COMMISSION DECISION

of 25 July 2012

on the State aid n° SA.33114 (2012/C) (ex. 2011/NN) — Poland Alleged aid to Crist Shipyard

(notified under document C(2012) 5057)

(Only the Polish version is authentic)

(Text with EEA relevance)

(2013/9/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(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 the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) On 6 November 2008, the Commission adopted two recovery decisions [2] concerning unlawful State aid to the shipyards in Gdynia and Szczecin (hereinafter the "Gdynia Shipyard" and the "Szczecin Shipyard") allowing a special sales procedure. The Polish authorities were given the opportunity to sell the yards' assets in bundles in open, transparent, unconditional and non-discriminatory tenders.

(2) The Commission, while following up the recovery process, requested clarifications about the tender procedures mentioned above. Following press reports that the State-owned Industrial Development Agency (hereinafter "IDA") may have granted in September 2010 a loan (hereinafter "the measure", to Crist S.A. (hereinafter "Crist" or "the company") for the purchase of certain assets of the Gdynia Shipyard, the Commission requested clarifications on this issue at a meeting with the Polish authorities on 22 October 2010. The Polish authorities explained their position and undertook to submit all necessary information and corroborating documents regarding the transaction. The information was submitted on 25 November 2010 and on 5 December 2011.

(3) The Commission met with the Polish authorities on 6 December 2011.

(4) A series of exchanges took place between Vice-President Almunia and the Polish Minister of Treasury, Mr Grad, culminating in a letter from Mr Grad dated 25 October 2011 and informing the Commission that the end of the liquidation procedure was planned for the end of 2011 for both the Gdynia Shipyard and the Szczecin Shipyard.

(5) By letter dated 25 January 2012, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU") in respect of the measure at stake (hereinafter "the opening decision").

(6) The opening decision was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the measure.

(7) Poland submitted its comments on 27 February 2012. No comments from third parties were received. Further information was provided by Poland on 4 and 5 June 2012.

II. BACKGROUND TO THE CASE

1. Description of the beneficiary

(8) According to the Polish authorities, Crist, a private company located in Gdańsk, was established in 1990 by its two current shareholders. It has about 150 employees and about 500 self-employed contractors providing services to the company. The main fields of Crist's activities are shipbuilding, ship repair and hydro-technical installations. In the period between 2004 and 2008, the company worked yearly on about 20 ships

[1] OJ C 129 of 4.5.2012, p. 9.

[2] Commission Decision of 6 November 2008 on State aid C 19/05 (ex N 203/05) granted by Poland to Stocznia Szczecińska, OJ L 5, 8.1.2010, p. 1, and Commission Decision of 6 November 2008 on State aid C 17/05 (ex N 194/05 and PL 34/04) granted by Poland to Stocznia Gdynia, OJ L 33, 4.2.2010, p. 1.

[3] See footnote 1.

and other constructions. The company's customers are mainly ship owners from Europe (Germany, the Netherlands, Scandinavia and Poland).

(9) According to the Polish authorities, the company is active mainly in the three following market segments:

— hydro-engineering construction market: steel constructions used as locks, barrages, caissons and other steel constructions for the construction of marine wharves and harbour jetties,

— renewable energy market: arrangements and/or elements used in the construction of marine wind power farms,

— offshore market: survey, exploration and processing installations operating off shore used to support drilling platforms and construction modules of the steel drilling platforms.

(10) The structure of Crist's revenues broken down by market segment is illustrated in table 1 below. The Polish authorities informed the Commission that this revenue structure results from the implementation of the business plan according to which the focus of activities is to shift from traditional shipbuilding to the marine sector of renewable energy and hydro-engineering.

Table 1

Crist revenue structure by segment

Revenue category	2009	2010 [1]	2011
hydro-engineering	[17-23] (*) %	[4-6] %	[3-5] %
renewable energy	[23-28] %	[75-80] %	[67-74] %
offshore	[21-26] %	[6-8] %	[6-8] %
other (shipbuilding)	[29-34] %	[9-12] %	[17-20] %

[1] The Commission notes that the sum of the figures provided by Poland in the column for 2010 does not equal 100. The Commission believes this minor discrepancy to be the result of rounding the figures to two decimal places.
(*) Business secret

(11) According to the Polish authorities, Crist increased its revenues by a multiple of 10 over the period 2002-2009, reaching PLN 383 million in 2009 (EUR 95,75 million [4]. The revenue decreased in 2010 to PLN 236 million (EUR 59 million) but reached PLN 630 million (EUR 157,5 million) in 2011. The main financial results of Crist covering the period 2007-2009, that is prior the granting of the loan by IDA, and the period 2010-2011, that is after the granting of the loan, are summarised in table 2.

Table 2

Main financial results of Crist 2007-2011 (in million PLN)

	2007	2008	2009	2010	2011
Sales revenue	323,41	361,06	383,77	236,48	630,29
Sales profit	19,10	20,80	27,10	5,5	53,1
Operating profit	20,80	19,50	25,80	15,37	49,33
Net profit	22,20	20,10	15,50	12,62	31,66
Depreciation	2,40	3,30	4,20	5,58	10,75
Financial surplus	24,60	23,40	19,70	18,20	42,41

(12) According to the Polish authorities, in 2011, the company had credits and exposure limits of about PLN […]* million (EUR […]million), including the IDA loan (see Section 3 "Description of the measure") and financial support in various forms granted by four private banks. The company is currently engaged in the execution of 10 contracts with an aggregate value of about PLN […] million (EUR […]million) and is negotiating further contracts worth in total approximately PLN […] million (EUR […] million).

