the Commission had doubts as to whether Odlewnia Śrem could be considered a 'firm in difficulty' within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup> (hereinafter 2004 Guidelines) and thus be eligible for restructuring aid, as Odlewnia Śrem showed a net profit of PLN 3,9 million in 2005.
- (19) Secondly, the Commission had doubts about whether the restructuring plan was capable of restoring the long-term viability of the beneficiary, since it seemed to focus on debt servicing and covering operating costs and the company seemed to be struggling to find a private investor.
- (20) Thirdly, the Commission had doubts as to whether the aid was limited to the minimum necessary and whether the own contribution was significant and as high as possible, particularly since the Polish authorities had not provided any concrete privatisation plans, under which the own contribution would have been significantly greater.

- (21) Finally, the Commission had doubts about the compensatory measures, since Poland had not shown that the decreases in production referred to in recital 16 were indeed compensatory measures and not merely the result of external factors such as a decline in demand or the company's inability to compete on the relevant markets.

### IV. PARTIES' COMMENTS

- (22) The Commission has received comments only from Poland.

#### Polish authorities' comments

##### *Changes in the State aid measures*

- (23) The Polish authorities have informed the Commission of some changes in the aid granted after accession, which should now be PLN 24,2 million. The table below summarises the state restructuring aid (aid already implemented and aid planned) to Odlewnia Śrem as notified by the Polish authorities in their comments on the initiation of the investigation procedure.
- (24) The total nominal value of the State aid is PLN 43,6 million. These measures comprise a State guarantee, a loan granted on preferential terms, direct grants and deferrals and write-offs of public law liabilities. A detailed description of the State aid measures is presented in the table below (aid elements as indicated by the Polish authorities).

Table 1

#### State aid already granted

A	B	C	D	E	F
No	Presumed date of agreement or decision	Granting authority	Form of aid	Nominal value (PLN)	Aid amount (PLN)
State aid granted before accession and not applicable after accession					
1	19.3.2004	Mayor of Śrem	Write-off of real estate tax liabilities (incl. interest) for the period 1.3.2002 — 30.6.2002	738 748,02	738 748,02
2	19.3.2004	Mayor of Śrem	Write-off of tax liabilities	500 000,00	500 000,00
3	23.4.2004	ARP	Loan	4 000 000,00	4 000 000,00
4	28.4.2004	ARP	Credit guarantee	14 000 000,00	14 000 000,00
5	30.4.2004	Mayor of Śrem	Write-off of interest on tax liabilities	200 353,90	200 353,90
Total				19 439 101,92	19 439 101,92

<sup>(1)</sup> OJ C 244, 1.10.2004, p. 2.

A	B	C	D	E	F
No	Presumed date of agreement or decision	Granting authority	Form of aid	Nominal value (PLN)	Aid amount (PLN)
State aid granted after accession					
6	20.5.2004	Ministry of Science and Information Technology	Grant	435 000,00	352 350,00
7	9.5.2005	ZUS (Social Insurance Institution)	Social security contributions to be paid in instalments (incl. interest)	5 385 415,31	134 585,81
8	17.10.2005	Provincial authority	Deferral of payment	855 438,78	105 369,44
9	2nd quarter 2007	Provincial authority	Environmental charges due up to 30.6.2003 to be paid in instalments	1 272 657,45	247 003,92
10	2nd quarter 2007	Provincial authority	Interest on environmental charges to be paid in instalments (concerns item above)	692 185,03	126 365,78
11	2nd quarter 2007	Provincial authority	Environmental charges due up to 30.6.2003 to be paid in instalments	422 946,34	51 018,68
12	2nd quarter 2007	Provincial authority	Interest on environmental charges to be paid in instalments (concerns item above)	274 950,10	33 167,04
13	2nd quarter 2007	State Fund for the Rehabilitation of the Disabled. (PFRON)	State Fund for the Rehabilitation of the Disabled (PFRON) contributions due up to 30.6.2003 to be paid in instalments	803 221,50	148 274,11
14	2nd quarter 2007	State Fund for the Rehabilitation of the Disabled. (PFRON)	Write-off of interest on contributions to the State Fund for the Rehabilitation of the Disabled (PFRON) due up to 30.6.2003	421 085,20	421 085,20
15	2nd quarter 2007	State Fund for the Rehabilitation of the Disabled. (PFRON)	State Fund for the Rehabilitation of the Disabled (PFRON) contributions for the period July 2003 — January 2004 to be paid in 20 quarterly instalments	479 156,60	155 721,64

