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Subject: State aid SA. 33474 (2011/N) – Poland - Aid for the restructuring of Formet SA

1. Procedure

(1) On August 4, 2011, Poland notified a State aid for the restructuring of Fabryka Form Metalowych FORMET S.A. (Metal Mould Plant FORMET Joint-Stock Company), hereinafter referred to as "FFM FORMET" or "the company". On 23 September 2011 and on 7 December 2011 the Commission requested additional information on the measure. The Polish authorities provided additional information by its latter dated on 26 October 2011 and 10 January 2012 registered at the Commission at the same dates.

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2. Description

2.1. Beneficiary

(2) FFM FORMET is located in Bydgoszcz, in Kujawsko-Pomorskie province, a Polish region eligible for regional aid under Article 107 (3)(a) TFEU.[1]

(3) The company is, since 45 years, a manufacturer of injection moulds for plastics, rubber injection moulds, pressure casting moulds for metals an punching tools (mainly for household appliances sector, motor vehicle sector, electronics, etc.) Prototype production is typical for the activities of the company. Consequently, tasks performed by the company during the whole production process are highly complex and non-standard-ones. Its domestic market share is estimated at 1.6 % (accordingly around 0.16% of the EU market) for injection moulds and about 10 % share in the medium and large moulds[2].

(4) FFM FORMET is a company wholly owned by the State treasury. Since 15 April 2000 it has been functioning as a joint-stock company.

(5) In February 2011, the company was employing 141 people. FFM FORMET is wholly owned by the State treasury and, therefore should be considered as a large enterprise.[3]

2.2. Financial difficulties

2.2.1. Reasons behind FFM Formet's difficulties

(6) According to the Polish authorities, the difficulties of the company are mainly due to internal disturbances i.e. frequent changes of the management board, high fixed costs of production process and inefficiencies in marketing and sales. Furthermore, there are also external factors aggravating the company's situation, among them: decreasing demand for products and services, unprofitable orders and economic crisis in Poland and in Europe.

(7) Since 2008 FFM FORMET is in a difficult financial situation. It has been registering net losses in its activities, failing turnover as well as failing net asset value. However, in 2010 a small profit was recorded. As explained by the Polish authorities, it was an exceptional occurrence caused by sale of real estate belonging to the company which took place during that period. The negative tendency recurs in 2011. The table below presents the main financial indicators for the company for the period 2008-2011.

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1 See the Decision of the Commission of 13.09.2006 on the case N531/2006 "Poland-Regional aid map 2007-2013", OJ C 256, 24.10. 2006, p. 6

2 Own study of the company

3 Article 3(4) of the Annex I to the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (OJ C 1422, 20.05.2003)

	2008	2009	2010	2011 (31.08.2011)
Turnover	20 054 357	9 611 354	14 974 975	7 895 064
Net financial result	- 2 708 404	- 3 340 806	1 125 612	- 1 592 043
Liabilities	11 798 000	9 941 000	7 785 000	
Net asset value	3 424 634	21 489	816 810	- 806 206

Table 1: Financial situation of the company in 2008-2011, in PLN

2.3. The aid measure

(8) Poland notified restructuring aid in the amount of PLN 2.3 million (ca. EUR 0.51 million). The proposed aid takes form of the conversion of the debt of the company – a rescue loan approved by the Commission on 25 November 2010, amounting to PLN 2.3 million[4] - into shares.

2.4. Restructuring plan

2.4.1. Restructuring measures

(9) The notified restructuring of FFM FORMET covers (as it has been notified) the period of 2011-2015 and should, according to the Polish authorities, enable the company to return to long term viability. Actions to be taken include the purchase of three state-of-the-art milling and one deep hole boring machine, as well as the modernisation of the measuring machine. Furthermore, the restructuring plan envisages the repair of other machines belonging to the company, building refurbishment (roof and machine systems), marketing outlays and financial restructuring (loan to share capital conversion). According to the Polish authorities the own contribution should reach 70 % of the restructuring costs.