2. **Description of the Programme**

(13) On 27 May 2010, Crist applied for the IDA loan (see Section 3 "Description of the measure") under the "Programme of support by IDA of initiatives for the stimulation of the Polish economy" (hereinafter "the Programme") in the programme subcategory of "Support for undertakings in the most vulnerable regions affected by the economic crisis".

(14) The companies eligible for the Programme are medium and large enterprises implementing projects which aim at stimulating demand in the Polish economy and are active in the most vulnerable districts affected by the economic crisis or by severe floods. Such districts are clearly defined by the Programme. The district of Gdańsk is one of the vulnerable districts as defined by the Programme, while the district of Gdynia is not.

[4] Figures in EUR in this Decision are approximations provided only as indications with the exception of the EUR […]million figure, representing the value of the contract between Beluga Hochtief Offshore and Crist, which is denominated in EUR. All figures in PLN are converted into EUR by using the exchange rate EUR 1 = PLN 4.

(15) According to the Programme, IDA will participate in projects and ventures to stimulate economic demand and economic development. IDA should benefit from a reasonable return, i.e. participation should be on market terms. The maximum intensity of the financing provided by IDA cannot exceed 80 % of the net value of the planned investment.

(16) According to the Polish authorities, IDA should not support projects that could contain elements of State aid, with the exception of projects related to national security and defence in line with Article 346 TFEU ([5]).

(17) The Programme constitutes a part of IDA's commercial activity aimed at profit making, and applies, according to the Polish authorities, standards relevant on the market for commercial financing services for enterprises. As explained by Poland, such activity is separate from the granting of State aid by IDA to large enterprises in difficulty.

3. **Description of the measure**

(18) The measure under investigation is a loan of PLN 150 million (EUR 33,4 million) granted by IDA to Crist on 14 September 2010 (hereinafter "the IDA loan") for the purchase of an asset bundle including a dry dock, so called Crist Shipyard Area 2. According to the Polish authorities, at the time of granting, the loan represented less than […] % of the total amount of the company's credits and exposure limits.

(19) Pursuant to the Programme, the interest rate for the IDA loan should amount to the applicable base rate, increased by a net interest margin of 0,9 - 4 % per annum (hereinafter "the interest margin") according to the risk of the financing and the quality of the collateral provided by the beneficiary, as presented in table 3.

Table 3

Interest margin applicable to the measure according to the Programme

financial risk	strong collateral	moderate collateral	weak collateral
low	0,9 %	1,0 – 1,4 %	1,5 – 1,8 %
moderate	1,0 – 1,4 %	1,5 – 1,8 %	1,9 % – 3,3 %
high	1,5 – 1,8 %	1,9 % – 3,3 %	3,4 % – 4,0 %

(20) The interest margin for the IDA loan to Crist was set at 1,8 %. The overall interest rate of the loan received by Crist was 6,81 % ([6]). The interest rate was set at the level of the base rate defined as the 3-month WIBOR ([7]) (equal to 3,81 % when the loan was granted) plus 1,2 % to which an interest margin of 1,8 % was added. The interest margin was set by IDA at 1,8 % as both the financial risk of this transaction and the collateral were estimated as moderate, which, as shown in table 3, should result in a margin of between 1,5 % and 1,8 %. The maturity of the IDA loan is on 31 December 2015, i.e. a duration of approximately 5 years and 3 months since the measure was granted on 14 September 2010.

(21) The collateral for the IDA loan consists of:

— a registered pledge over 100 % of Crist shares,

— mortgage on real estate (part of Shipyard Area 2),

— a registered pledge on a number of movables forming part of Shipyard Area 2,

— a blank bill signed by Crist,

— a statement by Crist on its voluntary submission to execution and

— statements of each shareholder of Crist on their voluntary submission to execution,

(22) According to the Programme, the collateral must correspond to at least 150 % of the funding provided by IDA.

(23) The third tendering round for the sale of the Gdynia Shipyard's assets took place on 15 September 2010. According to the press, Crist was, as a result of the financing received from IDA, able to outbid another competitor, Patia (a company registered in Cyprus, connected with the Ukrainian company ISD – the owner of the Gdańsk Shipyard). Crist bid PLN 175 million (EUR 43,75 million) to purchase the asset bundle on offer (hereinafter referred to as the "dry dock"). The floor price of the dry dock had been set at PLN 96,7 million (EUR 24,17 million).

III. **REASONS FOR OPENING THE FORMAL INVESTIGATION PROCEDURE**

(24) In the opening decision, the Commission expressed its doubts as to whether Crist would have been able to

([5]) According to this Article: "The provisions of the Treaties shall not preclude the application of the following rules […] b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security …".

([6]) In the letter of 25 November 2010 Poland mistakenly informed the Commission that the interest rate was set at the level of the base rate defined as the 6 month WIBOR (instead of 3 month WIBOR) and that the overall interest rate of the loan received by Crist was 7,02 % (instead of 6,81 %). Poland corrected that information by a letter of 27 February 2012.

([7]) Warsaw interbank reference rate.

obtain the necessary financing on similar terms on the market on the basis of the information available to IDA at the moment of the decision granting the loan.

(25) According to the preliminary analysis of the measure on the basis of the information available to the Commission the IDA loan might have conferred an advantage on Crist through state resources. The Commission expressed its concerns as to: (i) the rate at which the credit was granted, (ii) the collateral that IDA accepted, (iii) the benchmark used by IDA, (iv) the business plan submitted by Crist and (v) a possible preferential treatment of Crist by IDA.

