# COMMISSION DECISION

## of 20 December 2006

## on State aid No C 3/2005 (ex N 592/2004 (ex PL 51/2004)) which Poland is planning to implement for Fabryka Samochodow Osobowych SA (formerly DAEWOO — FSO Motor SA)

*(notified under document number C(2006) 6628)*

**(Only the Polish text is authentic)**

**(Text with EEA relevance)**

(2007/509/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of 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,

Whereas:

### 1. PROCEDURE

(1) By letter dated 30 April 2004 Poland notified the Commission of aid to DAEWOO-FSO MOTOR S.A., which changed its name to Fabryka Samochodów Osobowych S.A. (hereinafter 'FSO' or 'the beneficiary'), as aid granted before accession. By letter dated 19 May 2004 the Commission asked Poland to submit some missing documents. These were provided on 18 June 2004. The Commission requested further information by letters dated 2 August 2004 and 6 October 2004, to which Poland replied by letter registered on 13 September 2004, and by letter dated 3 November 2004 respectively. On 9 November 2004 a meeting took place between the Commission and the Polish authorities.

(2) On 5 January 2005, the Polish authorities accepted that the Commission would also treat the notification of 30 April 2004 as a notification under Article 88(3) EC Treaty with regard to any measures which were found to constitute new aid.

(3) By letter dated 19 January 2005, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid which had not been granted before accession and constituted new aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 26 April 2005 [2]. The Commission invited interested parties to submit comments on the measures. No third party submitted comments.

(4) In a letter dated 28 February 2005, registered on 1 March 2005, the Polish authorities asked for an extension of the deadline to submit its comments on the opening of the formal investigation procedure. Poland submitted a partial response by letter dated 1 April 2005, registered on 4 April 2005. In the same letter Poland asked for the deadline for providing additional information to be extended to 15 April 2005, because it needed time to update the restructuring plan. By letter dated 27 April 2005, registered on 29 April 2005, the Polish authorities asked for the deadline for providing the supplementary information to be extended again, to 13 May 2005. This information, together with an updated version of the restructuring plan, was submitted by letter dated 31 of May 2005, registered on 2 June 2005. Additional comments were submitted by letter dated 13 June 2005, registered on 14 June 2005.

(5) By letter dated 4 August 2005, registered on 8 August 2005, Poland informed the Commission that a new investor had been found for FSO. By letter dated 28 September 2005, registered on 29 September 2005, the Polish authorities informed the Commission that an updated restructuring plan would be submitted in November 2005 together with a description of the models produced. By letter dated 16 November 2005, registered on the following day, Poland submitted the English version of the FSO stock valuation. The Commission requested supplementary information on 12 December 2005. The Polish authorities submitted further information by letter dated 15 December 2005, registered on 19 December 2005, in which the announced update of the restructuring plan was submitted. In the same letter Poland informed the Commission that it would provide more information in the coming weeks. In its letter of 3 January 2006, registered on 5 January 2006, Poland submitted a partial response to the Commission's request for information of 12 December 2005 and asked to be given more time (up to 23 January 2006) to provide the remaining information. By letter dated 26 January 2006, registered on 30 January 2006, the Polish authorities submitted part of the additional information,

[1] OJ C 100, 26.4.2005, p. 2.

[2] See footnote 1.

requesting an extension of the deadline to 6 February 2006. By letter dated 14 February 2006, registered on 15 February 2006, Poland provided the missing points of the response to the Commission's letter of 12 December 2005.

(6) On 21 February 2006, a meeting between the Commission services, the Polish authorities, FSO management and the investor AvtoZAZ was held in Brussels. Following the meeting, on 8 March 2006, the Commission sent Poland a request for further information. Poland replied by letter dated 6 April 2006, registered on the following day. In a letter to Poland dated 27 April 2006, the Commission allowed an extension of the deadline for submitting the final version of the restructuring plan to 20 May 2006. The information was submitted by the Polish authorities by letter dated 22 May 2006, registered on the following day.

(7) By letters dated 28 and 29 June 2006, both registered on the following day, the Polish authorities informed the Commission that a licence agreement had just been signed for the production of a new car model by FSO. On 29 June 2006, a meeting was held with the Polish authorities.

(8) By letter dated 5 July 2006, the Commission requested further information, which the Polish authorities provided by letters dated 19 and 27 July 2006.

(9) The Polish authorities submitted additional information by letter dated 30 August 2006 and during a meeting on 31 August 2006.

(10) By letter dated 6 September 2006, the Commission requested further information, which was provided by letter dated 3 October 2006, registered on the following day. Poland informed the Commission that it would provide more information in the next 10 working days.

(11) Poland submitted additional information by letter dated 17 October 2006, registered on 19 October 2006. In this letter, the Polish authorities requested a meeting with the Commission services. This meeting took place in Brussels on 7 November 2006. Following this meeting the Polish authorities sent a letter on 17 November 2006.

## 2. DETAILED DESCRIPTION OF THE AID

### 2.1. Beneficiary of the aid

(12) FSO is a Polish car manufacturer. The company's main production plant is located in Warsaw, which is an assisted area under Article 87(3)(a) of the EC Treaty. It manufactures passenger cars, spare parts and accessories. Its main source of revenue since the end of the nineties has been the manufacture of the Daewoo brand vehicles *Matiz* and *Lanos*. FSO S.A. now controls 18 subsidiaries (service, manufacture of components, sales) down from […] (*) in 1999.

(13) The predecessor of FSO had been in business in Poland since the 1950s and was one of the two largest Polish car manufacturers. A joint venture agreement was concluded in 1996 between Daewoo Motor Corporation Ltd ('DMC') and the former Ministry of Industry and Trade. Daewoo acquired 70 % of the newly created entity DAEWOO-FSO MOTOR S.A. About 25 % of the company was owned by the State Treasury and the rest by minority shareholders. Since then the company name has been Fabryka Samochodów Osobowych ('FSO').

### 2.2. Difficulties and efforts to find a strategic investor

(14) FSO's difficulties are mainly the result of the bankruptcy of its largest shareholder, DMC, in 2000. This led to a decline in demand for Daewoo brand vehicles because of customer uncertainty about the fate of FSO and the availability of spare parts and repair services. In addition, FSO suffered from a severe decline in the sale of new vehicles in Poland at the beginning of this decade owing to a very sharp increase in imports to Poland of second-hand cars from Western Europe. Furthermore, as the two models produced were not modernised, unlike competing models, they became less attractive on the EU market over the years. As a consequence of the foregoing, FSO's sales dropped from 189 000 units (of which 179 000 sold in Poland) in 1999 to 47 000 in 2001. FSO generated net losses in 2000, 2001 and 2002 of PLN 2,1 billion (EUR 540 million [3]), PLN 1,1 billion (EUR 282 million) and PLN 425 million (EUR 109 million) respectively. In recent years the vast majority of the cars manufactured have been *Lanos*, exported to Ukraine [as assembly kits] and assembled and sold by the firm AvtoZAZ, which started commercial cooperation with FSO in 2000. Total sales remained at a very low level and the company continued to register operating losses.