2.4.2. Restructuring costs and sources of financing

(10) Total planned restructuring outlays and sources of financing are presented in the table below:

Planned restructuring activities and financing sources for the years 2011-2015

PLN thousand

Restructuring outlays and costs	**Amount**	**Sources of financing**	**Financial resources**
Machining centres – net value (100%)	3 992	Lease promise of 7 July 2011 issued by Deutsche Leasing Polska S.A. – 80% of the lease subject value	3 194

[4] Commission's decision on the State aid case N246/2010 Rescue aid to Formet SA, OJ C 357, 30.12.2010, p. 12

Modernisation of the measuring machine	150	Funds from real estate lease –1 293 Sale of redundant land	1 293 1 075
repairs of machines	325		
building refurbishment (roof and machine systems)	880		
marketing outlays	215		
financial restructuring (loan to share capital conversion)	**2 300**	state aid	**2 300**
Total	**7 862**	**Total**	**7 862**

Table 2: Planned restructuring activities and financing sources

2.4.3. Own contribution to the restructuring costs

(11) The company will contribute to the costs of the restructuring costs directly in the amount of PLN 5 784 000, with funds coming from the real estate lease, the sale of redundant land and the leasing (the Polish authorities provided a lease promise issued by a private leasing company – Deutsche leasing on 7 July 2011 on the base of a positive estimation of the creditworthiness of the company as well as copies of real estate lease contracts signed with private companies)

2.5. **Compensatory measures**

(12) The Restructuring plan of FFM FORMET envisages that in order to limit the negative impact of the state aid on the conditions of trade on the domestic and EU markets, the company will introduce the following compensatory measures:

- discontinuing the metalworking services
- decommissioning of particular machines.

(13) According to the Restructuring plan, the annual sales value of the metalworking services for the previous three years was around PLN 400 000. Assuming the implementation of investments by the company the annual sales value of these services in 2011 would be PLN 500 000. In the years 2011-2015, forecast revenue would amount to PLN 2.5 million. Assuming profit margin of 25 % (average value for the years 2008-2010), the result achieved would amount to PLN 625 000. The table below presents the profitability of the metalworking services achieved in the period of 2008-2010:

No	*Services*	*Revenues*	*Technical manufacturing cost*	*Result*	*Profitability*
1	Metalworking	**2008**			
		300 000	140 200	145 500 (117 855 net)	48.50%
		2009			
		443 000	179 000	31 000 (25 110 net)	7%

		2010			
		400 000	170 000	76 000 (61 560 net)	19%

Table 3: Profitability of the metalworking services achieved in the period of 2008-2010, in PLN

(14) Moreover, the Restructuring plan envisages the decommissioning of certain grinding machines. This measure is aimed at limiting the 'grinding' capacity of the company to the level necessary for carrying out basic activities that is manufacture of tools. Purchase of new machines without decommissioning of some existing machines would result in increasing the company's capacity. According to the Polish authorities, decommissioning of these machines would reduce the company's capacity by further PLN 500 000 per year. The table below presents a list of machines for decommissioning. These machines generated the capacity of about 6250 hours per year. The load of 6250 hours per year reflects the actual time of operations of these machines, taking into account their technical condition, technology and quality potential.

No	*Machine*	*Machining type*	*Load [hours per year]*
1	BPH 20NA	Surface grinding	800
2	SWPO 80	Optical grinding	700
3	SPC 20	Surface grinding	800
4	SPD 30	Surface grinding	1 000
5	RUP 28	Cylindrical grinding	1 350
6	NUA 25	Tool grinding	1 600
Total hours per year			6 250

Table 4: List of machines for decommissioning

Grinding activities including production of tools on the machines to be decommissioned	*2008*	*2009*	*2010*	*2011 (forecast)*
Value of works	375 000	185 000	320 000	532 000
Profitability in %	20.5%	11%	18%	12%
Profit	76 875	20 350	57 600	63 840
Net Profit	62 270	16 485	46 655	51 710

Table 5: value of works realized on the machines to be decommissioned, in PLN

(15) According to the Polish authorities, total operating hours per year amount to 6 250, which based on the hourly rate of PLN 80 gives PLN 500 000 per year, i.e. PLN 2.5 million for 5 years.

(16) The table below presents the profitability of grinding services achieved in the period 2008-2010:

No	*Services*	*Revenues*	*Technical manufacturing cost*	*Result*	*Profitability*

1	Grinding services	**2008**			
		11 700	6 600	5 900 (4 779 net)	50.42%
		2009			
		80 700	21 700	19 500 (15 795 net)	24.16%
		2010			
		66 700	40 800	25 900 (20 980 net)	38,83%

Table 6: Profitability of the grinding services achieved in the period of 2008-2010, in PLN

(17) When summing up the two proposed compensatory measures, the Polish authorities point out that, during the forecast period, the company will give up revenues totalling PLN 5 million (PLN 1 million per year on average), i.e. 4,76% of its ultimate capacity.