(26) As regards the rate, the Commission was not in a position to determine whether the interest rate of the IDA loan (assumed to be 7,02 % at the time of the opening decision) was in line with the market economy investor principle as the Polish authorities had not provided evidence on the company's rating and the level of collateral.

(27) With regard to the collateral, the underlying contract between IDA and Crist for the IDA loan and the expert evaluations of Crist's shares and of the dry dock given as collateral for the loan were not provided to the Commission. The Commission therefore considered that Poland had not demonstrated *prima facie* that the expert evaluations were done in a conservative manner and that a private investor would have accepted such collateral.

(28) In relation to the benchmark, the Commission had doubts as to whether the […] Bank loan could be used as a benchmark to assess whether the IDA loan complies with the private market investor principle. The Commission considered that the […] Bank loan was different from the IDA loan as: (i) it refinanced the transaction which Crist had initially financed from its own funds, (ii) the amount of the […] Bank loan was significantly lower, and (iii) the IDA loan entailed a higher risk compared to the […] Bank loan since its amount exceeded Crist's own funds and its duration was substantially longer (five years and three months compared to three years and eight months).

(29) On the business plan, the Commission noted that at the time the loan was granted, despite the company's overall sound financial condition, Crist was facing a three year trend of decreasing net results. Given the market risks involved, possible market overcapacity, and the fact that the financial crisis was far from over when the measure was taken the Commission had doubts as to whether a private investor would have provided the financing in question.

(30) Finally, without prejudice to the question of whether the Programme as such constitutes State aid within the meaning of Article 107(1) TFEU, the Commission raised doubts as to whether Crist was eligible for the support provided by IDA pursuant to the Programme as the loan was granted for an investment in Gdynia, which not being a vulnerable district could not benefit from the Programme. The Commission also queried whether the intensity of IDA financing to Crist complied with the maximum intensity threshold defined by the Programme (see recital 15). The IDA loan amounts to PLN 150 million (EUR 37,5 million). Crist purchased the dry dock for a price of PLN 175 million (EUR 43,75 million). On the basis of those figures, the aid intensity of the IDA loan was 86 %, i.e. above the limit set out in the Programme. The Commission therefore considered that Crist might have received preferential treatment by being granted the IDA loan under the Programme.

(31) In light of the above, the Commission had doubts as to whether a private investor would have provided Crist with the relevant financing and decided to open the formal investigation procedure.

IV. **COMMENTS FROM POLAND**

(32) The Polish authorities submitted that a comprehensive assessment of the economic and financial situation of the company, of its business plan and of possible market references preceded the decision to grant the loan to Crist and that it follows from the unambiguous results of this analysis that the loan in question corresponds to normal market conditions, understood as the conditions under which a private market operator would agree to finance a particular investment. Therefore, according to Poland, the IDA loan to Crist does not constitute Sate aid.

1. **The interest rate**

(33) Poland explained that the granting of the IDA loan was preceded by a three stage assessment of the company's economic and financial situation carried out according to standards relevant on the market of commercial financial services offered for enterprises. It included, at the first stage, an initial credit scoring by an independent external adviser, on the basis of which the company was marked for the purposes of qualifying for the next stage, i.e. a more detailed assessment. During the second stage, the last three accounting years were assessed together with the forecasted results, ratio analysis, quantitative measures such as liquidity ratio, asset turnover, capital structure, profitability and development as well as qualitative measures such as the quality of management, level of dependence on the market and quality of the proposed collaterals. At the last stage, the level of margin was set by applying a matrix taking into account the risks and the proposed level of collaterals established as a result of the expert analysis.

The rating of Crist

(34) By referring to the dynamics of Crist's results between 2006 and 2009 (see table 4) Poland stressed that the economic and financial situation of the company at the moment of applying for the loan, as established by the expert analysis, was good.

Table 4

Dynamics of Crist results, 2006-2009 (in million PLN)

	2006	2007	Dynamics	2008	Dynamics	2009	Dynamics
Profit on sales	21,20	19,10	**90,09 %**	20,8	**108,90 %**	27,10	**130,29 %**
Operating profit	20,90	20,80	**99,52 %**	19,50	**93,75 %**	25,80	**132,31 %**
Net profit	16,50	22,20	**134,55 %**	20,10	**90,54 %**	15,50	**77,11 %**
Depreciation	1,97	2,40	**121,83 %**	3,30	**137,50 %**	4,20	**127,27 %**
Financial surplus	18,47	24,60	**133,19 %**	23,40	**95,12 %**	19,70	**84,19 %**
Revenues from sales	228,75	323,41	**141,38 %**	361,06	**111,64 %**	383,77	**106,29 %**

(35) As regards the decrease in the net financial result in 2008 and 2009, Poland explained that it was caused by a change in the business model, that is accepting contracts of a higher value and providing higher profitability but which are characterised by a long completion period reaching up to 12-15 months. This means that the highest financial gains come at the completion of the product and its transfer to the contractor.

(36) The assessment of the business plan presented by Crist was carried out by IDA on several levels. Poland explained that the plan was developed in cooperation with […], the analysis of it was made by […] ("[…]") and a detailed examination of the document, including the assumptions and expected effects was made by IDA experts. The Polish authorities observed that, at each stage, the opinion on the document was positive and submitted that its accuracy has been confirmed by the real results achieved by Crist, which are in line with the forecast figures or even exceed them. Poland further explained that the favourable financial forecasts presented by Crist were credible and confirmed by the concluded contracts.