(*) Confidential information.

[3] For information only, all the amounts provided by the Polish authorities in Polish zloty (PLN) have been converted into euro (EUR) using the exchange rate of 20 October 2006, namely 1 EUR = 3,89 PLN.

*Table 1*

| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|---|---|
| Total sales [1] (1 000 cars) including assembly kits | 189 | 121 | 47 | 30 | 35 | 43 | 47 |

[1] *Source:* 'Company Presentation, Fabryka Samochodów Osobowych S.A., Warsaw 2006', submitted by the Polish authorities on 31 August 2006.

(15) Some parts (notably the brand name and some Asian production plants) of the bankrupt DMC, but not FSO, were acquired by General Motors and harboured in a new subsidiary called GM DAT, which stands for General Motors Daewoo Auto & Technology.

(16) FSO had been looking for a strategic investor since its difficulties began. In February 2004, it contacted the 29 biggest motor vehicle companies and sent them a memorandum presenting itself as an attractive investment opportunity. [Some companies] AvtoZAZ, […], [expressed] interest in principle in investing in FSO. AvtoZAZ, FSO's key customer, expressed concrete interest in broadening cooperation with FSO. The Polish government started exclusive negotiations with AvtoZAZ for the sale of FSO.

(17) AvtoZAZ is the biggest car manufacturer in the Ukraine. It assembles cars of several brands, including ZAZ (own brand), Daewoo, VAZ (the brand of the Russian Lada) and Opel [4]. It is owned by UKRAVTO, which is the owner of the biggest car distribution and service station network in Ukraine. UKRAVTO distributes several brands, including ZAZ, Daewoo, Chevrolet, VAZ and Opel.

(18) On 25 June 2004 a Letter of Intent was signed between the State Treasury, AvtoZAZ and FSO. By resolution of 9 November 2004, the Council of Ministers approved the sale of FSO shares owned by the State Treasury. FSO and the State Treasury agreed to appoint KPMG as an independent consultant to appraise the market value of the company. The cost method (the book value of the Company's assets and liabilities, with correction when necessary) and the liquidation method (the market value of forced FSO assets sales, less liabilities) were applied. In both cases the value of the FSO shares was negative. At the same time, the State Treasury selected a second independent consultant (PriceWaterhouseCoopers) to carry out its own appraisal. It confirmed the first valuation.

(19) The sale agreement with AvtoZAZ [5] was signed on 30 June 2005 for a total price of PLN 100. Under the agreement, AvtoZAZ has to implement the business plan negotiated with the State Treasury. It covers the period 2005-[…] and provides for launching production of a new car model, increasing production volumes and maintaining a minimum level of employment. The agreement indicates that the State aid contained in the restructuring plan notified to the Commission will be granted by the Polish government if the Commission endorses it. The buyer declares that the award of State aid to FSO was one of the conditions of its decision to purchase the company's shares.

(20) In the meantime, AvtoZAZ purchased (at a discount) 100 % of the remaining claims against FSO, with a nominal value of nearly […], of […] banks which were creditors of FSO.

### 2.3. **Markets** [6]

(21) In 1999, 640 000 new vehicles were sold in Poland and FSO's market share was 28 %, making it the number one car manufacturer in Poland at the time. In 2003 the number of cars sold in Poland fell to 358 000 and FSO's market share fell to 2,2 % (less than 8 000 cars sold). In 2004, FSO sold only 3 500 cars in Poland. The main competitors of FSO in Poland (and in Europe) are Fiat, Skoda, Renault, Toyota, Opel, Peugeot, Ford, Volkswagen and Citroen. On the Polish market, the share of imported vehicle sales rose from 25 % in 1998 to 75 % in 2003.

[4] According to a press release dated 10 January 2006, published on its website (www.ukravto.ua), ZAZ produced 148 163 vehicles in 2005. Including 10 190 models 'Travria', 6 224 'Travria Pick-Up', 20 864 'Slavuta', 21 379 'Sens', 9 107 'Lanos T-150', 697 'Opel Astra-H', 1 915 'Opel CKD', 6 179 'VAZ-21093', 14 459 'VAZ-21099' and 57 149 other vehicles.

[5] Formally, the contract is between the State Treasury of the Republic of Poland and Zakrytoje Akcjonernoje Obszczestwo z Inostrannoj Inwesticjej 'Zaporozskij Awtomobilestroitelnyj Zawod' with its headquarters in Zaporozhye, Ukraine.

[6] The data used in this section are taken from information provided by the Polish authorities.

(22) Production capacity in the European Union as a whole in 2004 (25 Member States) was 20,8 million cars, whereas production volume was only 14,5 million cars. With a production capacity utilisation rate of 70 %, the industry is therefore clearly suffering from a major excess of production capacity. While FSO's 1999 sales level would have corresponded to an EU market share of over 1 %, FSO's production in 2004 represented a market share below 0,5 %.

(23) Since 2003, most of FSO's production has been purchased by AvtoZAZ and sold on the Ukrainian market. New car sales in Ukraine have increased rapidly in recent years. From 2001 to 2005 they rose from 65 000 to 265 000. On the Ukrainian market the Daewoo cars produced by FSO face competition from the following brands: VAZ (Lada), ZAZ, Chevrolet and the other Daewoo models not produced by FSO. Skoda, Opel, Toyota, Mitsubishi, Nissan, Renault and VW are present on this market but have more limited market shares.

(24) FSO also plans to export a part of its production to […]. Car sales in […] were around 1,6 million units in 2005. The domestic brands hold a 72,5 % market share and imported cars account for 27,5 % of sales. However, the low quality and outdated design of […] brand cars is leading to a steady increase in imports. Furthermore, foreign car manufacturers are building facilities in […]. Some 40 % of Western motor vehicle companies have already established factories in the area and a further 16 % are planning to do so.

### 2.4. **The restructuring plan**

(25) As illustrated in Table 2, the management started restructuring activities in FSO S.A. and its subsidiaries as soon as the situation deteriorated in 2000 after DMC declared bankruptcy. The workforce at FSO S.A. was reduced by 2 222 employees between January 2001 and September 2003. The restructuring programme notified to the Commission in April 2004 (the 'initial restructuring plan') started at the end of 2003, with completion in 2007, and planned an additional reduction of 1 100 employees in the workforce of FSO S.A., bringing long-term employment to around 2 000 workers. Since then, the programme has been implemented to a large extent. The workforce was down to 2 200 persons at the end of 2005. In the meantime the Polish authorities have announced that the latter level corresponds to the new long-term objective. The subsidiaries controlled by FSO were also completely restructured during this period and the workforce was considerably reduced.

