



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.07.1999
COM(1999)355 final

99/0149(ACC)

Proposal for a

COUNCIL AND COMMISSION DECISION

on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, signed on 16 December 1991, with regard to the adoption of the necessary rules on state aids for the implementation of Article 63 (1) (iii) and (2) of the Europe Agreement and Article 8 (1) (iii) and (2) of Protocol 2 to the said agreement on European Coal and Steel Community products

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Europe Agreements establishing Associations between the European Communities and their Member States, of the one part, and respectively Republic of Bulgaria, Republic of Estonia, Republic of Latvia, Republic of Lithuania, Republic of Poland, Romania and the Republic of Slovenia, of the other part, lay down that the Association Council shall adopt the necessary implementing rules for the application of the provisions on state aids. The relevant Articles are: Article 63 of the Europe Agreement with the Republics of Estonia and Poland; Article 64 of the Europe Agreement with Romania and the Republics of Bulgaria, Latvia and Lithuania; and Article 65 of the Europe Agreement with the Republic of Slovenia.

The provisions on state aids are one of the basic points of the Europe Agreement between the European Communities and the respective States. Covering any aid granted by the State or through State resources in any forms whatsoever which might affect trade between the European Community and the respective States, the proposed decision lays down co-operation between the two parties' monitoring authorities.

According to the respective Decisions of the Council and the Commission on the conclusion of the Europe Agreements the position to be taken by Community within the Association Councils shall be laid down in accordance with the corresponding provisions of the Treaties establishing the three Communities. Articles 133 and 300 of the EC Treaty as well as Article 95 of the European Coal and Steel Community Treaty are an appropriate legal basis for the position to be adopted by the Community in the Association Councils with regard to the implementing rules for the application of the provisions on state aids.

The Council has so far agreed to the implementing rules for the application of the provisions on state aids concerning the Czech Republic and the Slovak Republic. The Implementing Rules for the application of the State aid provisions in the Czech Republic were adopted by the Association Council on 24 June 1998 (OJ L 195, 11.07.1998). The attached proposal follows the model as agreed for the Slovak Republic.

The Commission therefore requests the Council to adopt the attached proposal for a Council and Commission Decision.

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THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300 (2) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 95 thereof,

Having regard to the proposal of the Commission of the European Communities,

Having regard to the opinion of the Consultative Committee,

- (1) Whereas the European Community and its Member States concluded the Europe Agreement with the Republic of Poland on 13 December 1993;
- (2) Whereas Article 63 (3) of the Europe Agreement lays down that the Association Council shall adopt the rules necessary for the implementation of paragraphs 1 and 2 of that Article;
- (3) Whereas Article 8 (3) of Protocol 2 to the Europe Agreement on products covered by the European Coal and Steel Community Treaty lays down that the Association Council shall adopt the necessary rules for the implementation of paragraph 1 and 2 of that Article;

HAVE DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, with regard to the rules implementing Article 63 (1) (iii) and (2) of the aforementioned Europe Agreement, and to the rules implementing Article 8 (1) (iii) and (2) of Protocol 2 on European Coal and Steel Community products to the Europe Agreement shall be based on the draft decision of the Association Council annexed to this Decision.

Done at Brussels,

For the Council

For the Commission

ANNEX

ASSOCIATION BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF POLAND

- The Association Council -

DECISION No/99 OF THE ASSOCIATION COUNCIL

BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF POLAND, OF THE OTHER PART

adopting the implementing rules for the application of the provisions on state aid referred to in Articles 63(1)(iii) and (2) pursuant to Article 63(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and in Article 8(1)(iii) and (2) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and in particular Article 63(3) thereof,

Having regard to Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement and in particular Article 8(3) thereof

Whereas Article 63(3) of the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article;

Whereas it is recalled that in accordance with Article 63(2) of the Europe Agreement, the concept of "public aid" as contained in Article 63(1)(iii) of the Europe Agreement is to be assessed on the basis of criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, and thus covers any aid granted by the 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, insofar as it may affect trade between the European Community and the Republic of Poland (state aid);

Whereas the Republic of Poland will appoint a national institution or administration to become a monitoring authority with responsibility for state aid matters;

