EUROPEAN COMMISSION

Brussels, 25.01.2012
C (2012) 162 finał version

**PUBLIC VERSION**

**WORKING LANGUAGE**

**This document is made available for information purposes only.**

**Subject:** State aid SA.32965 (2011/N) – Poland
**Restructuring aid to ZNMR**

Sir,

The European Commission ("the Commission") wishes to inform Poland that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided not to raise any objections to the relevant measure as it is compatible with the Treaty on the Functioning of the European Union ( hereinafter "TFEU").

The Commission has based its decision on the following considerations:

## I. PROCEDURE

(1) On 4 May 2011, Poland notified restructuring aid, in the form of a direct grant of PLN 400 000 (EUR 91 000), to Zakład Naprawczy Mechanizacji Rolnictwa w Ostródzie Sp. z o.o. (hereinafter: "ZNMR" or "the company"). Additional information was requested by the Commission by letters of 8 June 2011 and 3 October 2011. In response Poland submitted additional information on 2 August 2011 and 28 October 2011.

Jego Ekscelencja
Pan Radosław SIKORSKI
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
00-580 Warszawa
POLSKA

(2) The notified restructuring plan was preceded by a notification of a rescue loan of PLN 400 000 of 2 June 2010 which was approved by the Commission on 19 October 2010 (N 217/2010).

## II. DESCRIPTION

### 1. Beneficiary

(3) ZNMR, the beneficiary of the restructuring aid, is located in the region of Warmińsko-Mazurskie, a Polish region eligible for regional aid under Article 107 (3)(a) TFEU. The company was created in 1952. It specialises in manufacturing metal structures such as crankshafts, steel structures (including wind turbine generators) and steel structures for the construction industry (including roofing and railings for the domestic market). It is also active on the market of production of fuel tanks for boats and yachts and in the repair of tractor engines as well as provision of other services (including refurbishment of sub-assemblies, welding services, machining).[1] The company does not export any of its production: the entirety of its sales is realised in Poland.

(4) Before its restructuring, the company's shares were owned by the Ministry of Treasury. Currently, 85% of them are owned by a public authority called Agencja Rozwoju Przemysłu S.A. (Industrial Development Agency – ARP S.A.), 13% by natural persons (employees or former employees of the company entitled to acquire shares held by the State of Treasury free of charge) and the remaining 2% by the State Treasury (the transfer of the Treasury's shares free of charges to eligible employees of the company is still under way).

(5) Thus, in line with Article 3(4) of the Annex to the Commission communication on the definition of micro, small and medium-sized enterprises[2], it is considered a large enterprise. ZNMR employs 80 workers; it does not belong to a larger business group.

(6) ZNMR is currently facing serious difficulties that have started in 2008. In particular, the Company presents the following figures:

- persistent losses – the company recorded losses of PLN 595 000 in 2008, PLN 837 000 in 2009 and PLN 218 000 at 31 December 2010;
- falling asset value – the net value of the company's assets was PLN 1 283 000 in 2008, PLN 446 000 in 2009 and PLN 227 000 at 30 December 2010;

---

1 According to the Polish authorities, the market share of the company on the Polish market in the crankshaft is around 10-15% (August 2010) while the market share regarding the remaining production on the Polish market is negligible. The company operate solely on the Polish market.

2 Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise, OJ 2003/L 124/36.

- increasing debt – at the end of 2008 liabilities and provisions for liabilities stood at PLN 1 647 000 or 56.2% of total assets, a percentage which had risen to 82.2% by the end of December 2009 (with liabilities and provisions for liabilities standing at PLN 2 065 000). At 31 December 2010 the Company's indebtedness had deteriorated further and stood at 90.1% - an increase attributable above all to a fall in the balance-sheet total from PLN 2 511 000 at the end of 2009 to PLN 2 294 000 (with liabilities and provisions for liabilities standing at PLN 2 066 000);

- falling revenues from sales – in the period 2008-2010 revenues from sales fell from PLN 6 767 000 in 2008 to PLN 5 771 0000 in 2010.

### 2. The reasons of the company's difficulties

(7) As main reasons of the financial difficulties the restructuring plan mentions the following:

**a.** Technical infrastructure and machinery resources are not adapted to market requirements (inefficient and energy-consuming equipment);

**b.** High fixed costs of operations;

**c.** The public ownership of the company: the ownership structure of the company does not suit market requirements and expectations - many contractors do not wish to cooperate with a company that is owned by the State Treasury. Moreover under the current ownership structure, the powers of the Management Board are very limited, which hampers the effective management of the Company;

**d.** Obsolete and inefficient employment structure - the ratio of white-collar workers and indirect blue-collar workers to blue-collar workers is too high.