*Table 2* [1]

**Workforce at the end of the year**

| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|---|---|
| FSO S.A. | 8 769 | […] | […] | […] | […] | […] | 2 236 |
| Service, component, and other subsidiaries | […] | […] | […] | […] | […] | […] | […] |
| Subsidiaries responsible for sales | […] | […] | […] | […] | […] | […] | […] |
| Total FSO S.A. + subsidiaries | 19 099 | […] | […] | […] | […] | […] | 6 534 |

[1] *Source:* reply from the Polish authorities of 30 August 2006.

(26) The initial restructuring plan, which was notified to the Commission on 30 April 2004, was based on the condition that a strategic investor for FSO would be found before 2006. As the time of entry of the investor was not certain when the restructuring plan was prepared, the plan initially included two variants. In the course of 2004, when the entry of a potential investor became more certain, FSO confirmed the first restructuring variant, although the target dates were pushed back slightly. The plan included the following measures:

— extending the right to manufacture the Matiz and Lanos models up to the end of 2006 (licence agreement signed with GM DAT in April 2004),

— entrance of AvtoZAZ as a strategic investor before the end of the first quarter of 2005 (originally end of 2004),

— production of a modified Lanos model from 2005 onwards (originally not mentioned),

— development of new own models and production start-up from 2007 (originally 2005/2006).

(27) In the initial restructuring plan, FSO planned to produce [between 130 000 and 170 000] units in the long-term. In accordance with this long-term production objective, it planned to reduce existing production capacity by one third, i.e. from [200 000-230 000] vehicles per year — on the basis of two shifts and 250 working days — to [140 000-170 000] per year. Since 2001 small use has been made of existing capacity (less than 25 %). The Polish authorities estimate that after restructuring FSO's break-even point will be [100 000-150 000] cars per annum ([7]).

(28) In subsequent letters the Polish authorities informed the Commission of delays in implementation of the initial restructuring plan and said that the intermediate sales objectives had not been achieved.

(29) In 2005, the restructuring plan was modified in the sense that FSO no longer planned to develop its own new models but rather to produce an existing model of a major car manufacturer, called 'the licensor', as opposed to 'the investor', AvtoZAZ. All the components for their production would thus already be available and the investment expenditure would be limited to the technological adjustments to the existing FSO production lines, in order to allow production of the new model. To implement the new plan, FSO needed to attract a licensor.

(30) The Commission observes that this modification of the restructuring plan — attracting a licensor in addition to the investor — became necessary as FSO failed to attract as an investor a major car manufacturer with which FSO could have developed a new model, as provided for in the initial restructuring plan. The investor — AvtoZAZ — has not developed models of its own which are competitive on the EU market.

(31) After being modified in response to negotiations with the investor, the restructuring plan was again modified in response to negotiations with potential licensors.

(32) In the November 2005 version of the restructuring plan, the Polish authorities indicated that a new FSO subsidiary, […], would be created.

(33) In […] 2006, FSO and its shareholder UkrAvto signed a Memorandum of Understanding with GM DAT for the production of a new model at FSO.

(34) In […] 2006, FSO and UkrAvto concluded a […] agreement with GM DAT for the production and […] of the […] model (Chevrolet Aveo). GM was looking for new production capacity for this model in […]. Under the terms of the contract, FSO can manufacture and assemble this model until […]. It can continue to sell in […] until […].

(35) At the same time, FSO signed an agreement with GM DAT extending the existing licence agreement for the production of the Daewoo Lanos […]. Under the new agreement, FSO can produce this model until […] and sell it until […]. As sales of Lanos […] increased in 2005 and 2006, FSO intends to produce this old model in significant quantities until the production of the […] starts at the end of […].

(36) In their recent submissions of information, the Polish authorities have indicated that FSO, contrary to what had been announced previously, plans to sell [from 130 000 to 170 000] cars over the long term, in particular after 2008. Part of this production would be sold in […] and most of the rest in […].

([7]) Letter from the Polish authorities of 13 June 2005.

(37) Regarding the financial restructuring which is part of the restructuring plan, measures have been adopted and implemented since 2003 to reduce the company's debts. On 22 September 2003, an agreement was signed with FSO's major creditors, namely DMC, the State Treasury, and […] financial institutions (including […] Polish banks). The agreement provided for conversion of the claims of DMC and of the State Treasury into FSO shares at the same conversion rate. This conversion has since taken place. The […] financial institutions agreed to write off the majority of their claims against FSO. As indicated, since then […] banks have sold (at discount) their remaining claims on FSO to the investor. More than PLN […] million […] has already been written off. Besides this agreement with its major creditors, on 17 September 2003 FSO lodged an application in court to commence arrangement proceedings with its smaller creditors. These proceedings have since been concluded.

*Table 3*

**Restructuring of liabilities**

| Item | Liabilities (PLN 1 000) | Interest (PLN 1 000) | Total (PLN 1 000) | Liabilities converted into shares (PLN 1 000) | Written off (PLN 1 000) |
|---|---|---|---|---|---|
| DMC | […] | […] | […] | […] | […] |
| State Treasury | […] | […] | […] | […] | […] |
| Arrangement proceedings | […] | […] | […] | […] | […] |
| […] financial institutions | […] | […] | […] | […] | […] |
| Total | 4 193 892 | 873 849 | 5 067 741 | 3 547 475 | 1 188 500 |

The amount of liabilities under the loans was quoted in accordance with the Agreement (taking into account the USD exchange rate as at the date of the Agreement, i.e. 3,94 PLN/USD).

[…]

### 2.5. **Aid measures**

(38) In its decision to launch the formal investigation procedure, the Commission concluded that several measures constituting restructuring aid had already been granted before accession in the last quarter of 2003 and in the first four months of 2004. These measures are therefore not covered by this investigation procedure, which concerns only the aid measures that were to be granted after accession. However, the aid granted before accession has to be taken into account in the compatibility assessment, in particular when assessing restriction of the aid to the minimum necessary.

(39) The largest part of the aid granted after accession takes the form of a […] % State guarantee on a future investment loan to […]. The bank loan of USD […] million (EUR […] million [8]) will be denominated in US dollars. The guarantee therefore exposes the State to potential payments amounting to USD 83 million (EUR 66 million) [9]. The second important measure is a write-off by the Ministry of Finance of claims on FSO amounting to PLN 34 860 000 (EUR 9 million).

(40) The different measures are listed in the table below, on the basis of the information submitted by the Polish authorities on 3 January 2006 [10]:

[8] All amounts provided by the Polish authorities in US dollars (USD) have been converted into euro (EUR) using the exchange rate of 20 October 2006 of 1 EUR = 1,26 USD.

[9] The Polish authorities informed the Commission that the planned guarantee had been revised downwards in their letter of 3 January 2006. The aid measures listed in the decision to launch the investigation procedure were based on the notification of 30 April 2004. The notification contained a plan for a guarantee of USD 162,5 million.