Whereas this monitoring authority will be responsible for the analysis of existing and future individual aid awards and programmes in the Republic of Poland and will give an opinion as to their compatibility with Article 63(1)(iii) and (2) of the Europe Agreement, and Article 8(1)(iii) and

(2) and (4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement;

Whereas the Republic of Poland will, when providing for the necessary rules to ensure effective supervision, ensure in particular that the monitoring authority receives in due time all the relevant information from the other government departments at central, regional and local level;

Whereas the Commission of the European Communities will, under the relevant Community programmes, assist the monitoring authority by providing for documentation, training, study tours and other relevant technical assistance,

HAS DECIDED AS FOLLOWS:

Article 1

The implementing rules for the application of the provisions on state aid referred to in Article 63(1)(iii) and (2) pursuant to Article 63(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland of the other part, and in Article 8(1)(iii) and (2) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement as set out in the Annex to this Decision, are hereby adopted.

Article 2

These Implementing Rules enter into force on the first day of the following month of the adoption of the rules.

Done at Brussels,

For the Association Council
The President

IMPLEMENTING RULES FOR THE APPLICATION OF THE PROVISIONS ON
STATE AID REFERRED TO IN ARTICLE 63(1)(iii) AND (2) PURSUANT TO
ARTICLE 63(3) OF THE EUROPE AGREEMENT ESTABLISHING AN
ASSOCIATION BETWEEN THE EUROPEAN COMMUNITIES AND THEIR
MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF POLAND,
OF THE OTHER PART, AND IN ARTICLE 8(1)(iii) AND (2) OF PROTOCOL 2
ON EUROPEAN COAL AND STEEL COMMUNITY (ECSC) PRODUCTS TO
THAT AGREEMENT

SURVEILLANCE OF STATE AID BY MONITORING AUTHORITIES

Article 1

Surveillance of state aid by monitoring authorities

Subject to the procedural rules in force in the European Community ("the Community") and the Republic of Poland, the granting of state aid shall be surveyed and assessed as to its compatibility with the Europe Agreement by the responsible monitoring authorities in the Community and the Republic of Poland, respectively. The monitoring authority in the Community shall be the Commission of the European Communities ("the Commission"), and in the Republic of Poland the Ministry of Economy.

GUIDANCE FOR DEALING WITH CASES

Article 2

Criteria for compatibility

1. The assessment of compatibility of individual aid awards and programmes with the Europe Agreement, as provided for in Article 1 of these Rules, shall be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case law of the Court of First Instance and the Court of Justice of the European Communities and the special guidance to be developed pursuant to Article 4(3).

Insofar as the aid awards or aid programmes are destined for products covered by Protocol 2 to the Europe Agreement, the first sentence of this paragraph applies fully with the exception that the assessment shall not be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community but on the basis of the criteria arising from the application of the rules on State aid of the Treaty establishing the European Coal and Steel Community.

2. The monitoring authority of the Republic of Poland shall be informed of any acts relating to the adoption, abolition or modification of the Community criteria of

compatibility referred to in paragraph 1, insofar as these are not published but are specifically brought to the attention of all Member States.

3. Where such changes do not encounter objections from the Republic of Poland within three months from the date of receiving the official information about them, they shall become criteria of compatibility as provided for in paragraph 1 of this Article. Where such changes encounter objections from the Republic of Poland and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place, in accordance with Articles 7 and 8 of these Rules.
4. The same principles shall apply in respect of other significant changes in Community policy on state aids.

Article 3

De minimis aid

Aid programmes or individual aid awards which do not involve export aid and which fall below the threshold applicable in the Community for *de minimis* aid¹ shall be considered as having only a negligible effect on competition and trade between the Parties and shall therefore not be treated under these Rules. This Article does not apply to the industries covered by the Treaty establishing the European Coal and Steel Community, to shipbuilding, to transport nor to aid towards expenditure in connection with agriculture or fisheries.