**e.** Low receptivity of the workers for flexibility at work, lack of concern for the company's property and reluctance to change.

### 3. The aid measure

(8) Poland notified to the European Commission an aid measure for restructuring in the form of a direct grant of PLN 400 000 (EUR 91 000) from the Ministry of Treasury. This amount will allow ZNMR to reimburse the principal of the rescue loan authorised by the Commission on 19 October 2010 in its previous decision.

### 4. Restructuring measures and sources of financing

(9) In order to address the difficulties identified above, ZNMR's management intends to carry out several restructuring measures, in particular:

**a.** Replacing of 70% of the shaping machines, purchasing of a numerical control lathe and a numerical control milling machine;

**b.** Optimising arrangement of machines to shorten transport routes between work places and to obtain free working space, increase (in square meters) of some production areas. These changes will make it possible to accept and execute larger orders;

**c.** Manufacturing of crankshafts will be stopped, the profitability of this production area being indentified as low. Machinery related to this activity will be sold;

**d.** Increasing welders' professional qualifications and training technical workers in weld testing and obtaining appropriate certificates to manufacture structures which requires such qualifications;

**e.** Reducing employment (reduction by 23%, i.e. 18 persons concerned on a total of 80), white-collar employees in particular;

**f.** Adopting of a new marketing strategy (creation of a position of sales representative, participations in fairs an exhibitions, new website, advertisements in trade press, selling the rights to the name and logo and adopting new ones);

**g.** Privatisation of the company. This will give to the Board the power of conducting the restructuring of the company and result in more involvement of the employees regarding its development.

(10) The restructuring measures listed above will have a total cost of PLN 1 238 100. The company's own contribution to restructuring would amount to PLN 838 100. The remaining costs would be financed out of State aid.

(11) Below is a table showing the costs associated with the implementation of the restructuring programme and the sources of funding for this purpose.

| Item No. | Measure | Value | Sources of funding | |
|---|---|---|---|---|
| | | | State aid | Own contribution |
| 1 | Financial restructuring - repayment of the rescue loan | 400,000 | 400,000 | |
| 2 | Financial restructuring - repayment of outstanding obligations | 188,000 | | 188,000 |
| 3 | Restructuring of production | 545,000 | | 545,000 |
| 4 | Restructuring of employment | 45,100 | | 45,100 |
| 5 | Marketing activities | 60,000 | | 60,000 |
| | Total | 1,238,100 | 400,000 | 838,100 |

**Table 1. Costs of the restructuring and sources of funding**

## 5. Compensatory measures

(12) As part of compensatory measures the company plans to eliminate the engine repair section. The forsaking of this activity is definitive. The deadline for the forsaking of the engine repair services has been determined at the end of 2012. This activity is being gradually halted since the beginning of 2011 - currently the remainders of orders and long-term orders are being executed.

(13) Below there is a table presenting the level of proceeds from sale as part of the above-mentioned operations obtained by the company during the past five years and forecast proceeds for the next five years - assuming no forsaking of the above-mentioned activity. The forecasts are based on the company's experience from previous years and inquiries received by it from the existing and new customers.

**Table 2. Profit from sale – engine repair operations**

| 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|---|
| 168 873,26 | 67 923,01 | -56 784,72 | -96 061,03 | 60 010,20 | 76 029,15 | 75 202,00 | 69 569,00 | 68 956,00 | 69 685,00 |

(14) The table above indicates that the engine repair operations were profitable in the past years except in 2008 and 2009 which was caused by the economic crisis. In particular, the net profit for 2010 amounted to PLN 60 010, 20.

# III. ASSESSMENT OF THE AID

## III.1. State aid in the meaning of Article 107(1) of the TFEU

(15) Under Article 107(1) of the TFEU, State aid is any support 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 incompatible with the internal market.

(16) The notified measure involves State resources granted by an official body of the State, i.e. the Ministry of Treasury. Therefore, the loan is granted from States resources and is imputable to the State. The direct grant, given by the Ministry of Treasury without any counterparty from ZNMR, is an economic advantage that ZNMR would not have obtained under normal market conditions. The grant is given to ZNMR alone, the advantage is therefore selective. Furthermore, as there is trade between the Member States in the products which the company manufactures, the measure is liable to improve the

competitive position of the beneficiary in relation to its competitors in the internal market, and it consequently distorts or threatens to distort the competition and is liable to affect trade between the Member States.

(17) Therefore, the Commission considers that the direct grant to ZNMR constitutes State aid pursuant to Article 107(1) of the TFEU. The Polish authorities moreover don't contest this qualification.