2.5.1. Financial plan of the company (including simulations for the years 2011-2015 with sensitivity analysis for major assumptions)

(18) The financial forecast has been prepared for three different scenarios: real, optimistic and pessimistic, which, although to various degree, assume restoring the company's profitability.

(19) As all these scenarios assume the company's return to profitability, for the purposes of this decision, only the pessimistic scenario will be presented.

(20) The financial forecast for the pessimistic scenario is based on the following assumptions:

- Inflation rate of 2.5% has been assumed for the years 2011-2015;
- Costs of basic materials will equal about 23-25% of revenues plus inflation;
- The output will be close to the level of planned sales volumes. A drop in revenues compared to 2010 has been assumed in subsequent years. This would result from depreciation of assets (production machines and equipments), no outlays for necessary repairs, overhauls and checks of the company's machine park;
- The company revenue forecast was prepared on the value level – FFM FORMET manufactures moulds and provides services based on specific orders;
- Limited refurbishments are planned only for 2011;
- Payroll will equal the average gross salary multiplied by average employment and number of months per year;

- The company expects neither changes in the balance of products nor any extraordinary gains or losses;

- The scenario assumes obtaining public aid for restructuring including the rescue loan to be converted into shares;

- Planned inflows from real estate rental and gains on sale of the right to perpetual usufruct of land (2011) have been disclosed.

(21) The table below envisages the main financial indicators for the company for the years 2011-2015.

In PLN	2011	2012	2013	2014	2015
Turnover	14 500 000	14 900 000	14 900 000	15 200 000	15 600 000
Net financial result	1 339 000	330 000	553 000	695 000	835 000
Liabilities	8 603 000	7 487 000	6 575 000	5 810 000	5 046 000
Net asset value	4 355 000	4 635 000	5 089 000	5 680 000	6 390 000

Table 7: Financial situation of the company – pessimistic scenario for the years 2011-2015

(22) According to the Polish authorities, if the assumptions included in this version of the Restructuring plan are validated in reality, the company will regain financial liquidity. FFM FORMET will start to restore its equity as a result of retaining profits generated for subsequent years.

3. Assessment of the aid

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

(23) 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.

(24) The notified measures involve State resources granted by the Minister of the State Treasury. It constitutes a selective advantage since it will provide FFM FORMET with resources which it would not otherwise be able to obtain on the market, given its financial difficulties. Moreover nothing in the information examined suggests that debt to equity swap is envisaged by the authority granting the aid in the light of market considerations.

(25) The Commission notes that FFM FORMET's production is predominantly destined for the national market but it competes with foreign undertakings. In addition, the company exports approximately 2.4% of its production to Russia, Germany, Sweden and Slovak Republic. Several other companies operate on those markets in competition with FFM

FORMET and there is trade between Member States in moulds. Consequently the aid can at least potentially distort competition and affect trade between Member States.

(26) Therefore, the Commission considers that the present aid measure in favour of FFM FORMET constitutes State aid pursuant to Article 107(1) of the TFEU.

3.3. **Applicable rules**

(27) Article 107(3)(c) of the TFEU stipulates that the Commission may 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. On this basis, the Commission has adopted the Guidelines for State Aid for Rescue and Restructuring of Firms in Difficulty (hereinafter as "the Guidelines),[5] which spell out the rules as to the eligibility of the firm for the aid and the compatibility of restructuring aid.

3.4. **Eligibility of the company for restructuring aid**

(28) Pursuant to the provisions of point 12 of the Guidelines, newly created firms are not eligible for rescue aid. Under the Guidelines a firm is considered as new for the first three years following the start of operations in the relevant field of activities.

(29) FFM FORMET was registered as a joint stock company in 2000 and has been active in the manufacturing of moulds for 45 years. Therefore it cannot be considered as a newly created firm.

(30) Pursuant to point 13 of the Guidelines a firm belonging to a larger business group is not normally eligible for restructuring aid, except where it can be demonstrated that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

(31) The Commission notes that FFM FORMET does not belong to any business group.