(37) As regards the profitability of the investment, Poland submitted a detailed explanation of the calculated ratios based on the cash flow, NPV (Net Present Value) ratio and IRR (Internal Rate of Return) ratio, which all proved high. The NPV value of the project covering purchase of the dry dock for the price of PLN 150 million was PLN […] million and the internal rate of return (IRR) was […] %. Poland added that although in the end the dry dock was purchased for PLN 175 million, the financial ratios are still very high for that transaction (NPV of PLN […] million and IRR of […] %).

(38) On the basis of the above-mentioned analysis IDA set the company's rating according to its three-level internal system of assessment. Crist was assessed as representing an average credit risk, good financial reliability and sufficient capability to repay liabilities in a longer period of time, and also an increased resistance to unfavourable economic conditions lasting for a longer period. Poland submitted that the result of the method used by IDA is in line with the Commission's Communication on the revision of the method for setting the reference and discount rates ([8]) ("the Reference Rate Communication"). The data available to IDA was assessed to correspond to the rating category BBB (good), as defined by the rating agency EuroRating, but in order to err on the safe side Poland retained a BB rating for the purposes of checking the outcome of applying the Reference Rate Communication.

The collateral

(39) The Polish authorities submitted that Crist had provided as collateral: a registered pledge over 100 % of Crist shares, mortgage on real estate (part of Shipyard Area 2), a registered pledge on a number of movables forming part of Shipyard Area 2, a blank bill signed by Crist, a statement by Crist on its voluntary submission to execution and statements of each shareholder of Crist on their voluntary submission to execution.

(40) Poland submitted expert valuations of Crist's shares carried out by […] using two methods: the assets based valuation method (adjusted net assets method) dated 29 July 2010 and the income-based valuation

([8]) OJ C 14 of 19.1.2008, p. 6.

method (discounted cash flow with an Adjusted Present Value approach) dated 1 August 2010. The results of these two valuations differed to a considerable degree. While the first method resulted in a value of PLN […]million, the second method showed almost PLN […]million. At the same time, in a separate document submitted by the Polish authorities, dated 3 August 2010, […] demonstrated that the adjusted net assets method was closer to the liquidation value of the company and did not reflect the real value of Crist (in particular the equity capital). […] concluded that PLN […]million should be taken as the real value.

(41) As regards the value of the second element of the collateral, i.e. the mortgage on the real estate, Poland provided an independent expert valuation of 4 March 2009 which estimated the market value of the asset bundle at PLN 169,5 million (or PLN 84,7 million in a forced sale). In addition, IDA requested a post-transaction independent expert valuation in January 2011, provided to the Commission, which set the value of the mortgaged real estate at PLN […] million.

(42) In response to the scepticism of the Commission as to whether the price paid by Crist in the third tendering round for the dry dock (PLN 175 million) can be taken as a proxy for the value of that collateral, Poland proposed to consider as a market value the counter offer of PLN 166 million which was made at the time by the other offering company - Patia.

(43) Furthermore, according to Poland the collateral value is further strengthened by the varied nature of the collateral components (real property, moveable property and financial assets) and the fact that all elements constituting the collateral were free of any encumbrance prior to the granting of the loan.

(44) The Polish authorities summarised that, on the basis of the various valuations, the total value of collateral on the loan was situated somewhere between PLN […] million and PLN […] million (see table 5). For the purpose of its internal rating, IDA had assessed Crist's collateral to be moderate (see table 3). Referring to the Reference Rate Communication rules (see table 6), the Polish authorities submitted that the total value of the collateral, in line with the market value, is PLN […]million [9] and constitutes […] % of the loan granted. This level of collateral significantly exceeds the level of the amount of the loan and corresponds to the category of "high collateralisation", as defined in the Reference Rate Communication, since the expected loss resulting from default in the loan repayment (LGD) equals 0.

Table 5

The values of the collaterals depending on the adopted methods of valuation

			Collateral object and method of valuation	
			Crist shares Assets-based valuation method (Adjusted Net Assets Method)	Crist shares Income-based valuation method (Adjusted present Value)
		Value (PLN)	[…]	[…]
Collateral object and method of valuation	Shipyard Area 2 Market value method (income based)	169 471 000	**TOTAL:** […]	**TOTAL:** […]
	Shipyard Area 2 Forced value sales	84 735 500	**TOTAL:** […]	**TOTAL:** […]
	Shipyard Area 2 Market value method (income based)	180 439 000	**TOTAL:** […]	**TOTAL:** […]
	Shipyard Area 2 Value of the last counter-offer	166 000 000	**TOTAL:** […]	**TOTAL:** […]

[9] Crist shares income-based valuation method (recommended by an expert) at PLN […] million and mortgage on the real estate (part of Shipyard Area 2) estimated by an expert at PLN 169,5 million.

(45) The Polish authorities also provided a […] report that was prepared in May 2012, i.e. after the transaction took place. It contains *inter alia* a verification of the […] valuations available to IDA at the time of the transaction. Poland highlights the criticism of the net asset valuation: […] did not include any valuation of intangible assets such as among others contract backlog, customer relationships and workforce, which could have significant values and would increase the valuation results. […] concludes that that valuation significantly underestimates the value of Crist equity. In relation to the income-based valuation method, Poland observes that […] arrives at similar values to those of […] (i.e. ca. PLN […] million).

The interest rate

(46) For the purposes of granting the loan, IDA assessed both the credit risk of the company and the level of collateral provided as moderate. As a consequence the loan was granted by IDA at an interest rate of 6,81 %, calculated as the sum of the base rate (three month WIBOR (3,81 %) plus 1,2 %) and the interest margin as it resulted from the matrix re-produced in table 3, i.e. 1,8 %.

