COMMISSION

COMMISSION DECISION

of 28 November 2007

on State aid C 6/07 (ex N 558/06) planned by Poland for Techmatrans S.A.

(notified under document number C(2007) 5616)

(Only the Polish version is authentic)

(Text with EEA relevance)

(2008/272/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 pursuant to those provisions [1],

Whereas:

I. PROCEDURE

(1) By letter dated 21 August 2006, Poland notified the Commission of the planned restructuring aid for Techmatrans. Poland provided the Commission with further information by letter dated 14 December 2006. By letter dated 21 February 2007, 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 for Techmatrans. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments and received no comments from interested parties. The Polish authorities submitted further information by letters of 10 April and 24 July 2007.

II. DETAILED DESCRIPTION OF THE MEASURES

The Beneficiary

(2) Techmatrans is a 100 % state-owned engineering company created in 1972. It employs 112 workers. In 2006 the company's turnover amounted to PLN 8,1 (EUR 2,0) million and the balance sheet totalled PLN 6,3 (EUR 1,6) million. With these figures the company meets the SME thresholds, however due to the State ownership it is classified as a large enterprise. It does not belong to a larger business group.

(3) The company's main activities are providing repair, service and modernisation of transport technology systems as well as supply of new lifting transport technology systems for industrial plants of the automotive, metallurgical and construction sectors. The company has a low market share on the Polish market (0,2-1,0 %) and an even lower market share on the European market.

(4) Since 2002 the owner and the management of Techmatrans have made efforts to privatise the company. In July 2005 in reply to the invitation to buy between 51 % and 85 % of the company's shares, two bidders submitted offers. No negotiations were launched and in September 2005 the procedure was terminated. The Polish authorities have not explained why the procedure was stopped.

(5) Techmatrans is based in a region eligible for aid under Article 87(3)(a) of the EC Treaty.

The company's difficulties

(6) Between 2000 and 2004 the company incurred cumulated net losses amounting to PLN 7,7 million and own capital fell from PLN 11,2 million in 2001 to PLN 4,0 million in 2004. In 2005 the company made a profit of PLN 277 000, however in 2006 the company made losses again, amounting to PLN 1,1 million.

[1] OJ C 77, 5.4.2007, p. 43.
[2] See footnote 1.

(7) As the main reasons for the difficulties the Polish authorities mention a lack of orders, low profitability of contracts performed, and high costs of employment restructuring.

(8) Techmatrans admits that the difficulties are caused by internal deficiencies: low level of production technology compared to competitors, poor production management, poor quality and low technical level of products, and old and obsolete assets (on average production assets are 90 % depreciated). In fact since 2001 no major modernisation or even replacement investments have been implemented.

(9) Due to the lack of funds the marketing activity of Techmatrans is limited; accordingly, the company's current customer base consists mainly of companies with which Techmatrans has cooperated previously. Its liquidity problems have further exacerbated the company's situation.

(10) The company's liquidity indexes are too low to raise long-term loans on the market. Due to losses the equity of Techmatrans has decreased by 65 % since 2001, while the company was unable to take on long-term debts. Accordingly, around 30 % of operations are financed by short-term liabilities in respect of suppliers or public authorities.

The restructuring

(11) The planned restructuring consists mainly in assets restructuring. The restructuring plan envisages significant investments in production assets: purchase of new machines, know-how and licences and modernisation of IT systems. The aim of these investments is to increase the production efficiency and extend the range of the company's products.

(12) In order to lower the costs the company plans to purchase new vehicles and modernise the heating, water and energy supply systems.

(13) The planned capital injection will stabilise the financial situation of the company and improve financial indices.

(14) Certain restructuring measures have been already implemented. Overheads have been reduced: the company's activity was concentrated on one localisation, which reduced the costs of maintenance and operating costs; part of the redundant assets were sold in 2004, and employment was reduced from 133 workers in 2003 to 112 in 2005. As a result, the company made a small profit in 2005. The employment restructuring is considered to have been accomplished, and so no further employment reductions are planned.

(15) In order to lower fixed costs and accumulate capital for restructuring, Techmatrans plans to sell the redundant assets: real estate in 2007, redundant stocks (over one year old) and old machines and cars during the restructuring period, when the new ones are bought. The market value of the real estate according to an independent expert is between PLN 1,8 million and PLN 3,1 million, depending on the method of evaluation. Therefore the company assumed that the planned revenue from the real estate sale should amount to PLN 2 million. As for the sale of stocks, it is assumed that the revenue will amount to 25 % of the book value, i.e. they will amount to PLN 100 000. The estimated revenue from the sale of cars and machines amount to PLN 100 000.

(16) In addition, Techmatrans secured a merchant credit of PLN 110 000 with a longer repayment deadline than usual on the market. Poland has also proposed considering the profits made by Techmatrans in 2005 as an own contribution.