3.4.1. The 'One time, last time' principle

(32) According to point 72 et seq. of the Guidelines, if the firm concerned has already received rescue or restructuring aid in the past, including any non 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, unless the restructuring aid follows the granting of rescue aid as a part of a single restructuring operation.

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[5] Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ 2004/C 244/02 Commission Communication concerning the prolongation of Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 156 of 9.7.2009, p.3

(33) The Polish authorities indicated that the company has not received any rescue or restructuring aid in the last ten years other than the rescue aid in the form of a loan amounting to PLN 2.3 million notified and approved by the Commission on 25 November 2010. The rescue aid approved in November 2010 constitutes the first step of the present restructuring process of the company. On this basis, the Commission finds that the company complies with the 'one time, last time'

3.4.2. Company in difficulty

(34) According to point 9 of the Guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.

(35) Under point 10, a firm is considered to be in difficulty when

(a) in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

(b) when in a case of a company, where at least some members have unlimited liability for the debt of the company where more than half of its capital as shown in the company accounts has disappeared and more than one quarter has been lost in the preceding 12 months.

(c) whatever type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(36) The Commission notes that the company does not fulfil the conditions of points 10 (a) of the Guidelines: the loss of the net asset value during the preceding 12 months was below the required 25% of the capital provided for in points 10 (a) of the Guidelines. The Polish authorities also informed the Commission that the beneficiary of the aid does not fulfil the criteria under the Polish law for being the subject of collective insolvency proceedings.

(37) However, point 11 of the Guidelines provides that even when none of the above circumstances are present, a firm may be defined as being in difficulty when it presents usual signs of a firm in difficulty such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil assets value.

(38) In fact the company has experienced continued net losses: from PLN -2.708 million in 2008, PLN -3.341 million in 2009, and the net result of PLN 1.125 million in 2010. The positive result in 2010 was due to an exceptional event (sale of assets). The operating profits were in any event negative in 2010: PLN -0.455 million). Net asset value of the company is also falling, if the above mentioned sale of assets that occurred in 2010 is not considered (PLN 3.424 million in 2008, PLN 21 thousands in 2009 and PLN 816 thousands in 2010). Other data also confirms the bad financial situation of FFM

FORMET: falling turnover (from PLN 20.054 million in 2008 to PLN 14.974 million in 2010) and negative net cash flows (PLN -970 818 in 2008, PLN -189 902 in 2009 and only PLN 58 249 in 2010 uniquely due to the already mentioned sale of real estate). The Commission considers that the above factors, and especially the fact that the company is registering losses on its commercial activities and its net asset value fell by 76% during the last 3 years (2008-2010) still reflects the difficult financial situation of the company.

(39) Therefore the Commission considers FFM FORMET to be a firm in difficulty pursuant to point 10 (a) of the Guidelines.

3.4.3. Restoring long-term profitability

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

(41) The Commission notes that the measures presented in the restructuring plan are aimed at addressing the identified problems that lead to the company's difficult financial situation. The plan is focussing on a modernisation of a significant part of the park of machines and equipment. On one hand, the measure should lead to reductions in exploitation costs and on the other it should enable the company to propose more reliable services and to expand the offer range.

(42) The Polish authorities have provided the financial plan of the company for the period 2011 – 2015 for probable, pessimistic and realistic scenarios. The Commission notes that the proposed restructuring measures should enable the company to return to viability, even in the pessimistic scenario, and that the plan is based on realistic assumptions, as developed in point 19 above). The Commission notes that in the pessimistic scenario the company generates net profits during the whole restructuring period (2011-2015) and the net asset value of the company should progressively increase during this period from PLN 4.355 million in 2011 to PLN 6.39 million in 2015. In parallel, its liabilities will be decreasing to PLN 5.046 million in 2015. The plan should still enable the company to return to viability in realistic and optimistic scenarios, which foresee higher sales.

(43) Therefore, on the basis of the above, the Commission considers that the proposed restructuring measures are capable of restoring the long-term viability of the company within a reasonable time scale and that they are established on realistic premises.

(44) Consequently, the Commission considers that the full implementation of the proposed plan should enable the company to achieve the long-term viability and complies thus with point 34 et seq. of the Guidelines.

3.4.4. Aid limited to the minimum, own contribution

(45) 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 financing on market terms.