(47) In addition to the calculations by IDA, based on its internal rules, Poland submitted further clarifications using the method for establishing a proxy set out in the Reference Rate Communication (see table 6).

Table 6

Loan margins in basis points according to the Reference Rate Communication

	Collateralisation		
Rating category	High	Normal	Low
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400
Weak (B)	220	400	650
Bad/Financial difficulties (CCC and below)	400	650	1 000

(48) Poland submitted that taking into account the reference rate published by the Commission for Poland (4,49 %), Crist's rating category (BB), and the high level of collateral (see recital 44), the interest rate on the loan should not be lower than 5,49 %. Poland therefore stressed that the rate applied by IDA of 6,81 % is 132 basis points higher than the reference rate defined in the Reference Rate Communication, i.e. 5,49 %.

(49) The […] report provided by Poland contains a detailed estimate of Crist's credit rating at the time of the transaction based on two different expert approaches. The rating models were developed by […] based on scoring/rating models used by commercial banks. The report estimates Crist's rating to be within the (BB-B) range. […] nevertheless finds the interest rate to be sufficient in view of the high value of collaterals, which assessed together indicate a high collateralisation.

2. **The benchmark**

(50) The Polish authorities informed the Commission that the […] Bank loan was not the sole basis for setting the final level of the interest rate for Crist, as this was done primarily on the basis of an internal assessment system. Irrespective of the differences in the loans, Poland noted that both institutions, IDA and […] Bank, reached similar conclusions with respect to the interest rates.

(51) Also, as a general remark, Poland submitted that in view of the high value of the loan at stake (PLN 150 million) it is practically impossible to find an ideal benchmark on the Polish market for the loan granted to Crist. With reference to the judgment of the Court of First Instance in Case T-296/97 *Commission v. Alitalia*, Poland argued that a possible gain by Crist should be assessed by reference to a similar and not an identical loan.

(52) Poland submitted a comparison of both credits (see table 7 below) and recalled that both loans were granted in 2010, that the […] Bank interest rate was even lower (6,68 % compared to IDA's 6,81 %) and that the […] Bank decision bore a higher risk. Consequently, in the opinion of the Polish authorities that transaction constitutes a valuable point of reference.

Table 7

Comparison of […] Bank and IDA loans to Crist

	[…] Bank loan	IDA loan
Amount	PLN […]	PLN 150 000 000
Date of granting	18.2.2010	14.9.2010
Credit duration	3 years 10 months	5 years 3 months
Interest rate	6,62 %	6,81 %
Value of collateral	PLN […]	PLN […]

	[…] Bank loan	IDA loan
Development prospects [1]	PLN […]	PLN […]
Additional risks	Lack of certainty that the dry dock (Shipyard Area 2) will be purchased and the production line will be complete	Loan granted for the purchase of the dry dock (Shipyard Area 2) being a completion of the production line

[1] The value of the contracts concluded at the moment of signing the financing contract.

(53) As regards the credit risk, Poland noted that both […] Bank and IDA based their decisions on the same business plan, which foresaw the purchase of both Shipyard Area 1 and 2. Therefore the risk of the completion of the plant was higher before the first transaction took place (even if […] Bank only refinanced the transaction which Crist originally covered from its own resources). In fact, the IDA loan decision allowing the purchase of the Shipyard Area 2 ensured the completion of Crist's new business strategy in which the company refocuses its business activity from traditional shipbuilding to the offshore renewable energy sector. In addition, Poland pointed out that the granting of the […] Bank credit to Crist occurred before Crist signed a very lucrative contract with Beluga Hochtief with the highest transaction value in Crist's history (of EUR […]million) which further improved the company's creditworthiness at the time of IDA's loan decision.

(54) On the other hand, the Polish authorities underlined that at the moment of granting the loan there was additional information that IDA gave serious consideration. For instance, Poland pointed out that apart from IDA and […] Bank, Crist enjoyed positive and long-lasting relations with a number of other financial institutions providing finance for the company's activities [10]. This demonstrated Crist's ability to raise finance on the capital market, at the time of the loan decision. To this end, Poland submitted a list of credit and guarantee limits in individual financial institutions held by Crist at the time of the transaction.

(55) Finally, the Polish authorities drew the Commission's attention to the National Bank of Poland interest rate table of September 2010 containing a periodically published list of average interest rates for new loans for businesses in PLN. It follows from that table that for credits over PLN 4 million with an interest rate variability not exceeding 3 months (as in the case of Crist), the average interest rate equalled 5,4 %, i.e. lower than the rate IDA charged Crist.

[10] Crist had been benefiting from a number of other external private sources of financing. They include credits and guarantees from […], […][…], […], […], […]and […] for over PLN […] million in 2010 and amounting to over PLN […] in 2011.

3. **The Business Plan**

(56) The Polish authorities provided the Commission with Crist's business plan ("the business plan"). Poland informed the Commission that prior to granting the loan to Crist, IDA had consulted the commercial partners of the company ([…] and […]) as well as private banks, and received answers confirming the financial stability of Crist. The Polish authorities provided the Commission with these confirmation letters from private banks and also an analysis by […] of the implementation of the business strategy by Crist covering the period prior to IDA's decision to grant the loan.

(57) The business plan assumed that the net present value of the investment project would amount to PLN […] million (EUR […]million) and the internal rate of return would be […] %. These estimations took as an assumption that the company would pay PLN 150 million for the dry dock. In response to the observation of the Commission in the opening decision that in the end the actual price paid was PLN 175 million, Poland submitted an analysis by […]. It shows that the NPV and IRR of the investment amounts to PLN […]million and […] % respectively on the basis of knowledge available at the time of transaction. […] adds that with the current knowledge, the NPV and IRR correspond to PLN […]million and […] % respectively.