(17) Restructuring costs according to the notified restructuring plan amounted to PLN 5,35 million, PLN 2,8 million was planned to be financed from the state aid and the remaining PLN 2,55 million was supposed to be financed by Techmatrans.

(18) As regards the compensatory measures, the company planned to cease one of its activities, i.e. design of technological transport control systems. The control systems would remain part of the company's offer, but their design would be commissioned from other companies.

The measure

(19) The notified aid consists of a capital injection from the state-owned Industrial Development Agency (IDA) to an amount of PLN 2,8 (EUR 0,7) million. The legal basis for the capital injection is the Commercialisation and Privatisation Act of 30 August 1996 ([3]).

(20) The current owner — the State Treasury — will reduce the share capital of Techmatrans in order to cover the losses incurred in 2001-2004. Then the company will issue new shares, which will be bought by IDA, which in this way will acquire 41,5 % of the Techmatrans shares. The injected capital will be spent on investments.

(21) In addition to the above notified measure, the Polish authorities have informed the Commission that Techmatrans had received state support in 2004 and 2005 in the form of arrangements for debt repayment in instalments. The support was granted as *de minimis* aid.

III. **DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE**

(22) The formal investigation procedure was opened as the Commission had doubts that the planned restructuring aid complied with the Community Guidelines on state aid for rescuing and restructuring firms in difficulty ([4]) (hereinafter 'the Guidelines').

(23) First, the Commission had doubts that the envisaged restructuring was sufficient to restore long-term viability. The projected profit margin was low, so presumably it would have not been acceptable for a private investor. In addition, the company's actual situation in 2006 was much worse than projected, so the restructuring plan had to be updated.

(24) Second, the proposed own contribution was lower than required by the Guidelines. Moreover, certain measures proposed as an own contribution raised doubts as regards their compliance with the Guidelines. The restructuring costs also seemed to have been underestimated. As such, coverage of restructuring costs by the real own contribution was probably even less smaller than indicated.

(25) Finally, the Commission had doubts as regards the economical rationality of the compensatory measures proposed. The activity which was supposed to be ceased seemed to be technologically more advanced and more profitable than the company's other activities. This also raised doubts regarding the company's industrial strategy.

IV. **COMMENTS FROM POLAND**

(26) First, Poland did not share the Commission's doubts surrounding the future profit margins envisaged by the company in the restructuring plan. Evidence was provided to show that a profit margin of around 2 % to 4 % is typical in the mechanical engineering sector for similar companies producing technological transportation systems like Techmatrans. Poland presented an example of a successful company listed on the Polish stock exchange, which is active in the same market segment and achieves similarly low profit margins.

(27) The Polish authorities stressed that the planned capital injection is supposed to be a temporary support for Techmatrans enabling effective restructuring of the company and its successful privatisation in 2009/2010. Poland emphasised that IDA's participation in the company was planned purely as a temporary investment and that both IDA and the State Treasury would sell their shares in Techmatrans once the situation of the company had improved.

(28) The Polish authorities noted that significant restructuring measures, such as reduction of employment, reduction of overheads and organisational restructuring with a long-term impact on the results of the company had already been implemented in Techmatrans.

(29) The Polish authorities submitted an updated restructuring plan of Techmatrans. The financial projections have been corrected taking into account the results achieved by the company in 2006 and including repayment of the rescue loan.

(30) Poland noted that the company managed to obtain additional private financing in the restructuring period. Techmatrans signed agreements with banks on its receivables discounting (on 19 July 2006 and 27 March 2007). On the basis of these agreements the bank takes over Techmatrans' receivables which are due in less than 90 days, while immediately paying out cash to Techmatrans. Poland argues that this financing has a similar effect to revolving credit and should be considered as an own contribution of Techmatrans.

([3]) According to Article 56(2) of the Act, 15 % of the yearly profits from privatisation and the accumulated interest is transferred to the Entrepreneurs' Restructuring Fund. The Fund's assets are used for rescue and restructuring of firms in difficulty. According to Article 56(5) of the Act, the State Treasury increases the capital of ARP S.A. by an amount equal to 1/3 of the income of the Entrepreneurs' Restructuring Fund for the purpose of supporting the rescue and restructuring of large companies in difficulty, including the ones to be privatised.

([4]) OJ C 244, 1.10.2004, p. 2.

V. **ASSESSMENT**

1. **State aid within the meaning of Article 87(1) of the EC Treaty**

(31) Article 87(1) of the EC Treaty declares any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States incompatible with the common market.

(32) The capital injection of PLN 2,8 (EUR 0,7) million will be paid by the state-owned Industrial Development Agency (IDA) from a fund created by law and financed through public revenue and thus from State resources.