(46) The aid measure at hand proposed that the own contribution of the company to the costs of the restructuring amounts to PLN 5.562 million. It would be financed in part by funds from the sale of certain company's real estates, lease of a real estate and by a financial leasing (for which the Polish authorities have provided certifying documents). The total cost of the restructuring is of PLN 7.862 million.

(47) The Commission can accept the own contribution with the funds coming from the sale of certain assets of the company. The Polish authorities have provided independent evaluation of the real estate to be sold for the total amount of PLN 1.075 million. The Commission can also accept the own contribution by the company in the form of financial lease amounting to PLN 3.194 million as it can be considered as an external financing similar to crediting offered by a bank Indeed, the acquisition of an asset which is essential for the restoration of viability through a financial lease (as in this case) on market terms is in substance equivalent to a partial financing the acquisition through a loan. Both financing techniques constitute "external financing at market conditions" as mentioned in point 43 of the Guidelines, and is also a sign that the market believes in the viability of the restructuring plan of the company.

(48) The Commission also accepts the own contribution of the company coming from the lease of the real estate belonging to the company amounting to PLN 1.293 million. According to the Polish authorities, the company concluded several lease agreements with different undertakings (the relevant copies have been provided to the Commission), thus ensuring itself the monthly profit of PLN 27 682.

(49) On this basis, the Commission takes note that the total own contribution mentioned above of PLN 5.562 million (funds from the sale of assets PLN 1.075 million + financial leasing PLN 3.194 million + founds from the real estate lease PLN 1.293 million) corresponds to more than 50% of the restructuring costs required by the Guidelines, therefore fulfilling its conditions.

3.4.5. Avoiding undue distortions of competition

(50) 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 reduction of the presence which the company can enjoy on its markets at the end of the restructuring period.

(51) 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.

(52) As for the assessment of the own contribution aspect of restructuring aid, conditions for authorising such aid to companies located in assisted areas eligible for regional aid may be less stringent also as regard the implementation of compensatory measures (point 55 and 56 of the Guidelines). To analyse the consequences of the restructuring aid on the market and on the competition, the Commission considers the fact that FFM FORMET is located in an assisted area ('article 87(3)(a) region').

(53) The Commission notes the following for the purposes of assessing the adequacy of the compensatory measures (which are described in points 12-17 above):

(54) The company has a very limited share on national and the EU market of injections moulds (see point 3 above).

(55) The amount of aid is quite limited: PLN 2.3 million (app. EUR 0.5 million).

(56) The Commission also takes into consideration the fact that the region Kujawsko-Pomorskie where the company is located has a high unemployment rate (16% at the end of October 2011, compared to the average unemployment rate for Poland of 11.8%[6]).

(57) The Commission notes that the proposed abandoning of certain metalworking services have been profitable during the last three years. According to the data provided by the Polish authorities, within the period of 2008 and 2010, the company achieved the net profit of PLN 204 525 when providing these services. The forecast for the year 2011 is also positive – the company should have closed the year with the total net profit of PLN 42 120. Bearing in mind the negative net financial result achieved within this period by the company, abandoning of profitable metalworking services is to be deemed as a genuine compensatory measure.

(58) In addition, FFM FORMET offered its withdrawal from providing certain grinding services (as a result of the decommissioning of particular machines). According to the Polish authorities, these services have been profitable during the last three years – with the total net profit amounting to PLN 57 754. Bearing in mind that after having decommissioned the machines at stake the company will not restart certain grinding services, the measure can be qualified as a real compensatory one.

(59) Therefore, the proposed measures can be considered as real and constitute a compensatory measures to the aid at hand. these measures will enable competitors to pick up the shares on the market and provide services on activities that have been abandoned by the beneficiary.

(60) 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. The Commission also takes into account that the company is located and

[6] According to the Central Statistical Office (GUS), http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_pw_bezrobotni_stopa_wg_powiat_10m_2011.xls

active in an assisted area and that its continued operations, on a sustainable basis, are positive for mobility in the region.

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

4. Decision

(62) The Commission considers that the notified restructuring aid in favour of FFM FORMET is compatible with the internal market under Article 107(3)(c) of the TFEU on the basis of the Guidelines on State aid for rescuing and restructuring firms in difficulty.

[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/competition/elojade/isef/index.cfm]

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Yours faithfully,

For the Commission

Joaquín Almunia
Vice-President of the Commission