[10] Measures 22 and 23 were omitted in the submission of information of 3 January 2006. They are, however, presented in the decision of 19 January 2005 to initiate the procedure provided for in Article 88(2) of the EC Treaty. As the Commission has not received any details on their withdrawal, it has decided to take them into account.

*Table 4*

**State aid after accession**

| No | Authority granting State aid/Type of liability | Form of State aid | Measure in nominal value (USD 1 000) |
|---|---|---|---|
| 1 | Ministry of Finance | Guarantees and pledges on investment credit | 83 000 |

| No | Authority granting State aid/Type of liability | Form of State aid | Amount of debt written-off or deferred/measures in nominal value (PLN 1 000) |
|---|---|---|---|
| 2 | Tax office Warsaw Prague | Write-off | 34 860 |
| 3 | Social Insurance Institute | Write-off | 1 586 |
| 4 | State Fund for Rehabilitation of Disabled Persons (PFRON)<br>*Payments to PFRON* | Write-off,<br>Deferral into 5 quarterly instalments; First instalment payable 30 June 2005 | 467<br>382 |
| 5 | State Fund for Rehabilitation of Disabled Persons (PFRON)<br>*Payments to PFRON* | Write-off,<br>Deferral into 6 quarterly instalments; First instalment payable 1 January 2006 | 375<br>375 |
| 6 | Warsaw City Authority<br>*Real estate tax* | Deferral into 12 monthly instalments<br>First instalment payable 2 January 2006 | 5 836 |
| 7 | Warsaw City Authority Białołęka District<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2005 | 376 |
| 8 | Warsaw City Authority<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2005 | 2 022 |
| 9 | District Starost Office in Ełk<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2005 | 56 |
| 10 | Ełk City Authority<br>*Real estate tax* | Deferral into 12 monthly instalments of liabilities for April and May 2004<br>First instalment payable 31 December 2004 | 54 |
| 11 | Ełk City Authority<br>*Real estate tax* | Deferral into 12 monthly instalments<br>First instalment payable 30 June 2005 | 323 |
| 12 | Kożuchów City Authority<br>*Real estate tax* | Deferral into 12 monthly instalments<br>First instalment payable 1 January 2005 | 458 |
| 13 | Mazowiecki Provincial Governor<br>*Fee for perpetual usufruct of land* | Write-off of fee for 2004 | 2 419 |
| 14 | Warsaw City Authority | Write-off of fee for 2004 | 397 |

| No | Authority granting State aid/Type of liability | Form of State aid | Amount of debt written-off or deferred/measures in nominal value (PLN 1 000) |
|---|---|---|---|
| 15 | District Starost Office in Opole<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2004 | 79 |
| 16 | District Starost Office in Opole<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2005 | 79 |
| 17 | District Starost Office in Nysa<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2004 | 89 |
| 18 | District Starost Office in Nysa<br>*Fee for perpetual usufruct of land* | Deferral of fee until 31 December 2005 | 81 |
| 19 | Nysa City Authority<br>*Real estate tax* | Write-off, Deferral into instalments payable in 16 quarterly instalments | 341<br>341 |
| 20 | 2nd Mazowiecki Tax office, Warsaw<br>*Tax on civil law transactions* | Write-off | 1 103 |
| 21 | 2nd Mazowiecki Tax office, Warsaw<br>*Tax on civil law transactions* | Write-off | 671 |
| 22 | II Customs Office in Warsaw<br>*Customs duties* | Deferral of payments for May and June 2004 until December 2004 | 1 050 |
| 23 | II Customs Office in Warsaw<br>*Customs duties* | Deferral of payments for July and August 2004 until January 2005 | 1 000 |
| 24 | National Fund for Environmental Protection and Water Management/ Provincial Fund for Environmental Protection and Water Management State Treasury | Subsidy or preferential loan to finance costs for the implementation and functioning by the end of 2008 of a system to recycle vehicles and the costs of adapting to legal requirements concerning environmental protection | 7 170 |
| | | TOTAL in PLN (rows 2-24) | 61 990 |

(41) The notified aid measures amount to USD 83 million (EUR 66 million) and PLN 62 million (EUR 16 million). At the exchange rate of 20 October 2006, the total aid measures therefore amount to EUR 82 million or PLN 318 million.

(42) A large proportion of the aid measures are in the form of a write-off or deferral of the State's existing claims on FSO. Since, to the Commission's knowledge, FSO has not paid these claims, the company has already benefited from the suspension of payment of its liabilities. As a result, these measures can be deemed to have already been partially implemented.

### 2.6. **Grounds for initiating the procedure**

(43) In its decision to initiate the procedure, the Commission indicated that the compatibility of the new aid would be assessed on the basis of the applicable rescue and restructuring guidelines. The current Community Guidelines on State aid for rescuing and restructuring firms in difficulty ('the 2004 guidelines') entered into force on 10 October 2004. For measures notified before this date, the previous 1999 rescue and restructuring guidelines [11] ('the 2004 guidelines') entered into force on 10 October 2004. For measures notified before this date, the previous 1999 rescue and restructuring guidelines [12] ('the guidelines') apply. As the measures were notified on 29 April 2004, the 1999 guidelines apply. The Commission therefore made an initial assessment of the notified (new) aid on the basis of the criteria laid down in those guidelines.

[11] OJ C 244, 1.10.2004, p. 2.
[12] OJ C 288, 9.10.1999, p. 2.

(44) The Commission concluded firstly that given the losses and the decline in sales which FSO had suffered in the previous years, it qualified as a firm in difficulty under section 2.1 of the guidelines.

(45) Regarding restoration of viability, the Commission expressed doubts about certain aspects of the plan. One element of these doubts concerned the lack of clarity about the planned level of production. The Commission also remarked that it did not have at its disposal the updated restructuring plan, which, according to the Polish authorities, had been negotiated with the investor. Importantly, the Commission also stated that it had not received a market survey from the Polish authorities. It indicated that the survey would have to include an assessment of total production capacity and demand at Community level, and a conclusion as to whether there was excess capacity on the market.

(46) Regarding the avoidance of undue distortion of competition, the Commission indicated that it could not take a final position because, firstly, the Polish authorities had not provided information on whether there was overcapacity on the market on which FSO operated. Secondly, Poland had not indicated whether FSO and/or the investor were planning any measures that could be considered compensatory measures, beyond the capacity reduction already included in the restructuring plan as a measure necessary to achieve viability.

(47) Regarding the limitation of aid to the strict minimum necessary, the Commission requested more details on the measures considered to be own contributions and details about restructuring costs. The Commission also expressed doubts about whether the aid was limited to the minimum necessary because the conditionality of some of the aid measures seemed to indicate that they were not absolutely necessary.

(48) Finally, the Commission noted that the agreement on debt restructuring concluded with public creditors on 22 September 2003 might contain aid granted before accession. Even if the compatibility of this potential aid cannot be assessed and it cannot be recovered, it must nevertheless be taken into account in the assessment of the new aid.