(33) Techmatrans competes with other European companies on the Polish and EU market. The criterion concerning the impact on trade within the Community is therefore fulfilled.

(34) Therefore, the above-mentioned measure is considered to be state aid within the meaning of Article 87(1) of the EC Treaty.

(35) The measures received by Techmatrans as *de minimis* aid in 2004 and 2005 do not fulfil all the criteria of Article 87(1) of the EC Treaty and therefore will not be covered by these proceedings in accordance with point 69 of the Guidelines.

2. **Derogations under Article 87(2) and 87(3) of the EC Treaty**

(36) The exemptions in Article 87(2) of the EC Treaty do not apply to the present case. As to the exemptions under Article 87(3) of the EC Treaty, since the primary objective of the aid concerns the restoration of the long-term viability of an undertaking in difficulty, only the exemption of Article 87(3)(c) of the EC Treaty, which authorises 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. Therefore, the aid can only be considered compatible on the basis of Article 87(3)(c) of the EC Treaty if the conditions laid down in the Guidelines are respected.

2.1. *The eligibility of the company*

(37) The Guidelines consider a firm to be in difficulties if it is unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing and without the intervention of public authorities will almost certainly go out of business. The Guidelines also list some of the typical characteristics of such companies, such as mounting debt or falling or nil net asset value.

(38) Techmatrans has to be considered as a 'firm in difficulty' within the meaning of the Guidelines. In the last 5 years Techmatrans has lost more than half of its equity and has made losses both on sales and its net result. The accumulated losses in the period 2002-2004 totalled PLN 7,3 (EUR 1,9) million. In the same period sales went down from PLN 15,7 (EUR 4,1) million (in 2001) to PLN 8,5 (EUR 2,2) million (estimated for 2006), i.e. by 46 %.

(39) In the period 2001-2005 the working capital fell from PLN 7,7 (EUR 1,9) million to PLN 2,3 (EUR 0,6) million. In the same period the share of stocks in the working capital grew from 16 % to 38,5 %.

(40) In view of the above, the Commission considers that Techmatrans qualifies as a 'firm in difficulty' within the meaning of the Guidelines and is consequently eligible for restructuring aid.

2.2. *Restoration of viability*

(41) In order for a measure to be deemed compatible with Community law under points 34-37 of the Guidelines, the restructuring plan has to analyse in detail the problems which have led to the difficulties and set out the means by which to restore the long-term viability and health of the firm within a reasonable timescale. This has to be done on the basis of realistic assumptions as to future operating conditions. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits.

(42) In the opening decision, the Commission raised doubts as to whether the planned restructuring was sufficient in order for Techmatrans to achieve viability and pointed out that the restructuring plan needed to be updated and completed. With the additional information submitted following the decision to initiate the formal investigation procedure, the Polish authorities have allayed these doubts as regards restoration of viability.

(43) Firstly, the poor results generated by Techmatrans in 2006 have been duly explained. As the notified capital injection had to be postponed, the company, faced with liquidity problems, started to require advance payments from its clients amounting to 40 % of the value of orders. As a result, a considerable number of orders was lost. Once the company had managed to improve its liquidity in the second half of 2006, its results improved significantly. The restructuring plan has been updated accordingly, taking into account the results recorded by Techmatrans in 2006.

(44) Secondly, as regards the Commission's concerns with respect to the low level of the expected profit margin of 3 % at the end of the restructuring period in 2010, the Polish authorities explained that such a level of expected profit margin corresponds to the situation in the sector, where margins oscillate between 2 % and 4 %. Examples of private companies active in the same sector and generating similar profit margins have been presented, including one company listed on the Polish stock exchange.

(45) A more detailed analysis of the situation in the market segment in which Techmatrans is active confirmed that a relatively low profit margin is typical for companies producing and providing services for the automotive industry, as the margins are squeezed by clients with a strong negotiating position. Therefore the projected level of return is justified.

(46) The restructuring activities consist mainly of new investments which should allow the company to exploit its potential in the long run (and which, in the short-term, by increasing depreciation, have a negative impact on the net result). Significant restructuring measures, such as employment restructuring, partial assets restructuring and organisational restructuring have been already implemented. Finally, the company has no significant debts to repay, and all the restructuring aid will be spent on improving productivity and competitiveness.

(47) The mechanical engineering industry is an industry with predominantly small and medium sized companies, mainly because products are customised and sold in small batches. Demand is cyclical which requires companies to flexibly adjust their capacities. In many cases products are know-how based and long-standing experience is necessary. Techmatrans seems to be a company which meets these requirements and the implementation of the investment program envisaged in the restructuring plan should ensure restoration of long-term viability.