(58) The same report contains an overview of the market situation and the development prospects of Crist. The report notes that Crist changed its production profile from traditional shipbuilding to tailor-made vessels, platforms and construction elements at sea. This business strategy gives Crist a niche position from which to participate in planned offshore projects in the North Sea and which provides ample opportunities for dynamic growth. […] concludes that the company is operating in a sector with significant growth potential.

(59) Poland submitted that as a result of the expert analysis of the business plan IDA concluded that: despite the economic crisis in progress since 2008 the company had recorded positive financial results for the last three years, the value of the signed and negotiated contracts indicated a quick development of the company, the financial forecasts were assessed positively and showed the company's ability to repay the loan.

(60) Finally, the Polish authorities observed that, with a net profit of PLN 12,6 million (EUR 2,8 million) in 2010 and PLN 31,6 million (EUR 7,03 million) in 2011, the company generated a net result which exceeded […]times the figures foreseen in the business plan. Similarly, it was noted that the company's total balance sheet at the end of 2011 was higher than planned by around […] %.

4. **Preferential treatment of the company**

(61) As regards the alleged preferential treatment of Crist by IDA, the Polish authorities explained first that the company was eligible for Programme funds as Crist's headquarters and two of its centres of business are located in Gdańsk. The investment in Gdynia, which otherwise does not qualify for such funds, did not result in the company's reallocation of activity but rather in a geographical extension of Crist's activity.

(62) With regard to the level of funding, Poland reaffirmed that the level of financing of Crist's investment from the IDA fund did not exceed the 80 % cap foreseen in the Programme. Poland stated that the total outlay of the investment programme planned by the company was PLN 188,2 million and encompassed Crist's purchase of not only the dry dock (Shipyard Area 2) but also the hull assemble area (Shipyard Area 1). Poland explained that both investments together belong to the same production line which allowed Crist to target effectively the renewable energy and off-shore construction markets. Only the complete investment programme enabled Crist to change its business model from traditional shipbuilding to tailor-made vessels, platforms and construction elements for off-shore wind farms.

(63) Therefore the intensity ratio of the whole investment of Crist (PLN 213,2 million [11] to the IDA loan (PLN 150 million) corresponds to 70 % and is well below the 80 % cap established by the Programme.

(64) Finally, Poland claimed that the Programme from which the loan for Crist was financed was a commercial programme and not of an aid nature. Poland noted that IDA's decisions to finance certain projects are assessed on a commercial basis by experts having experience from the largest financial institutions in Poland.

V. **ASSESSMENT**

1. **Existence of State aid within the meaning of Article 107(1) TFEU**

(65) Under Article 107(1) TFEU, 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(66) The classification of a national measure as State aid presupposes that the following cumulative conditions are met: (1) the measure confers an advantage through State resources; (2) the advantage is selective; and (3) the measure distorts or threatens to distort competition and is capable of affecting trade between Member States.

1.1. *Existence of an advantage*

(67) In order to determine whether the measure under investigation constitutes aid, it is necessary to establish whether Crist received an economic advantage which it would not have obtained under normal market conditions, that is conditions on which a private investor would provide financing to Crist

The interest rate

(68) In order to determine whether the measure under examination is compatible with the private investor test, the Commission assessed whether, on the basis of the information available to IDA at the time the decision was taken, a private creditor would have granted Crist a similar credit.

(69) As outlined in recital 33 and following, Poland informed the Commission that prior to the granting of the loan, Crist was subject to a detailed assessment of its economic and financial situation performed by IDA in cooperation with external experts, which led to the determination of Crist's rating. According to its internal system, IDA qualified Crist's rating as moderate, which, according to Poland, corresponds at least to the category BB (satisfactory) for the purposes of applying the Reference Rate Communication.

(70) With regard to the collateral, Poland submitted all expert valuations and provided detailed explanations concerning each of the elements constituting the loan's collateral (see recitals 39 to 45). On the basis of those valuations, which indicated that PLN […]million should be retained as the value of the pledge on the shares and an amount in excess of PLN […] million could be attributed to the mortgage over the dry dock, and bearing in mind the Programme condition that collateral should represent at least 150 % of the funding, the value of Crist's collateral was qualified by IDA as moderate, providing good cover for the credit risk. Poland nevertheless submitted that this constituted a prudent approach and that the independent expert collateral valuations indicate the high value of the collateral.

[11] This includes PLN 38,2 million for the Shipyard Area 1 and PLN 175 million for the Shipyard Area 2.

(71) Finally, on the basis of the moderate level of risk and collateral, the loan by IDA was granted at an interest rate of 6,81 %, calculated as a sum of the base rate (three month WIBOR plus 1,2 %) and an interest margin of 1,8 % (see table 3). Poland submitted that this rate exceeded the minimum interest rate as it would be calculated according to the Reference Rate Communication (see table 6 and recitals 46 to 49). The Commission notes that while Poland uses 'high collateralisation' for its calculations, the statement holds true even if IDAs assessment of 'moderate' (or normal) collateralisation is applied: base rate plus 220 basis points or 6,69 %.

(72) As a general remark, the Commission recalls that its preliminary doubts with regard to the interest rate level, contained in the opening decision, were primarily due to the lack of evidence on the company's rating and the level of collateral. In that regard, the Commission notes that in the reply to the opening decision Poland provided the relevant information, which IDA had at its disposal prior to the granting of the loan. In addition, Poland submitted an ex post valuation of the mortgaged real estate and a report drawn up by […] after the fact but based on the information available at the time the decision to grant the loan was taken.