### 3. **POLAND'S COMMENTS**

(49) Regarding the contradictory figures on planned production levels in the years 2005 and 2006, the Polish authorities explained in their letter of 13 June 2005 that, owing to delays in the entry of the investor, the figures had had to be revised downwards in successive versions of the restructuring plan. They indicated that the break-even point, estimated to be [100 000-150 000] units, should be reached in […]. In their letter of 22 May 2006 the Polish authorities provided sales forecasts for the years 2008 to 2010. In the documents submitted during the meeting of 31 August 2006, the Polish authorities provided a forecast for the years 2006 to 2008, which confirmed the figures set out above.

*Table 5*

| Production forecast (1 000 cars) | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| Letter of 22 May 2006 [1] | | | […] | […] | [> 200] |
| Document of 31 August 2006 (Production forecast including assembly kits) | [< 100] | […] | […] | | |

[1] This forecast concerned the […] model, for which the […] agreement was concluded only […].

(50) In their letter of 3 October 2006, the Polish authorities submitted a substantially higher forecast for 2008 to 2010. According to this forecast, annual production should evolve to a level of [over 250 000] units during that period.

(51) As requested in the decision to initiate the procedure, Poland submitted the updated version of the restructuring plan on 31 May 2005. Poland has submitted further updated versions since then. The restructuring plan includes descriptions of the markets on which FSO operates. It shows that there are considerable overcapacities in the EU, as already indicated.

(52) In terms of proposals for compensatory measures, Poland has stated that, firstly, FSO plans targeted restriction of production and sales to the level of [140 000-170 000] cars until 2008, despite the fact that it could produce [200 000-230 000] cars and has the real possibility of selling over [140 000-170 000] cars. Secondly, FSO has limited its sales network by reducing the number of car sales outlets from […] in 2003 to […] in 2006. It has also liquidated two of its own sales outlets. Thirdly, the company is limiting the number of countries to which it exports its products.

(53) Regarding the limitation of the aid to the minimum necessary, the Polish authorities have provided several documents on the amounts described as own contributions.

(54) Finally, Poland has provided a copy of the agreement of 22 September 2003 on debt restructuring.

## 4. ASSESSMENT OF THE AID

### 4.1. Existence of aid

(55) The Polish authorities do not contest that the measures listed in Table 4 constitute State aid, as concluded in the opening decision.

(56) Besides the measures listed in Table 4, in the decision to open the procedure the Commission expressed doubts that the agreement with public creditors of 22 September 2003 on debt restructuring could contain aid granted before accession. Indeed, the Commission noted that the financial institutions accepted a partial write-off of their claims against FSO only on the condition that the depreciation resulting from this waiver was accepted by the Polish tax authority as a cost reducing taxable income. The Commission therefore indicated that the State may have granted a more substantial concession than the private parties to the agreement. The Polish authorities provided a copy of the agreement of 22 September 2003. The Commission observed that the conversion of debt into FSO shares accepted by the State Treasury was carried out in parallel with and on the same terms as the conversion of debt by DMC, which is a private sector company. In addition, the amount so converted by DMC is much larger than the amount converted by the State Treasury. In these circumstances, the Commission concluded that this operation respected the market economy creditor principle and did not constitute State aid.

(57) Even though doubts on this subject were not expressed in the decision to launch the procedure, because the transaction took place afterwards, the Commission checked whether the sale of the State's stake in FSO to AvtoZAZ for the […] price of PLN 100 on 30 June 2005 contained aid to the purchaser, and, indirectly, to FSO. The Commission has analysed the valuation report drawn up by KPMG. The consulting firm observes that the company has been registering heavy losses and that demand for its products has been low. Therefore, the discounted cash flows method cannot be applied properly. Only the cost method and liquidation method can be applied. Both methods conclude that FSO's value is […]. PriceWaterhouseCoopers ('PWC') agrees to a large extent with the conclusions of KPMG. The Commission has not found any manifest errors in these reports and has concluded that the events that took place between the date of valuation by KPMG and the date of the transaction did not result in the price of the shares becoming […]. The Commission therefore considers that this transaction does not include an element of aid.

(58) In conclusion, only the measures listed in Table 4 constitute aid covered by the current decision.

### 4.2. Quantification of the aid

(59) In the decision to launch the procedure, the Commission concluded that the measures listed in Table 4 had not been granted before the accession of Poland to the EU on 1 May 2004. However, the Commission observed that in the contract for the sale of FSO shares concluded on 30 June 2005 between the government and AvtoZAZ, the State aid chapter (Article 9) provides that 'The relevant organs of the public administration intend, provided they receive a decision from the European Commission recognising the planned State aid as consistent with the common market, to grant the Company […] State aid for restructuring. This assistance shall be granted on

the terms set out in FSO's restructuring plan, which is currently under review at the European Commission under case number C 3/2005. […] The Buyer declares that the award of State aid to the Company referred to in clause 1 above was one of the conditions of its decision to invest by purchasing Company Shares. […] The declarations of the relevant organs of the public administration on the intent to grant State aid to the Company, referred to in clause 1 above, are included in Attachment No 6 to this contract'. The Commission concludes from the foregoing that on 30 June 2005 there was a legally binding commitment from the State to grant the notified aid subject to approval by the Commission.

(60) The Commission has noted that on 30 June 2005 and on earlier dates, it was far from certain that FSO could regain viability. This is confirmed by the aforementioned KPMG and PWC valuation reports. In particular, the Commission notes that the company had no licensor for the production of a new model. The company did not know what it would produce in the future. The contract for the […] was only signed in 2006. The then existing licence agreement with GM DAT for the production of the Lanos expires […]. The level of production of the Lanos was low and insufficient to cover costs. In conclusion, the aid was unconditionally promised at a time when the risk of bankruptcy was high.

(61) As regards the precise amount of aid included in the State guarantee covering the investment loan to […], the Polish authorities have not submitted a calculation of a risk factor by which the guarantee could be weighted. Up to October 2006, the Polish authorities always emphasised that this guarantee was necessary as the company was unable to obtain financing from the market due to the bad experience and the losses suffered by the banks in connection with earlier loans to FSO. In addition, the Commission has noted that, as indicated above, the commitment to grant the guarantee was entered into at a time when the risk of bankruptcy was high. In these circumstances, the Commission considers that the aid included in the State guarantee may be up to 100 % of the amount of the guarantee. However, on the basis of the later assessment of the compatibility of the aid, the Commission does not need to quantify the precise amount of aid included in this guarantee.