(48) Finally, the Polish authorities plan to privatise the company in 2009/2010 following the restructuring process. This should additionally secure the position of the company in the long-term perspective. Market belief in the company has already been demonstrated in 2005 when two potential investors expressed their interest in acquiring it (the negotiations, however, did not lead to a successful privatisation at that time).

(49) Having analysed and verified the above explanations and the planned restructuring, in particular the investment programme, the Commission considers that, if this restructuring is implemented, Techmatrans should achieve viability in the long term. On the basis of these elements, the Commission concludes that the implementation of the restructuring plan will lead to restoration of viability.

2.3. *Aid limited to the minimum*

(50) Pursuant to points 43-45 of the Guidelines, the aid must be limited to the minimum necessary and the beneficiary is expected to make a significant contribution to the restructuring from its own resources or from external commercial financing. The Guidelines clearly indicate that a significant part of the financing of the restructuring must come from own resources, including the sale of assets not essential to the firm's survival and from external financing at market rates.

(51) The own contribution to cover the restructuring costs of Techmatrans will come from asset sales: sale of real estate (PLN 2 million), stocks (PLN 0,1 million) and old cars and production machines (PLN 0,1 million). In addition Techmatrans has secured a longer-term merchant credit of PLN 0,11 million.

(52) In addition Techmatrans has obtained receivables discounting. The expected total of receivables to be discounted in 2007 amounts to PLN 3 160 000. This estimate is based on the agreements on receivables discounting already signed with banks and clients. Assuming that the expected shortening of the payment period would be similar to the effect achieved in 2006 (80 days), the financing achieved on this basis in 2007 should have an effect equivalent to the long-term financing of PLN 702 000 (PLN 3 160 000 × 80 days/360 days).

(53) As Techmatrans acquired this financing at market rates, while being in difficulties and before state aid was awarded, the Commission considers that it is justified to assume that similar financing will be available to the company for the whole period of restructuring and under financial conditions which are at least as good. Therefore the Commission considers that this financing can be accepted as an own contribution within the meaning of the Guidelines.

(54) The restructuring costs according to the updated restructuring plan would amount to PLN 5,959 million (investments: PLN 5,359 million, repayment of rescue loan: PLN 0,6 million). The own contribution to financing should amount to PLN 3,012 million (revenue from the sale of assets: PLN 2,2 million, longer-term merchant credit: PLN 110 000, receivables discounting: PLN 702 000).

(55) The own contribution of Techmatrans to the overall restructuring can be considered the maximum possible and equal to at least 50 % of restructuring costs which is in line with the Guidelines. The Commission can therefore accept the level of the own contribution.

2.4. *Avoiding undue distortions of competition*

(56) Pursuant to points 38-42 of the Guidelines, action must be taken to mitigate as far as possible any adverse effects of the aid on competitors. The aid must not unduly distort competition. This usually means limiting the company's market share at the end of the restructuring period. The compulsory limitation or reduction of the company's share of the relevant market represents a compensatory factor in favour of its competitors. It should be in proportion to the distortive effects of the aid and to the relative importance of the firm on its market or markets.

(57) According to point 56 of the Guidelines, the conditions for authorising aid are less stringent as regards necessary compensatory measures in assisted areas. When analysing the consequences of the restructuring aid on the market and on the competitors, the Commission has taken account of the fact that Techmatrans is located in an Article 87(3)(a) of the EC Treaty assisted area.

(58) As for compensatory measures, the doubts surrounding the economical rationality of the measures proposed raised by the Commission in the opening decision have been allayed. Techmatrans plans to cease activities connected with the design and sale of technological transport steering systems because outsourcing in this field will be more rational than in others where the company is active. Contrary to the company's other activities, subcontracting of this activity will not necessitate passing on to potential competitors the specialist knowledge inherent in the company's core activity. In addition, ceasing these activities will not require significant adjustments to be made within the company.

(59) The activity which Techmatrans plans to cease is profitable, and therefore the resignation is not motivated by viability concerns. In recent years this activity generated between 5 and 8,6 % of Techmatrans' revenue.

(60) The Commission notes that the market share of Techmatrans is low, that it is in terms of size an SME (while formally not qualifying as an SME because it is State owned) and that the amount of the planned aid is rather limited (EUR 0,7 million). Therefore the distortion of competition that the compensatory measures aim to address is insignificant. The Commission therefore considers the proposed compensatory measure to be sufficient.

VI. **CONCLUSION**

(61) The Commission concludes that the notified state aid in favour of Techmatrans for the implementation of the above-mentioned restructuring process can be deemed compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Poland is planning to implement according to the restructuring plan of Techmatrans, amounting to PLN 2 800 000, is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Implementation of the aforementioned aid of PLN 2 800 000 is accordingly authorised.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 28 November 2007.

For the Commission

Neelie KROES

Member of the Commission