A	B	C	D	E	F
No	Presumed date of agreement or decision	Granting authority	Form of aid	Nominal value (PLN)	Aid amount (PLN)
16	2nd quarter 2007	State Fund for the Rehabilitation of the Disabled. (PFRON)	Write-off of interest on contributions to the State Fund for the Rehabilitation of the Disabled (PFRON) for the period July 2003 — January 2004	38 392,87	38 392,87
17	2nd quarter 2007	District authority	Payments for perpetual usufruct due up to 30.6.2003 to be paid in instalments	263 496,00	34 701,67
18	2nd quarter 2007	District authority	Write-off of interest on payments for perpetual usufruct due up to 30.6.2003 (concerns item above)	137 890,00	18 159,78
19	2nd quarter 2007	ZUS	Social security contributions due up to 30.6.2003 to be paid in instalments	4 077 498,51	46 619,38
20	2nd quarter 2007	ZUS	Interest on social security contributions due up to 30.6.2003 to be paid in instalments (concerns item above)	2 306 780,00	26 341,18
21	2nd quarter 2007	ZUS	Contributions to the Labour Fund and Employee Benefits Guarantee Fund due up to 30.6.2003 to be paid in instalments	1 275 873,09	28 618,42
22	2nd quarter 2007	ZUS	Interest on contributions to the Labour Fund and Employee Benefits Guarantee Fund due up to 30.6.2003 to be paid in instalments (concerns item above)	727 023,00	16 296,744
23	2nd quarter 2007	ZUS	Social security contributions due up to 30.6.2003 to be paid in instalments	2 085 480,55	29 309,94

A	B	C	D	E	F
No	Presumed date of agreement or decision	Granting authority	Form of aid	Nominal value (PLN)	Aid amount (PLN)
24	2nd quarter 2007	ZUS	Interest on social security contributions due up to 30.6.2003 to be paid in instalments (concerns item above)	1 100 260,00	15 463,36
25	2nd quarter 2007	ZUS	Write-off of enforcement costs related to late payment of social security contributions due up to 30.6.2003	641 593,80	641 593,80
26	2nd quarter 2007	National Fund for Environmental Protection and Water Management (NFOSiGW)	Grant	470 000,00	470 000,00
State aid granted after accession				24 166 344,12	3 140 438,76
Total State aid granted and planned				43 605 446,04	22 579 540,68

*Other issues raised by Poland in its comments on the opening of the investigation procedure*

- (25) Firstly, as regards the company's viability, the Polish authorities claimed that the restructuring had proved successful, as Odlewnia Śrem had managed to find a private strategic investor, which would bring in the capital needed and enable the company to regain credibility on the market.
- (26) Poland also stressed that the company had diversified its production, focusing on more sophisticated products with greater value added. The shift to the production of iron castings weighing over 300 kg proved to be a good move, as a number of competitors ceased production in this segment of the market and thus provided an opening for Odlewnia Śrem to become active in it.
- (27) The Polish authorities confirmed that the company no longer had liquidity problems and that all its current business liabilities were being repaid on time.
- (28) Secondly, Poland argued that Odlewnia Śrem could be considered a 'firm in difficulty' within the meaning of the 2004 Guidelines, and thus be eligible for restructuring aid. The Polish authorities confirmed that the restructuring period started in 2003, when the company was clearly in difficulty. The fact that Odlewnia Śrem made a

net profit of PLN 3,9 million in 2005 should be considered a sign that it recovered viability through the restructuring process.