(62) The Commission notes that the Polish authorities, in their letter of 17 October 2006, suggested that the company would be able to obtain loans from the market at that time. As a result, Poland asked for the aid included in the guarantee to be quantified on the basis of the reduction in the interest rate obtained thanks to the guarantee. The Commission cannot accede to this request. The State committed itself to grant the guarantee (and the other aid measures), and the aid amount has to be assessed with reference to the time of the irreversible commitment by the State to grant the support measures, and no later. All loans offered by the market after this date are 'contaminated' by the aid which the State has undertaken to grant. The market took account of the direct positive impact (and indirect impact, such as the finding of an investor, which was made possible thanks to the promise of the aid) of the aid on the company. As a result, the price of the financing offered later cannot be used as a basis to assess the quantity of aid in the measures contractually promised previously. In addition, the information provided by the Polish authorities on the willingness of the banks to grant loans is not conclusive and does not prove that any bank would actually be ready to lend the amount in question to FSO without State support. The Polish authorities confirmed […] in their letter of 17 November 2006.

(63) As regards the aid by means of deferrals of tax and social security liabilities owed by FSO, these deferrals are equivalent to loans to the company. As indicated, these deferrals of payment were granted when the risk of bankruptcy was high. In these circumstances, the Commission concludes that the amount of aid in such deferrals could amount to the full deferred amount. However, on the basis of the later assessment of the compatibility of the aid, the Commission does not need to quantify the precise amount of aid included in these deferrals.

(64) Therefore, the maximum aid amount granted after accession to be assessed in this decision is USD 83 million (EUR 66 million) plus PLN 62 million (EUR 16 million). At the exchange rate of 20 October 2006, the maximum aid amount is therefore EUR 82 million or PLN 318 million.

(65) Regarding the amount of aid contained in the measures granted before accession, the Commission observes that some of the measures also involved deferrals of tax and social security debts. On the basis of the same reasoning as previously set out, the Commission has concluded that the maximum aid amount granted before accession is the total of the nominal value of the measures, namely PLN 201 million (EUR 51 million). The Commission does not need to quantify precisely the aid amount included in these measures.

### 4.3. **Legal basis for the assessment**

(66) As already indicated in the decision to initiate the procedure, the aid under consideration has been assessed on the basis of the 1999 (and not the 2004) Community guidelines on State aid for rescuing and restructuring firms in difficulty. The Commission considers that restructuring aid is compatible when each of the conditions laid down in the guidelines is fulfilled ([13]).

### 4.4. **Eligibility of the firm**

(67) As indicated in the decision to initiate the procedure, the Commission considers that FSO is in difficulty and eligible for restructuring aid. As confirmed by the information submitted by the Polish authorities, without the aid the company would not have been able to attract a new shareholder and a licensor, which was indispensable for its survival. In addition, without a State guarantee, banks would still even today not give FSO an investment loan, which is indispensable for production of a new model and, consequently, for the firm's survival.

(68) The Commission has also to verify whether […], which could be the beneficiary of the guaranteed investment loan, is eligible or not. The Polish authorities have assured the Commission that […] — or whatever other name it receives — would be a subsidiary of FSO and would appear in the consolidated financial statement of the FSO group. On the basis of the information provided by Poland, it can be concluded that the creation of […] would not constitute the creation of a new firm in the sense of the guidelines. Being a core part of an economic unit in difficulty, […] is eligible for restructuring aid.

### 4.5. **Restoration of viability**

(69) The guidelines indicate 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 […].'*

(70) As stated previously, FSO will in the future operate as an independent car manufacturer, in the sense that the models produced, assembled and sold by the firm will not be developed within the group to which it belongs ([14]). Therefore, the company needs to conclude a licence agreement with one of the major car manufacturers developing their own models. These companies can locate the production of their models in their own plants or in independent companies like FSO. It follows from the foregoing that, when trying to get a licence agreement, FSO will be in competition with the existing production plants of the car manufacturer concerned as well as with other independent manufacturers. FSO can get licence agreements regularly and generate profits from the production of the models concerned only if it is a reliable and efficient manufacturer with a low cost base.

(71) The Commission notes that the restructuring plan aims at fulfilling the latter condition.

(72) On the operational side, the company has implemented a far-reaching restructuring plan, which concerned FSO S.A. as well as the subsidiaries. Some of the problems identified at FSO were an excessive number of divisions

([13]) This is confirmed in the judgment of the Court of First Instance in Case T-17/03 *Schmitz-Gotha Fahrzeugwerke GmbH* [2006] ECR II-1139, paragraphs 44 and 45.
(44) Point 3.2.2 of the Guidelines, which lays down that requirement, stipulates, in particular, that the restructuring plan must fulfil three material conditions. It is essential, first, that it restore the viability of the beneficiary firm within a reasonable timescale and on the basis of realistic assumptions (point 3.2.2(i)); second, that it avoid undue distortions of competition (point 3.2.2(ii)); and, third, that it be in proportion to the restructuring costs and benefits (point 3.2.2(iii)).
(45) As those conditions are cumulative, the Commission must declare a restructuring aid plan to be incompatible if even one of those conditions has not been satisfied (Case T-171/02 *Regione autonoma della Sardegna* v *Commission* [2005] II-0000, paragraph 128; see also, to that effect, *France* v *Commission*, cited above, paragraphs 49 and 50).

([14]) In their letter of 6 April 2006, the Polish authorities indicate that 'As a rule, the granting of a licence is closely linked with closer cooperation between the licensor and the licensee. This involves transfer of know-how, manufacturing technologies, technical support, development of research and development processes, quality control, but also joint measures aimed at localising the production of assemblies and components. If the licensee is successful in implementing the terms and conditions of the licensing agreement, subsequent joint projects may be launched […].' From the foregoing, it is clear that over the long term, FSO expects to be involved more deeply in the development of new products. However, that concerns the very long term and implies a number of conditions, the fulfilment of which is at this stage hypothetical. The Commission will therefore base its analysis on the premise that FSO remains an independent manufacturer.

and management levels, as well as an inappropriate organisational structure. FSO decided to reduce the number of divisions and to merge some of them, to reduce the number of management levels and management positions. It has also modified the function distribution map by concentrating some functions and eliminating superfluous ones. More generally, as the level and structure of employment did not correspond to current operations and production volumes, the company substantially reduced its workforce, as shown in Table 2. The company has restructured its service subsidiaries, component production subsidiaries and sales subsidiaries.

(73) On the financial side, the company was riddled with debts, which it could not reimburse because of the major losses it had suffered since 2000. However, as illustrated in Table 3, the firm negotiated with its creditors, who agreed either to convert their claims into shares or to waive a majority of them.

(74) The foregoing description illustrates that, as required by the guidelines, the company has already taken important internal measures on the operating and financial sides to restore its competitiveness. The restructuring period will however only be completed when FSO has made the all the investments necessary for the production of the new model and has restored a production volume that generates a reasonable profit. Consequently, on the basis of current planning, the restructuring period should be considered as ending in the course of […].

(75) In addition to the internal restructuring, which makes FSO a more efficient manufacturer, the company also benefits from having had a new shareholder — AvtoZAZ — since 2005. This gives FSO privileged access to the distribution network of UkrAvto to sell its products.