(73) As regards the collateral, the Commission's assessment focused on whether the expert valuations were done in a conservative manner such that a private investor would have accepted the collateral on offer. In this respect, the Commission observes that, depending on the method used, the valuations of Crist's shares differ significantly (see recital 40). The Commission also notes the criticism by […] as regards the net asset value valuation of PLN […] million, which omits a number of important factors (see recital 45), which in turn result in the underestimation of the value of Crist equity. Finally, the Commission observes that the valuations of both […] and […] using the APV method arrive at the same conclusion (i.e. valuation of ca. PLN […]million) and that both independent experts are of the opinion that that method should be considered as more representative. In addition to providing these valuations to the Commission, Poland proposed to take as a proxy for the value of the collateral on the dry dock, the value of the counter offer by Patia of PLN 166 million, made at the time of the third tender. The Commission notes that such a proxy does appear to represents the value which a competitor of Crist was ready to pay for the dry dock in a situation of the forced sale of that asset.

(74) Without taking a position on which of the various reports should be retained, the Commission notes that IDA had a range of valuations as to the quality of the collateral on offer, only the most pessimistic of which represented less than 150 % of the loan to be granted, and expert recommendations indicating that the collateralwas sufficient to cover the credit risk.

(75) On the company's rating, the Commission critically assessed the contemporaneous evidence submitted by Poland, at the disposal of IDA prior to the decision to grant the loan. The Commission observes that within its internal rating expert analysis IDA carried out the full ratio analysis of Crist covering the liquidity ratio, turnover, asset-to capital structure and profitability ratios. In addition, IDA's assessment covered such elements as: cash flow analysis, financial forecasts, investment effectiveness, break-even point, vulnerability of the project to external factors such as interest rate or currency exchange rate.

(76) The Commission also takes note of the […] report. Although it post-dates the transaction, that report contains a detailed estimate of Crist's credit rating and the collateral on offer, on the basis of the same information that IDA had at its disposal at the time of the granting of the loan. The report estimates Crist's rating to be slightly lower than applied by IDA (BB-B range). As regard the collateral, the report considers that […] assets based valuation significantly underestimates the value of Crist equity. […] considers the APV method to be more consistent and commonly used. […] concludes on the basis of its analysis of Crist's rating and the value of the collateral on offer that the interest rate on the IDA loan was not lower than a market rate.

(77) The Commission also analysed whether the interest rate set by IDA corresponds to the methodology for setting reference rates, which the Commission can apply as a proxy for the market rate as contained in the Reference Rate Communication. According to the Reference Rate Communication, the reference rate results from the addition of a margin to a base rate corresponding to the 1-year IBOR (the 1-year money market rate in the Member State concerned). The margin to be applied depends on the rating of the undertaking concerned and the collateral (see table 6).

(78) Given that the base rate for September 2010 in Poland was 4,49 % ([12]), the rate of the IDA loan (6,81 %) would be higher than the applicable reference rate if, at the time of granting the loan:

— the rating of Crist was "weak" (B) and the collateral "high",

— the rating of Crist was "satisfactory" (BB) and the collateral at least "normal" or

([12]) The base rate, calculated in accordance with the Reference Rate Communication, for Poland in September 2010 canbe found at the following page of the Commission's Internet site: http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

— the collateral was "low" and the rating of Crist at least "good" (BBB).

In all three scenarios, the reference rate would be 6,69 % (4,49 % and 2,20 %) i.e. lower than the interest rate of the IDA loan (6,81 %).

(79) On the basis of the analysis above, the Commission considers that Crist's rating at the time of granting the loan was at worst "weak" (B). As regard the collateralisation, even the worst case scenario of collateral worth PLN […]million represents more than 100 % of the value of the loan and the Commission therefore considers that the expected loss resulting from default in the loan repayment (LGD) is in the range not exceeding 30 %, which corresponds to a high level of collateral as defined in the Reference Rate Communication. Taking into account the high collateralisation of the loan, the interest rate for the loan, in the worst case scenario, at the time of the transaction should have been not lower than 6,69 % (i.e. the reference rate for Poland 4,49 % plus 2,20 %, see table 6). The IDA loan was granted at a higher interest rate (6,81 %).

(80) In conclusion, the elements put before the Commission allow it to conclude that in deciding to grant the loan to Crist, IDA acted as a private creditor would have done on the basis of the information available and applied an interest rate that corresponded to a market rate.

The benchmark

(81) In the opening decision the Commission questioned the use of the […] Bank loan as a benchmark in this case. The Commission observed *inter alia* that the […] Bank loan was different from the IDA loan as it was for a much lower value and that […] Bank only refinanced the transaction which Crist had initially financed from its own funds. Moreover, The Commission's *prima facie* view was that the IDA loan entailed a higher risk compared to the […] Bank loan since its duration was substantially longer than the one provided by […] Bank.

(82) As outlined in recitals 50 to 55 the Polish authorities reaffirmed their position that it was appropriate to use the […] Bank loan as a benchmark for the IDA loan. Nevertheless, Poland underlined that other elements were taken into consideration prior to the decision to grant the loan.

(83) The Commission notes that IDA's decision to grant the loan to Crist was based on the complex expert analysis of the company's financial and economic situation which revealed the profitability of the planned investment and that the earlier decision of an independent financing institution, […] Bank, i.e. the benchmark in question, was an additional reference for IDA.