- (29) Thirdly, Poland provided further information about the company's own contribution towards the overall cost of restructuring.
- (30) According to the Polish authorities, the beneficiary made a significant own contribution. The restructuring costs totalled PLN 43,6 million, while the sources of financing for restructuring which can be classified as an own contribution to the restructuring can be valued at PLN 23,7 million, made up of the capital brought in by the private investor (PLN 16 million), the revenue from the sale or lease of assets already carried out (PLN 0,4 million) and the temporary suspension of the application of the Company Collective Bargaining Agreement (PLN 7,3 million). As regards the last of these, the Polish authorities argue that it constitutes a reduction of the cost of employment benefits as Odlewnia Śrem is temporarily released from paying contributions to the Company Social Benefits Fund. This Fund was set up by Odlewnia Śrem and its trade unions voluntarily, and is not required by law. There are therefore no state resources involved. It has been explained that the decision was taken with the agreement of the trade unions, which agreed to sacrifice part of the employees' benefits to support the restructuring. Therefore, the measure can be considered an own contribution.



- (31) In addition, Poland reiterated its view that the following also constituted own contributions to restructuring costs:
- a write-off and an arrangement for payment in instalments of civil law liabilities of PLN 2 million under a composition agreement signed with Odlewnia Śrem's creditors;
  - trade credits granted by suppliers allowing Odlewnia Śrem a longer period than usual in which to pay for materials and services, which Poland calculates to be worth PLN 2,5 million;
  - receivables from clients evaluated at PLN 9 million (realised by imposing shorter payment periods on clients).
- (32) Finally, with regard to the requirement to limit distortion of competition, the Polish authorities cite the 50 % reduction in the company's production of cast iron for industrial fittings (from approximately 11 000 tonnes to 5 500 tonnes). The fact that the company has ceased production of cast iron for wind power stations should be considered a valid compensatory measure.
- (33) Poland argues that demand for both types of product has been increasing in recent years and this trend is expected to continue. Poland has also stressed that Odlewnia Śrem has the technical capacity to produce as much as it did before restructuring, but it has undertaken to limit its output of cast iron for industrial fittings and completely cease production of cast iron for wind power stations. Hence, according to the Polish authorities, these measures can be considered compensatory measures.

Chapter 72 (Iron and steel) and chapter 73 (Articles of iron or steel).

- (36) According to Annex B to the multisectoral framework, the following articles of iron or steel are to be considered steel:

- sheet piling,
- rails and cross ties,
- seamless tubes, pipes and hollow profiles, seamless,
- welded iron or steel tubes and pipes, the external diameter of which exceeds 406,4 mm,

- (37) According to the information provided by the Polish authorities, Odlewnia Śrem does not produce any of these products. Moreover, it does not produce any of the products listed in Chapter 72 under the heading 'Iron and steel', but uses these products — for example, pig iron — as materials for its own production.

- (38) It produces specific, sophisticated end-products which fall under CN heading 7325, 'Other cast articles of iron or steel', and the relevant subheadings such as 7325 10 'Of non-malleable cast iron' and 7325 99 10 'Of malleable cast iron.'

- (39) Annex B to the multisectoral framework does not classify these articles of iron and steel as steel.

- (40) In conclusion, restructuring aid to Odlewnia Śrem is *prima facie* not forbidden and the compatibility of such aid must be assessed by the Commission under the applicable 2004 Community Guidelines.

#### Competence of the Commission

- (41) As some of the events relevant to this case took place before the accession of Poland to the European Union on 1 May 2004, the Commission first has to determine whether it is competent to act with regard to the measures in question.

- (42) Aid measures that were put into effect before accession and are not applicable after accession cannot be examined by the Commission under the -called interim mechanism procedure set out in Annex IV, point 3 of the Accession Treaty or under the procedures laid down in Article 88 of the EC Treaty. Neither the Accession Treaty nor the EC Treaty requires or empowers the Commission to review these measures.

#### ASSESSMENT OF THE AID MEASURES

##### Classification of Odlewnia Śrem's final product

- (34) The Commission had to verify whether the end product of Odlewnia Śrem belonged to the steel sector as, according to the Communication from the Commission on Rescue and restructuring aid and closure aid for the steel sector <sup>(1)</sup> 'the Commission considers that rescue aid and restructuring aid for firms in difficulty in the steel sector as defined in Annex B of the multisectoral framework are not compatible with the common market.'
- (35) Annex B to the Multisectoral framework on regional aid for large investment projects <sup>(2)</sup> (multisectoral framework), which was applicable when the aid was granted, refers to the Combined Nomenclature <sup>(3)</sup> (CN) code for products which are to be considered steel. These products are listed in two chapters of the CN, namely

<sup>(1)</sup> OJ C 70, 19.3.2002, p. 21.

<sup>(2)</sup> OJ C 70, 19.3.2002, p. 8.

<sup>(3)</sup> OJ L 279, 23.10.2001, p. 1.

- (43) On the other hand, measures put into effect after accession would constitute new aid and fall within the competence of the Commission under the procedure laid down in Article 88 of the EC Treaty. In order to assess the moment when a certain measure was put into effect, the relevant criterion is the legally binding act by which the competent national authority undertakes to grant aid <sup>(1)</sup>.
- (44) Individual aid measures are not considered to be applicable after accession if the precise economic exposure of the State was known when the aid was granted.
- (45) On the basis of the information provided by Poland, the Commission was able to identify those measures which were granted before accession and are not applicable thereafter. They are presented in the first part of Table 1 and amount to PLN 19,4 million. It was established that the remaining measures were not granted before accession. Therefore measures worth PLN 24,2 million were considered to have been granted after accession as explained in recital 23 above.

#### STATE AID WITHIN THE MEANING OF ARTICLE 87(1) OF THE EC TREATY

- (46) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the common market.
- (47) The notified guarantee, loan, grants, write-offs, deferrals, and arrangements for the payment in instalments of public law liabilities involve the use of state resources. Furthermore, they confer an advantage on the company by reducing its costs. As a company in difficulties, Odlewnia Śrem would not have obtained such financing on similar terms on the market. This advantage consequently distorts competition.
- (48) The state Treasury was ready to forego revenues from taxes and environmental charges due and, by providing subsidies and guarantees, to create an advantage for the company over its competitors. There was no evidence that the Polish authorities acted as a market creditor and the existence of State aid was acknowledged by the Polish authorities in its notification of the aid.
- (49) The beneficiary is active in the cast iron market and exports its products to other EU Member States. The

criterion of affecting intra-Community trade is therefore fulfilled.

- (50) Therefore the measures which were not granted before accession and constitute new aid were considered State aid within the meaning of Article 87(1) of the EC Treaty. This is not contested by the Polish authorities.

#### Compatibility of the aid with the common market: derogation under Article 87(3) of the EC Treaty

- (51) The exemptions in Article 87(2) of the EC Treaty do not apply to the present case. As to the exemptions under Article 87(3) of the EC Treaty, since the primary objective of the aid is to restore the long-term viability of the undertaking, the only exemption which can be applied is Article 87(3)(c), which allows authorisation of State aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

#### Applicable legal basis

- (52) The Commission assessed the measures constituting new aid and the full restructuring plan in accordance with the applicable rescue and restructuring guidelines. The current Community Guidelines on State aid for rescuing and restructuring firms in difficulty (2004 Guidelines) entered into force on 10 October 2004.
- (53) As already mentioned in the Commission's decision to initiate the formal investigation procedure, in order to assess the compatibility of the new restructuring aid, the restructuring must be considered as a whole. All the aid measures, not only the new aid, have to be taken into account to establish whether the plan will result in the restoration of viability and whether the aid is limited to the minimum necessary, and to determine the appropriate compensatory measures.

#### Eligibility of the undertaking

- (54) Since Odlewnia Śrem showed a net profit of PLN 3,9 million in 2005, the Commission had doubts as to whether it could be considered a 'firm in difficulty' within the meaning of the 2004 Guidelines, and thus be eligible for restructuring aid. These doubts arose in particular because of the lack of information on the beginning of the restructuring period. This meant that the Commission did not know in respect of precisely which point in time the eligibility assessment should be made. Poland has made clear that the restructuring period began in 2003 and Odlewnia Śrem's net profit of 2005 should therefore be considered a sign of viability being restored during the restructuring.

<sup>(1)</sup> Judgment of the Court of First Instance in Case T-109/01 *Fleuren Compost v Commission* [2004] ECR II-127, paragraph 74.



(55) The Commission is satisfied that at the beginning of the restructuring in 2003 the company was a firm in difficulty within the meaning of points 9 *et seq.* of the 2004 Guidelines and is therefore eligible for restructuring aid.

*Restoration of viability*

(56) The 2004 Guidelines state that 'the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. [...] The improvement in viability must derive mainly from internal measures [...]'.  
  
(57) The first crucial problem of Odlewnia Śrem was its high level of debt. The Commission notes that the financial restructuring has been completed.

(58) The company no longer has liquidity problems and all current business liabilities are being repaid on time.

(59) In its decision to initiate the investigation procedure, the Commission raised doubts as to whether the restructuring was mainly financial and the industrial restructuring aspects were insufficient. In their comments following the decision to initiate the procedure, the Polish authorities have provided sufficient evidence that modernisation of equipment and reorientation of production have been sufficiently addressed.

(60) In its decision to initiate the procedure the Commission raised doubts concerning the prospects of finding a private investor. However, the company managed to persuade a private company to invest in it, thus increasing its credibility on the market.

(61) Most of the financial analysis indicators show that the company is better off after the restructuring, as its liquidity, solvency and profitability have been enhanced.

(62) On the basis of these elements, the Commission concludes that its doubts as to whether the plan would lead to restoration of viability have been dispelled.

*Avoidance of undue distortion of competition*

(63) The Commission had doubts as to whether the notified restructuring aid did not unduly distort competition. Poland had to show that the company's 50 % reduction in its production of cast iron for industrial fittings and

termination of its production of cast iron for wind power stations were genuine compensatory measures and not simply the result of external factors such as a decline in demand or inability to compete on the market, and were not therefore necessary to restore viability.

(64) As Poland has shown, both types of product offer good prospects of profitability. Poland has also shown that Odlewnia Śrem has the technical capacity to produce as much as it did before restructuring. Poland undertakes to limit Odlewnia Śrem's output of cast iron for industrial fittings to 50 % of its original output and to put a complete stop to its production of cast iron for wind power stations. Hence, the Commission is of the opinion that these measures can be considered a compensatory measure, and not simply actions necessary for the restoration of the company's viability.

*Aid limited to the minimum*

(65) The Polish authorities have provided much detailed information on the amounts considered to be own contributions of the beneficiary to the restructuring costs.

(66) The Commission is not obliged to take a position on whether the elements listed in recital 31 can be deemed an own contribution to the restructuring, but it considers that the resources listed in recital 30 can be deemed an own contribution.

(67) To conclude, regarding the sources of financing for restructuring, PLN 23,7 million can be considered a contribution to restructuring from the beneficiary's own resources or from external resources free of State aid. Total restructuring costs, including those incurred before accession, were PLN 43,6 million. Odlewnia Śrem's own contribution to overall restructuring costs is therefore 54 %.

(68) The 2004 Guidelines set the minimum level of the own contribution to restructuring costs at 50 %. The Commission therefore concludes that the own contribution is significant and, in the light of the information provided, the aid is limited to the minimum necessary.

(69) Furthermore, the beneficiary of the aid is based in Stalowa Wola, which is situated in a region eligible for aid under Article 87(3)(a) of the EC Treaty. This is expressly regarded as an additional factor in favour of the compatibility of the aid (see point 56 of the 2004 Guidelines).

**CONCLUSIONS**

(70) The Commission finds that Poland has unlawfully implemented the aid in question in breach of Article 88(3) of the EC Treaty. However, the Commission concludes that the State aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid totalling PLN 43,6 million granted to Odlewnia Śrem by Poland is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

*Article 2*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 10 December 2008.

*For the Commission*  
Neelie KROES  
*Member of the Commission*

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