(76) The Commission notes that the restructuring plan is not free of risks and uncertainties. Firstly, FSO will have to successfully bid on a regular basis for licence agreements in order to have a model to produce. Secondly, it will be dependent on the commercial success of the one or two vehicles produced, which cannot be guaranteed. Thirdly, it will have to generate a sufficient profit margin from production of the models concerned. Given the intensity of competition on the automobile market, reflected in the low level of profit made by the manufacturers of vehicles for the mass market, achieving profitability will require constant improvements in efficiency and cost control. All these risks are inherent in the restructuring plan and, should they materialise, cannot be considered 'unforeseeable circumstances' within the meaning of paragraph 48 of the guidelines.

(77) However, in view of the operational and financial restructuring already achieved, the support of the new shareholder, and the […] agreement signed with GM DAT in […] 2006 for production of the […], the Commission considers that there is a sufficient probability that the restructuring plan will allow FSO to restore its long-term viability.

### 4.6. **Avoidance of undue distortions of competition**

(78) As already mentioned, the EU automobile industry is suffering from overcapacities and car manufacturers regularly announce workforce reductions. In this context, the exit of firms from the market is a normal outcome of the operation of market mechanisms. The aid currently examined thwarts the operation of these mechanisms and shifts the burden of adjustment to other manufacturers. These competitors have to face one more competitor than they would have to if the State had not intervened to rescue FSO from bankruptcy. In order to assess the size of the distortion created by this aid, it is therefore necessary to determine on which markets FSO operates and who its competitors are.

(79) The Commission observes that FSO is active on two markets. Firstly, it competes to obtain licences or orders to produce cars from existing major car manufacturers. In this context, FSO is in competition with existing production plants — either belonging to the major manufacturer concerned or independent — that could also produce these cars and would be interested in assembling them. The Commission observes that over recent years the major car manufacturers active in the EU regularly oblige several plants located in a given geographical area, generally Europe ([15]), to compete with each other for the production of a given model.

([15]) Producing within the EU to serve the EU market avoids customs duties and limits the transport costs. Therefore large car manufacturers consider the production plants operating within the EU to be more substitutable — and therefore in fiercer competition with each other — than production plants operating both within and outside the EU.

Thanks to the aid, FSO can survive and will compete for such production opportunities at the expense of other production plants located in the area. This kind of distortion may have already taken place when FSO was awarded the […] licence agreement by GM DAT. The […] model could theoretically have been produced in another European plant. As FSO will compete for other licence agreements in the future, the Commission can reasonably assume, leaving aside this particular contract, that the kind of distortion just described will take place in the future, at the expense of other plants located in the EU. In this respect, the Commission observes that several plants in the EU currently produce the type of car that FSO plans to produce. Such distortion can seriously harm the production plant which would have got the licence agreement concerned if FSO had left the market. The production of a car model often involves employing hundreds (or even thousands) of persons over several years. The welfare of the Member State where the unsuccessful bidder is located is thereby seriously affected by the presence of FSO on the market.

(80) Secondly, the model produced by FSO will be in competition with other models and take part of their market share from them. Sales of the competing models will be lower than they would in the absence of FSO. This kind of distortion will negatively affect the car manufacturers and their production plants producing the competing models. If FSO had exited the market, production of the models that FSO is going to build would most probably have been awarded to another production plant. However, the Commission observes that the fact that FSO was awarded the contract means its production is cheaper. Therefore, cheaper cars will be offered on the market than would be the case if FSO left the market ([16]). In addition, it is generally recognized that an increase in the production capacity available on a market tends to depress the prices of the product concerned. The lower car prices will therefore harm competitors. The Commission observes that, according to the forecast included in the restructuring plan, FSO's production will over the long term account for between 1 and 2 % of EU car production. However, as acknowledged by the Polish authorities, the cars produced by FSO will mainly be in competition with car models of similar size and price. Therefore the market share in that particular segment cannot be considered 'negligible' within the meaning of point 36 of the guidelines.

([16]) Indeed, the intense competition is likely to force the major car manufacturer producing its cars at FSO to reflect the lower costs in a lower sales price.

(81) The Commission concludes from the foregoing analysis that the aid keeping FSO alive on a market suffering from overcapacity will negatively affect FSO's competitors: production plants bidding for construction of the same model, production plants producing competing models and car manufacturers producing competing models. Therefore, the Commission considers that measures are necessary to limit the distortion created by the aid. In deciding on the level of these measures, the Commission takes into account the mitigating factors that the company is located in an assisted area and that its market share is small.

(82) In the course of the procedure, the Polish authorities have proposed various compensatory measures. Firstly, the Polish authorities have said that FSO has reduced its sales network by reducing the number of sales outlets. However, the Commission observes that, as sales in Poland have declined sharply and some outlets have overdue liabilities vis-à-vis FSO or have gone bankrupt, this rationalisation was necessary for viability reasons and to reduce sales costs. In addition, some of these outlets were not controlled by FSO and it was the decision of the owners not to sell FSO cars anymore and to sell other brands. This measure is therefore not an additional effort of FSO and does not restrict the presence of the company on the markets beyond what is justified by the need to restore viability. It cannot therefore be accepted as a compensatory measure.

(83) The Polish authorities have also suggested that FSO 'voluntarily' limit the number of countries to which it exports its products. However, the Commission notes that FSO will not produce its own models but will produce under a licence agreement. Such a contract limits the countries in which the products can be sold. Therefore, such a limitation is inherent to the business plan and not a concession from FSO, which has no control over it. In addition, the sales forecasts for these countries were not underpinned by sufficient information.

(84) The Polish authorities have proposed dismantling some equipment on FOS's production lines. However, this equipment has to be replaced anyway to produce a new model.

(85) Finally, Poland, which has indicated that FSO's production capacity is [200 000-230 000] units per year on a two shifts basis, has proposed restricting its production capacity to [140 000-170 000] units per year until 2008. The Commission notes that this corresponds to the level of production forecast by FSO for 2008 (see Table 5) ([17]). Therefore, this measure would not be a constraint on the company.

(86) To summarise, none of the measures proposed by the Polish authorities represent concessions by FSO. They do not limit FSO's market presence more than the measures necessary to restore viability would do in any case. Thus they cannot compensate for the distortion created by the aid. Undue distortions of competition are therefore not avoided. As the Commission considers that measures are necessary to limit the distortion of competition, it has decided to make the compatibility of the aid conditional on compliance with the following measures:

1. Annual production of passenger cars, including all kinds of assembly kits, will be limited to 150 000 units until the end of February 2011 ([18]), […].

2. Annual sales of passenger cars in the EU ([19]) will be limited to 107 000 units until the end of February 2011 ([20]).

3. These two conditions apply to FSO, to all its present and future subsidiaries, and to any company controlled by the FSO shareholders to the extent that it operates assets (e.g. plants, production lines) currently belonging to FSO or its subsidiaries.