(84) The Commission also has regard to the fact that Crist's purchase of the dry dock constituted the completion of a production line and can therefore be regarded as a less risky step in the realisation of the business strategy than that in relation to which the […] Bank loan was granted. When the […] Bank loan was approved it could not be taken for granted that Crist would be able to complete the last step in the planned investment, i.e. the purchase of the dry dock. In addition, the Commission notes that the signature, in the period between the two loans, of the biggest contract in Crist's history (valued at EUR […] million) strengthens the position of the company as compared to the point in time at which the […] Bank loan was granted.

(85) Finally, the Commission notes that, as demonstrated by the numerous external sources of financing enjoyed by the company at the moment the IDA loan was granted, the financial sector had a positive perception of Crist's financial potential and its capacity to generate income.

(86) The doubts expressed in the opening decision having been addressed, the Commission considers that the conditions of the […] Bank loan, as well as the fact that Crist had access to other sources of external financing, support the conclusion that a private creditor would have provided Crist with a loan on similar conditions to the IDA loan.

The Business Plan

(87) The opening decision noted that although Crist was overall in a sound financial state when the IDA loan was granted, the accounts showed a three year trend of decreasing net results and the market was characterised by overcapacity. The Commission had *prima facie* doubts as to whether a private investor would have provided financing given the market risks involved and the fact that the financial crisis was far from over when the measure was taken.

(88) As outlined in recitals 56 to 60, Poland put forward additional explanations on the elements which led IDA to take the credit decision. This included *inter alia* a three-stage analysis of the financial condition of the company, which revealed a sound creditworthiness and an independent analysis by […]. Poland underlined that the return on investment based on NPV and IRR was high.

(89) The Commission has examined the assessment provided by Poland of the profitability of Crist's investment which demonstrates that even although in the end Crist had to pay a higher price than originally assumed for the dry dock (i.e. PLN 175 million), the relevant financial values remain high (NPV and IRR of the investment amount to PLN […]million and […] % respectively on the basis of knowledge at the time of transaction). From the perspective of a private investor these results indicate that Crist had a sound business plan and that thanks to its investment Crist gained a possibility to gain new contracts in the hydro-engineering sector. In fact, the value of signed contracts indicated a quick development of the company.

(90) The Commission notes that the company's sales and operational activities indicated a strong positive dynamic. In addition, the Polish authorities have explained that the fall in net results, which concerned only two years (2008 and 2009, see table 4) was linked to the new business strategy of Crist. The doubts in relation to the overall positive assessment of Crist's financial results are thereby alleviated.

(91) Concerning the doubts raised as a result of market overcapacity, the Commission observes that while the traditional shipbuilding industry may face overcapacity, Crist, in line with its new strategy laid out in the business plan made available to IDA for the purposes of granting the loan, generated between […] % in 2009 and […] % in 2011 of its revenues on the markets other than traditional shipbuilding (see table 1). The structure of revenues of Crist and the information on the prospects of the development of marine wind power engineering where the company is primarily active indicate the potential for development and the relatively low risk associated for private investors.

(92) On the basis of the above, the Commission concludes that the business information available at the time of the transaction contained sufficient elements to allow a private investor to come to the same decision as IDA.

(93) This assessment is corroborated by Crist's financial results for 2010-2011, which as an integral part of the business plan can be now assessed from an ex post perspective. Although in 2010 the company fulfilled only […] % of its sales forecasts, the planned return on sales and net profit margins were exceeded and the net profit generated by Crist amounted to PLN 12,6 million and was […]times higher than the net profit planned for that year. In 2011 the company's results further improved with the sales level higher by […] % than planned while the generated net profit exceeded the forecast by […] %. The company's total balance sheets at the end of 2010 and 2011 were higher than planned by […] % and […] % respectively.

Preferential treatment of the company

(94) In the opening decision the Commission expressed doubts as to whether certain conditions set out in the Programme had been respected, and in particular whether Crist was eligible under the Programme and whether the loan respected the cap on intensity laid down in the Programme (see recital 15).

(95) The Commission notes the explanation of the Polish authorities to the effect that the company was entitled to financing under the Programme and the level of financing of Crist's investment from the IDA fund did not exceed the 80 % programme cap (see recitals 61 to 64). In relation to the second point, the Commission has checked that the cap, as described by the Polish authorities, was respected also on the basis of the information available to IDA at the time it took the decision to grant the loan: financing of PLN 150 million for a total investment of PLN 188,2 million ([13]) results in an aid intensity of 79,7 %.

(96) On the basis of these explanations the Commission considers that the doubts as to whether a private investor would have granted the loan have been alleviated.

1.2 *Conclusion on the advantage*

(97) On the basis of the above findings the Commission concludes that the company did not derive any undue advantage from the conditions under which the IDA loan was granted. In particular the Commission considers that (i) the information in the possession of IDA was such that a private investor would have come to the same decision and that (ii) the interest rate on the IDA loan to Crist corresponds to a market rate.

(98) In view of the fact that the elements indicating the existence of State aid within the meaning of Article 107(1) TFEU are cumulative, the absence of any one of them is decisive. There is therefore no need to analyse the other elements identified in recital 66 above.

([13]) IDA could not know at the time that in fact the total investment was going to be PLN 25 million higher than assumed (i.e. PLN 213,2 million instead of PLN 188,2 million, as a result of the increase in the price paid for the dry dock).

HAS ADOPTED THIS DECISION:

Article 1

The measure, which the Republic of Poland has implemented in favour of Crist S.A., in the form of a loan PLN 150 million at an interest rate of 6,81 %, does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 25 July 2012.

For the Commission
Joaquín ALMUNIA
Vice-President