Article 4

Derogations

1. In accordance with and within the limits of Article 63(4)(a) of the Europe Agreement, the Republic of Poland shall be regarded as an area identical to those areas of the Community referred to in Article 87(3)(a) of the Treaty establishing the European Community.
2. The monitoring authorities shall jointly evaluate the maximum aid intensities and specific regional coverage of areas in the Republic of Poland eligible for national regional aid. They shall submit a joint proposal to the Association Committee which shall establish a decision to this effect.
3. The Commission and the monitoring authority of the Republic of Poland shall also work out, and modify if necessary, in addition to the types of aid allowed in the Community, a special guidance on the compatibility of aid designed to combat the specific problems of the Republic of Poland as it completes transition to a market economy.

¹ Currently the Community *de minimis* threshold according to the Commission Notice on *de minimis* aid (OJ C 68, 6.3.1996) is EURO 100 000 of total aid per firm over a three-year period.

PROCEDURES FOR CONSULTATION AND PROBLEM SOLVING

Article 5

Examination of certain aid

1. Where the amount of the aid in question amounts to over EURO 3 million, aid programmes or individual aid awards, whether or not covered by frameworks and guidelines in the Community, may be referred by the relevant monitoring authority to the Sub-Committee dealing with competition policy and state aids for examination. The Sub-Committee may submit a report to the Association Committee which may adopt appropriate decisions or recommendations concerning the compatibility of the aid programme or aid award with the Europe Agreement and these Rules.
2. The principal purpose of such decisions or recommendations shall be to avoid the resorting to commercial defence measures as a consequence of the aid in question.
3. The Association Committee may decide to extend further the possibility of examination as provided for in this Article.

Article 6

Request for information

Whenever the monitoring authority of a Party becomes aware of the fact that an aid programme or individual aid award appears to affect important interests of that Party, it may request information about this from the authority responsible. In any event, both monitoring authorities shall endeavour to keep each other informed of important developments that may be of practical interest for the other.

Article 7

Consultation and comity

1. Whenever the Commission or the monitoring authority of the Republic of Poland considers that the award of state aid on the territory for which the other authority is responsible substantially affects its important interests, it may request consultation with the other authority, and consequently it may request that the other Party's monitoring authority initiate any appropriate procedures with a view to taking remedial action. This is without prejudice to any action under the respective Parties' relevant legislation and does not hamper the full freedom of ultimate decision of the authority so addressed, within the framework of the Europe Agreement.
2. The monitoring authority so addressed shall give full and sympathetic consideration to such views and factual material as may be presented by the

requesting authority and in particular to the alleged harmful effects on the important interests of the requesting Party.

3. Without prejudice to any of their rights and obligations, the monitoring authorities involved in consultations under this Article shall endeavour to find, within three months, a mutually acceptable solution in the light of the respective important interests involved.

Article 8

Problem solving

1. Where consultations under Article 7 do not lead to a mutually acceptable solution, an exchange of views shall take place within the Sub-Committee dealing with competition policy and state aids established in the framework of the Europe Agreement at the request of one Party within three months following the request.
2. Where this exchange of views does not lead to a mutually acceptable solution, or after the expiration of the period referred to in paragraph 1, the matter may be submitted to the Association Committee which may make appropriate recommendations for the settlement of these cases.
3. These procedures shall be without prejudice to any action under Article 63(6) of the Europe Agreement and Article 8(6) of Protocol 2 on Europe Coal and Steel Community (ECSC) products to the Europe Agreement. Trade instruments should however only be used as a last resort.

Article 9

Secrecy and confidentiality of information

1. With respect to Article 63(7) of the Europe Agreement, neither monitoring authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information.
2. Each monitoring authority agrees to maintain the confidentiality of any information provided to it in confidence by the other authority.

TRANSPARENCY

Article 10

Inventory

1. Under the relevant Community programmes, the Commission shall assist the Republic of Poland to draw up and thereafter update an inventory of its aid

programmes and individual aid awards, established on the same basis as in the Community, in order to ensure and continuously improve transparency.

2. The Commission shall provide the Republic of Poland with regular information on the documentation it produces with a similar aim in relation to the Member States of the Community.

Article 11

Mutual information

Both Parties shall ensure transparency in the domain of state aid by providing for appropriate publications and the exchange of information on state aid policy on a regular and reciprocal basis.

MISCELLANEOUS

Article 12

Administrative assistance (languages)

The Commission and the monitoring authority of the Republic of Poland shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.