(87) The Commission considers this condition appropriate to reduce the distortion of competition created by the aid. On the basis of the production forecasts provided by the Polish authorities, this condition will constitute a constraint on the company only for two, or, at a maximum, three years and two months ([21]). Thus, during that period, the condition will oblige the company to produce and sell fewer cars. These limitations also mean that the company will not be able to bid for any additional license agreements requiring production during this period.

(88) By setting the production ceiling (duration, level) so that the restrictive effect is limited to two – at the maximum three – years and two months, the Commission has taken into account the status of the region where the company is located and its small market share.

### 4.7. **Aid limited to the minimum necessary**

(89) In the decision to launch the investigation procedure, the Commission expressed doubts as to whether all the aid was necessary. In particular, the Commission observed that the granting of certain measures had been made conditional on finding an investor. The aid therefore seemed to constitute a way to attract an investor rather than being strictly limited to what the company really needed to survive. The investigation procedure has allayed these doubts. Indeed, the Commission finds that without the support of an investor and a licensor the company on its own could not have survived. FSO had no model of its own to produce, nor did it have the capability to develop a completely new one. Furthermore, the lack of interest manifested by the 29 biggest car manufacturers following the approaches made by FSO in February 2004 shows that the firm was in a very difficult situation and that even with the aid it did not represent a manifestly viable and profitable firm. On the basis of the foregoing, the Commission concludes that the fact that part of the aid was made conditional on finding an investor does not mean that this aid was in excess of the minimum necessary to restore FSO to viability.

(90) In order to assess whether the aid is limited to the minimum necessary, the Commission has analysed which parties have supported and will support the restructuring costs. These are mainly made up of the costs of restructuring the company's liabilities. For a smaller amount, the company also needed a guarantee to get the investment loan to finance the modernisation of the production line necessary to produce the new model.

([17]) On the basis of the amended forecasts submitted on 3 October 2006, this measure would only be a constraint in 2008.
([18]) Production must be limited to 25 000 units in the first two months of 2011.
([19]) Including new Member States when they join the EU.
([20]) Sales in the EU must be limited to 17 833 units in the first two months of 2011.
([21]) The restraining effect is limited to two years and two months when the production forecasts set out in Table 5 are used. If the increased forecasts included in the letter of 3 October 2006 are used, the restraining effect is limited to three years and two months.

(91) As previously indicated (see Table 3), FSO signed an agreement with its main creditors. Under this agreement, DMC converted claims against FSO amounting to PLN [2-3] million (*) […] into capital. The State Treasury did the same for an amount of PLN [400-800] million […]. As indicated in paragraph 55, the Commission considers this conversion to be free of aid. In this agreement of September 2003, private banks undertook to waive claims against FSO amounting to PLN [0,7-1,2] billion […], and more than half of this commitment has already been implemented. Smaller claims against FSO were also restructured, so that an additional PLN [120-230] million […] was written off. The debt conversions and write-offs directly reduce the amount of aid necessary to save the company. Indeed, if these creditors had not accepted the conversions and write-offs of their claims, the reimbursement of these liabilities would have been due immediately and additional aid would have been necessary to reimburse them and thereby avoid the bankruptcy of FSO. In total, not counting the debt conversion by the State Treasury, the contribution made by FSO's private creditors amounts to PLN [2,8-4,4] billion […].

(92) Besides the contribution just described, Poland has indicated that over recent years AvtoZAZ has pre-financed its orders to FSO, which have represented nearly the entire production of the Polish firm. This pre-financing permitted FSO, which had no liquidity available, to finance the production (of the cars ordered e.g. buying inputs). The pre-financed orders have made it possible for the company to operate over the last few years. This kind of pre-financing is not common practice in the car industry, especially for a firm in difficulty. It can then be concluded that AvtoZAZ, through this exceptional pre-financing to FSO, has contributed to financing the company during its restructuring period. This private contribution is a sign that the market believes in the viability of the firm. According to the information submitted by the Polish authorities, the amount of advance payments from AvtoZAZ amounted at some points in time to USD [10-50] million […].

(93) As indicated, at the exchange rate of 20 October 2006, the maximum aid amount to be granted after accession is EUR 82 million or PLN 318 million. In assessing whether the aid is limited to the minimum necessary, the Commission has also to take into account the aid granted before Poland's accession in the framework of the same restructuring. As indicated before, the Commission considers the maximum aid amount granted in the quarters before accession to be PLN 201 million (EUR 51 million). The maximum total restructuring aid therefore amounts to PLN 519 million (EUR 133 million). It may be concluded from the above that the private sector contribution covers more than 85 % of the restructuring costs, and the aid less than 15 %. Even if the (aid-free) conversion of debt by the State were considered a restructuring cost, the private sector contribution amounts to more than three quarters of the restructuring costs. The Commission considers the contribution from the private creditors to be substantial.

(94) On the basis of the foregoing, the Commission concludes that the aid is limited to the minimum necessary.

### 4.8. **'One time, last time' principle**

(95) On the basis of the information provided by the Polish authorities, the Commission concludes that the company has not received restructuring aid in the last ten years. During the current restructuring, the first aid measures were granted in the last quarter of 2003. This condition is therefore respected.

## 5. **CONCLUSION**

(96) The Commission concludes that the notified aid is compatible with the common market, if certain conditions are fulfilled,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid measures listed in Table 4, some of which Poland has already partially or fully implemented and some of which Poland has not yet implemented, for Fabryka Samochodow Osobowych are compatible with the common market, subject to the obligations and conditions set out in Article 2.

*Article 2*

1. The plan for restructuring FSO, including the restructuring of FSO liabilities, must be fully implemented.

(*) Clerical error — should be 'billion'.

2. Annual production of passenger cars, including all kinds of assembly kits, shall be limited to 150 000 units until the end of February 2011. This limitation applies to each calendar year. Production shall be limited to 25 000 units in the first two months of 2011.

3. Annual sales of these passenger cars in the EU (including new Member States as soon as they join the EU) shall be limited to 107 000 units until the end of February 2011. This limitation applies to each calendar year. Sales in the EU shall be limited to 17 833 units in the first two months of 2011.

4. The two conditions set out above shall apply to FSO, to all its present and future subsidiaries, and to any company controlled by the controlling shareholder of FSO to the extent that it uses productive assets (e.g. plant, production lines) currently belonging to FSO or its subsidiaries.

5. For the purpose of monitoring compliance with all the above conditions, Poland shall provide the Commission with six-monthly reports on the state of progress of FSO's restructuring. As regards the production and sales limitations, Poland shall provide the Commission with annual reports on production and sales figures of the previous calendar year, to be sent no later than at the end of January. The last report shall be sent before the end of March 2011 and shall cover production and sales in the first two months of 2011.

*Article 3*

Poland shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 4*

This Decision is addressed to the Republic of Poland.

Done in Brussels, 20 December 2006.

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