### III.2. Compatibility of the Aid

(18) The exemptions in Article 107(2) of the TFEU do not apply to the present case. As to the exemptions under Article 107(3) of the TFEU, since the primary objective of the aid concerns the restoration of the long-term viability of an undertaking in difficulty, only the exemption of Article 107(3)(c) of the TFEU, which allows to authorise State aid granted to promote the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest, can be applied.

(19) The Commission considers the present aid to constitute a restructuring aid which must be assessed in the light of the criteria under the Community guidelines on State aid for rescuing and restructuring firms in difficulty[3] (hereinafter, "the Guidelines"), in order to establish whether it may be compatible with the internal market pursuant to Article 107(3) TFEU. The Commission will therefore examine below whether the conditions spelled out in the Guidelines are fulfilled.

*The 'One time, last time' principle*

(20) According to point 73 of the Guidelines, if the firm concerned has already received rescue or restructuring aid in the past, including any un-notified aid, and where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted (whichever is the latest), the Commission will not allow further rescue or restructuring aid.

(21) Polish authorities confirmed that the company did not receive any rescue or restructuring aid in last ten years apart from the notified rescue aid cleared by the Commission decision in its previous decision. On this basis, the Commission finds that the company complies with the 'one time, last time' principle as laid down in point 72 et seq. of the Guidelines.

*Company in difficulty*

(22) The Guidelines consider a firm to be in difficulty if it is unable to recover through its own resources or by raising the funds it needs from shareholders or on the market, and without the intervention of public authorities will almost certainly go out of business. Point 10 of

---

[3] OJ C 244, 1.10.2004, p. 2.

the Guidelines spells out that a company is in difficulty where it has lost half of its registered capital and more than one quarter of that capital has been lost over the preceding 12 months. The Guidelines in point 11 also list some usual signs of such companies, such as mounting debt, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, rising interest charges or falling or nil net asset value.

(23) Although the company has lost 79,27% of its registered capital, ZNMR does not fulfil the conditions set in point 10.a) as it did not loose 25% of it over the last twelve months. It is neither fulfilling the conditions set in point 10.c) since it is not eligible to Polish insolvency proceedings. For that reason, the Commission has to assess the situation at the light of point 11 of the guidelines. In the case at hand, the Company displays the usual symptoms of a firm in difficulty (see figures above pt.(6)). In particular, the company records persistent losses and revenues from sales are decreasing (see figures below under point (22)). The company's indebtedness has deteriorated from 56.2% of the value of total assets in 2008 to 90.1% of the value of total assets in 2010.

(24) Therefore, the Commission concludes that ZNMR is to be considered as a company in difficulty in the sense of point 11 of the Guidelines.

*Restoring long-term profitability*

(25) In order to consider a measure compatible under points 34-37 of the Guidelines, the restructuring plan has to analyse the problems which have led to the difficulties, to set out the means by which to restore the long-term viability and health of the firm within a reasonable timescale. This has to be done on the basis of realistic assumptions as to future operating conditions.

(26) In this regard, the Commission notes that the problems that led the company into difficulties were indentified (see above point (7)) and that serious and concrete remedies are being implemented (see above point (9)).

(27) In particular, regarding the reduction of the fixed production costs, 70% of the technical infrastructure and machinery resources will be replaced by modern and less energy consuming fittings. Moreover, an optimised arrangement of the machines will be put in place.

(28) The manufacturing of crankshafts was identified as a low profitable production area and will be stopped. The company will focus on the production of yacht fittings and metal structures where a strong demand is recorded. In addition, a real marketing strategy will be developed in order to target important clients.

(29) The total wage bill of the company will be substantially reduced, decreasing from PLN 2 187 648 to PLN 1 809 963(-17%). Social and training measures will be taken in order to have a reduced but better skilled workforce.

(30) The Commission also observes that the privatization process of the company has already begun. Indeed, ZNMR received several take-over proposals and on 30 September 2011 engaged in exclusive negotiations with one interested company that has submitted a binding offer. The privatisation will limit political pressure and increase the powers of the Board to conduct necessary reforms of the company. Moreover, it will lead to more involvement of the employees regarding the development of the company which, according to the polish authorities, were not possible in a state-owned structure. Finally, the privatisation will positively modify the image of the company among the clients as a lot of them have expressed their reluctance to do business with state-owned companies. Concerning the turnover, the restructuring plan has retained conservative assumptions regarding volume of future sales. Indeed, although the turnover in 2010 was of PLN 5 770 643.21, the restructuring plan tables on a lower turnover during the coming years (PLN 5 350 000 in 2011; PLN 5 450 000 in 2012; PLN 5 550 000 in 2013; PLN 5 657 548 in 2014 and PLN 5 788 315 in 2015).

