COMMISSION DECISION

of 25 June 2014

on the State aid No SA.20949 (C 23/06) — Poland — Technologie Buczek

(notified under document C(2014) 4099)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2014/765/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,

Whereas:

1. PROCEDURE

(1) By letter dated 7 June 2006, the Commission notified Poland of its decision to open a formal investigation procedure under Article 88(2) EC in the above State aid case.

(2) On 23 October 2007, the Commission Decision 2008/344/EC [1] ('the decision') was adopted in which the Commission concluded that State aid received by steel producer Technologie Buczek Group ('TB Group') was incompatible with the common market and ordered Poland to recover it from TB Group's constituent entities, i.e. the mother company Technologie Buczek S.A. ('TB') and its subsidiaries Huta Buczek sp. z o.o. ('HB') and Buczek Automotive sp. z o.o. ('BA') in proportion to the benefit actually obtained.

(3) On 8 January 2008, BA applied to the General Court for the partial annulment of the decision. TB and HB submitted separate applications but later withdrew their actions.

(4) By ruling of 17 May 2011 [2], the General Court annulled the decision in so far as BA is concerned (see detailed description below in recital 7). On 21 March 2013, the Court of Justice dismissed the appeal brought by the Commission against the judgment by the General Court [3].

(5) As a result of the annulment of the decision in so far BA is concerned, the formal investigation procedure C23/06 has not been closed, and the Commission had to resume that procedure from the point at which the illegality had occurred.

(6) The Commission requested information from Poland on 22 April 2013, 12 June 2013 and 27 November 2013, to which Poland replied on 8 May 2013, 26 July 2013 and 10 February 2014.

2. ASSESSMENT

(7) The Court annulled:

— Article 1 of the decision which declares the State aid in the amount of PLN 20 761 643 unlawfully granted to the TB Group to be incompatible with the common market,

[1] Commission Decision 2008/344/EC of 23 October 2007 on State aid C 23/06 (ex NN 35/06) which Poland has implemented for steel producer Technologie Buczek Group (OJ L 116, 30.4.2008, p. 26).

[2] Case T-1/08, *Buczek Automotive sp. z o.o.* v *Commission*, ECLI:EU: T:2011:216.

[3] Case C-405/11 P *Commission* v *Buczek Automotive sp. z o.o.*, ECLI:EU:C:2013:186.

— Article 3(1) and (3) of the decision, which lay down the amounts of aid to be recovered from HB and BA individually, in so far as those paragraphs relate to BA [1],

— Articles 4 and 5 of the decision, which contain implementing provisions, in so far as those Articles relate to BA.

(8) Since Article 1 of the decision refers to the TB Group as a whole, whereas the remaining annulled articles single out BA, the Commission considers it necessary to recall first to what extent the annulment of the decision affects the other members of the TB Group, i.e. TB and HB.

(9) The Commission recalls the judgment in Case T-227/95 (*AssiDomän Kraft Products and Others* v *Commission* [1997] ECR II-01185, paragraphs 59 and 60), in which the Court held that, if an addressee [of a Commission Decision] decides to bring an action for annulment, the Community judicature has before it only the elements of the decision which relate to that addressee. The unchallenged elements of the decision relating to other addressees, on the other hand, do not form part of the subject-matter of the dispute which the Court is called on to resolve. In an action for annulment, the Court can give judgment only on the subject-matter of the dispute referred to it by the parties. A decision can be annulled only as regards the addressees who have been successful in their actions before the Court.

(10) As mentioned above in recital 3, TB and HB withdrew their actions before the General Court and therefore the decision has become definitive in their regard, including the obligation of Poland to recover unlawful aid. The Polish authorities have confirmed that TB repaid PLN 13 963 560,74, which accounts for the full amount of the aid to be recovered from TB, as well as for part of the aid to be recovered from HB. HB was declared insolvent and all relevant public authorities registered their claims in the bankruptcy mass. The liquidation procedure is pending. The Polish authorities have confirmed that following the annulment, the aid repaid by TB has not been returned to it and claims against HB have not been erased from the bankruptcy mass.

(11) For those reasons, the formal investigation procedure remains open only with regard to BA.

(12) The Commission notes the information from Poland that BA was declared bankrupt on 28 September 2012 and was erased from the commercial register of companies on 16 November 2012.

(13) Poland informed the Commission that the assets of BA, which formed its bankruptcy mass, were sold individually (not in bundles constituting whole business), in tender procedures ensuring the achievement of market prices. Neither the employees of BA, nor its suppliers or customers were transferred to any of the acquiring entities in the way which might indicate economic continuity of BA.

(14) Poland also informed the Commission that in the course of the bankruptcy proceedings the administrator liquidated all the assets of BA. After closure of the proceedings there are no more assets of BA left that could conceivably be acquired by other undertakings.

(15) On the basis of those elements, the Commission concludes that there are no undertakings that might be considered to be economic successors of BA.

(16) The formal investigation procedure in the present case has therefore become devoid of purpose, as even if the aid was to be declared incompatible with the internal market, there would be no means of recovering the aid in question,

[1] Article 3(1) of the decision orders Poland to recover the aid referred to in Article 1 as follows: PLN 13 578 115 from HB and PLN 7 183 528 from BA. Article 3(3) ordered Poland to recover also the interest on these amounts.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union, initiated on 7 June 2006 and which remains open with regard to Buczek Automotive sp. z o.o. following General Court's judgment in case T-1/08 of 17 May 2011 as confirmed by the Court of Justice judgment in case C-405/11P of 21 March 2013, is hereby closed, because the procedure has become devoid of purpose following the liquidation of Buczek Automotive sp. z o.o.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 25 June 2014.

For the Commission
Joaquín ALMUNIA
Vice-President