(31) On this basis, the following profits are forecasted:

**Table 4. Turnover, profit on sales and net profit for the coming years**

| Years | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|
| Turnover | 5,350,000 | 5,450,000 | 5,550,000 | 5,657,548 | 5,788,315 |
| Profit on sales | 28,044 | 34,488 | 126,927 | 247,078 | 295,786 |
| Net Profit[4] | 527,521 | 74.311 | 266,471 | 204,136 | 251,821 |

(32) The Commission therefore considers that the restructuring plan is capable of restoring the long-term viability of the firm. The Commission reminds the Polish authorities that pursuant to point 52 to 54 of the Guidelines, the restructuring plan, including the commitment to privatize the company, may only be altered with the prior consent of the Commission.

[4] The net profit in 2011 includes the aid (400 000 PLN), the nets profits in 2011, 2012 and 2013 includes revenues from the sale of fixed assets related to the forsaking of the crankshafts production.

*Aid limited to the minimum, own contribution*

(33) Pursuant to points 43-45 of the Guidelines, the aid must be limited to the strict minimum necessary to enable the restructuring and a beneficiary is expected to make a significant contribution to the restructuring from its own resources or from external commercial financing.

(34) The Guidelines clearly indicate that a significant part of the financing of the restructuring must come from own resources, including the sale of assets not essential to the company's survival and/or from external financing at market terms.

(35) On this basis, the Commission takes note that the own contribution mentioned above (see point (10)) amounts to approximately 67 % of the restructuring costs and thus corresponds to more than 50 % of the restructuring costs, as required by the Guidelines for large companies.

*Avoiding undue distortions of competition*

(36) Pursuant to points 38-42 of the Guidelines, measures must be taken to ensure that the aid's adverse effects on trading conditions are mitigated as far as possible. The aid shall not unduly distort competition. This usually means a limitation of the presence which the company can enjoy on its markets at the end of the restructuring period. The compensatory measures should be in proportion to the distortive effects of the aid and, in particular, to the size and relative importance of the firm on its market or markets. The degree of compensatory measures must be established on a case-by-case basis and with regard to the objective of restoring the long-term-viability of the firm. Moreover, according to point 7 of the Guidelines the Commission will request compensatory measures which minimise the effect on competitors.

(37) According to point 56 of the Guidelines, the conditions for authorising aid are less stringent as regards the implementation of compensatory measures in assisted areas. In the case at hand, the Commission notes that ZNMR is located in an assisted area according to Article 107(3)(a) TFEU.

(38) The Commission further notes that ZNMR has a very limited market share[5] and that the amount of aid it will receive is rather limited (less than EUR 100.000). ZNMR will stop the engine repair section. The information presented by Poland clearly indicates that this activities was profitable in the past years and would this activity not have been forsaken, it would remain profitable.

(39) It should be noted that there are companies which provide engine repair services and operate in direct market environment (e.g. RSY SA Iława). The forsaking by the company of the above-mentioned operations will help its existing competitors to expand their business and increase their share in the repair market.

---

[5] According to the Polish authorities, the market share of the company on the Polish market in the crankshaft is around 10-15% (August 2010) while the market share regarding the remaining production on the Polish market is negligible. The company operate solely on the Polish market.

(40) For the above reasons, the Commission considers that the proposed compensatory measures are adequate to ensure that the State aid's adverse effects on trading conditions are minimized.

(41) Consequently, the proposed compensatory measure complies with points 38-42 of the Guidelines.

### III. 3. Continuation of the rescue aid beyond six months

(42) A rescue aid for ZNMR, in form of a soft loan, was approved by the Commission on 19 October 2010. In the notification of the rescue aid, the Polish authorities committed to forward, not later than six months after the rescue aid measure is authorised, a restructuring/liquidation plan or proof that the loan has been repaid.

(43) The rescue aid in form of a loan was not terminated nor did the Polish authorities submit a restructuring plan to the Commission within six months from the authorisation of the rescue aid. Therefore, the rescue aid became illegal and incompatible. This situation would normally force the Commission under point 27 of the Guidelines to open the formal investigation procedure. However, the Commission can assess the continuity of this loan as restructuring aid. In the case at hand, the Commission notes that the loan will be replaced by the direct grant under scrutiny. It addresses the same purpose and does not change the overall restructuring costs and amount of own contribution of the company. Therefore, the prolongation of the rescue loan beyond six months can be considered as compatible restructuring aid.

(44) The Polish authorities explained that the delay to submit the restructuring plan was due to procedural delays at national level. They also confirmed that the rescue loan will be terminated immediately after the adoption of this decision.

## IV. DECISION

(45) The Commission considers that the restructuring aid in favour of ZNMR is compatible with the internal market under Article 107(3)(c) of the TFEU.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site http://ec.europa.eu/eu_law/state_aids/state_aids_texts_pl.htm.

Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe

B-1049 Brussels
Fax No: +32-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission