

**SUMMARY INFORMATION SHEET ON AID MEASURES IN FORCE ON 1<sup>ST</sup> MAY 2004 (EXISTING AID)**

**1. GENERAL ASPECTS**

**Country:** POLAND

**Title of the aid measure (English):**

Commercialisation, restructuring and privatisation of "Polish State Railways" (PKP) State Enterprise

**Title of the aid measure (Original language):**

Komercjalizacja, restrukturyzacja i prywatyzacja przedsiębiorstwa państwowego Polskie Koleje Państwowe (PKP)

**Legal basis (precise reference):**

- I. The Law of 8 September 2000 on commercialisation, restructuring and privatisation of "Polish State Railways" State Enterprise (Journal of Laws of 2000, No 84 item 948, as amended), among others:
  - A – Article 2, Article 17(4,6,7)
  - B – Article 15(7)
  - C – Articles 22-28
  - D – Articles 32 and 33a
  - E – Articles 33c-33l
  - F – Articles 34-38;
- II. The Law of 15 February 1992 on corporate income tax (Journal of Laws of 2000, No 54 item 654, as amended) – Article 12(4)(8)c
- III. The program of Further Restructuring and Privatisation of the PKP Group Companies until the year 2006 adopted by the Council of Ministers of the Republic of Poland on 16<sup>th</sup> December 2003 (enclosed to this summary information sheet);

**Ministry or other administrative body responsible for the measure and its implementation:**

- I.
  - A Ministry of Infrastructure
  - B Ministry of Infrastructure
  - C Tax Offices, Social Insurance Fund, Labour Fund, State Fund for Rehabilitation of Disabled Persons, National Fund for Environment Protection and Water Management, local authorities
  - D Ministry of Finance
  - E Ministry of Infrastructure and Tax Offices

F the State Treasury

II. Ministry of Finance

III. The enclosed restructuring program contains appropriate information;

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**Level at which the measure is administered (central government, regional, other)?**

- I. A, B, D, F – central government,  
C, E – central government, regional and local authorities,
- II. Central government,
- III. Central government, regional and local authorities;

**When did the measure enter into effect?**

- I. *2000.10.27* - entry into force of the Law of 8 September 2000 on commercialisation, restructuring and privatisation of “Polish State Railways” State Enterprise;
- II. *2003.01.01* – entry into force of the amendment of the Law of 15 February 1992 on corporate income tax, introducing the measure in question;
- III. *2003.12.16* – the date of acceptance of the program of Further Restructuring and Privatisation of the PKP Group Companies until the year 2006 by the Council of Ministers;

**What is the duration of the measure (expiry date)?**

The date when assumptions related to the restructuring and privatising of companies in the PKP Group will be accomplished;

**A DESCRIPTION OF THE MEASURE**

**Which transport sector is eligible (rail, aviation, maritime, etc.)?**

Rail;

**What are the main aim(s) and objectives of the aid?**

The main objective of the measure is the restructuring and privatising of “Polish State Railways” State Enterprise (PKP), acting pursuant to the law of 6 July 1995 on “Polish State Railways” State Enterprise (Journal of Laws of 1996 No. 95 item 474, as amended). The restructuring follows the process of commercialisation of the PKP, which began in 2000.

## **Form of the measure (scheme, ad hoc, individual)**

Individual

### **What are the instruments (or forms) of aid?**

#### **I.**

##### **A.**

- Commercialisation of the PKP state enterprise into a joint stock company owned solely by the State Treasury, followed by establishing new companies on the basis of PKP assets (organisational restructuring),
- Altering organisational structure, consisting in the establishment of operating companies, a management company for railway lines and other subsidiaries, connected with
  - capital injection in the form of financial and non-financial contributions (tangible and intangible assets required to carry out their activity),
  - transfer of land connected with railway by PKP to PLK for non paid use,
  - tax relieves;

B. Grant – injection increasing the initial capital of Polish Rail Lines (PLK S.A.);

C. Write-off or arrangement into instalments of certain public and legal debts of PKP;

D. State guarantee or surety:

- to redeem bonds issued by PKP in years 2001-2004,
- to repay bank credits or loans taken by PKP, including interest thereon, or to repay a bank creditor loan granted by foreign bank or foreign financial institution, including interests and other charges thereon, if so required by international standards and practice.

E. Restructuring of certain private and legal debts of PKP Group companies, which may consist in:

- write-off of liabilities in total or in part,
- deferment of due dates,
- arrangement into instalments of the repayment of liabilities
- tax relief.

F. Restructuring of assets:

- relief from obligation on the side of PKP to pay the first charge on the account of purchase of right to hereditary tenure,
- free of any charge overtaking of premises and other installations fixed on a. m. land in hereditary tenure,
- write-off of State Budget receivables on account of PKP acquiring the ownership of structures, facilities and premises in part not paid before the date of the law became effective,

- tax exemption of PKP income related to free of charge acquiring of ownership of a.m. assets.

II. Tax relief;

III. The information is provided in the enclosed restructuring program;

**For each instrument of aid please give a short description of the conditions applying to the instrument.**

I.

**A** Commercialisation of PKP consisted in transformation of the state enterprise into a joint stock company owned solely by the State Treasury. PKP S.A. entered into all legal relationships held by PKP State Enterprise, no matter of legal nature, unless otherwise stipulated in the Law on commercialisation, restructuring and privatisation of "Polish State Railways" State Enterprise.

Restructuring of PKP comprise measures altering enterprise structure of the company, consisting in:

- establishment of operating companies, a management company for railway lines and other subsidiaries, by PKP,
- management of assets, in particular through company contributions, sale, lease and disposal of redundant real estate, including housing properties,
- change of level and structure of employment,
- conversion of liabilities into stock and shares of PKP held in established subsidiaries.

The privatisation of PKP consists in disposal of shares of PKP held by the State Treasury or new shares being held by third parties as a result of rising company's capital.

PKP established operating subsidiaries for railway passenger transport and railway freight transport (operating companies), a joint stock company to manage railway lines under the name of Polish Railway Lines Joint Stock Company (PLK S.A.) and the others. PKP inserts to these subsidiaries financial contribution and non-financial contribution in a form of tangible and non-tangible assets separated from its enterprise, necessary to carry on the activity of the subsidiaries. Activities connected with the creation of these companies and connected with insertion to them a.m. contributions are exempted from the tax of civil-legal activities (stamp duty). The land, which forms the part of railway lines, and which cannot be inserted as the non financial contribution due to non established legal status, shall be transferred by PKP to PLK S.A. for non paid use on basis of the agreement. This non-paid use of land does not constitute in PLK S.A. and PKP the income within the meaning of provisions on income tax.

**B** Expenditure from the State budget, transferred within the given year for financing railway lines having significant meaning for the State, increase the stock capital of PLK S.A. Connected to that shares within the stock capital belong to the State Treasury represented by the Minister of Infrastructure;

**C** Financial restructuring covers liabilities of PKP:

- as of 30 June 2002 in legal persons' income tax, value added tax, excise duties and customs duties;
- as of 31 December 2001 due to Social Insurance Office, Labour Fund, State Fund for Rehabilitation of Disabled Persons, National Fund of Environment Protection and Water Conservation.

The law envisages write-off of liabilities including interest, prolongation charge and execution cost. Outstanding payments for retirement insurance are to be repaid in instalments since 2003 to 2006. The provisions concerning financial restructuring are also valid for liabilities constituting budget revenues of local and regional authorities, if the given authority decides to pass a bill on restructuring these liabilities.

An undertaking applies to the appropriate authority for issuing the decision to commence the restructuring of liabilities (at the latest on 30 September 2003), undertaking submits also a restructuring programme. According to the Law the application itself begins the process of restructuring. After a year since submitting the application, the restructuring authority takes decision to write-off the planned liabilities, if the following conditions are met:

- 1) the company has paid all its liabilities related to direct income tax, social insurance, payments due to Labour Fund, State Fund for Rehabilitation of Disabled Persons and National Fund of Environment Protection and Water Conservation, which emerged in period between 1/01/2002 and 1/03/2003;
- 2) since the application the company has paid in time payments due to retirement insurance, other social insurance, in part financed by insured person and payments for common health insurance;
- 3) the company hasn't granted any surety or guarantee and hasn't passed on any donation, excluding assets generating losses;
- 4) the company has paid in the restructuring charge equal to 1,5 % of liabilities under the restructuring process due to given restructuring authority, excluding interest, prolongation charges and execution costs.

The revenues related to write-off of liabilities are not treated as revenues in the meaning of regulations on legal person income tax.

**D** The law envisages the issue of bonds by PKP in years 2001-2004 of nominal value of PLN 6.000.000.000. The law states purposes for which the resources from the issue should be allocated, these are (amount of PLN 3.900.000.000):

- 1) the repayment of credits and loans, including interest and other cost related to these credits and loans,
- 2) pre-retirement benefits for employees of PKP made redundant in 2000, being paid off in years 2000-2001, single separation payments for employees made redundant in years 2000-2002, training, vocational and social consulting for employees and social benefits due to granted "railway leave" (PLN 1.100.000.000),
- 3) repayment of liabilities and ensuring continuity of exploitation process, including purchase of materials and services, purchase or modernisation of roll-stock, modernisation of equipment necessary for railway traffic and connected with safety requirements, including investments accounting to PLN 1.450.000.000,
- 4) repayment of liabilities of railway healthcare entities accounting to PLN 45.000.000,
- 5) costs of services provided by privatisation consultants accounting to PLN 6.000.000,
- 6) costs of the emission of bonds, excluding cost of bonds' redemption or payments on ground of interests or discount,
- 7) repayment of liabilities due to social insurance in the part financed by insured person, and health insurance, including interests,
- 8) subsidies for uneconomic regional passenger carriage performed by PKP or other companies

established by PKP.

PKP S.A. should apply to the Ministry of Finances for guarantee or surety, which may be granted maximally to 100 % of guaranteed or assured amount, 100 % of interests and other costs, if so required by international standards and practice.

**E** Restructuring of certain civil and legal liabilities consist in concluding restructuring agreement by PKP and other companies from PKP Group with creditors of civil and legal liabilities. This measure relates also to public creditors possessing civil receivables. Civil and legal liabilities under state guarantee or surety, aroused in relation to incurred credits or issued bonds are not eligible to such restructuring. The agreement on restructuring of certain civil and legal liabilities was concluded on 29 March 2004.

**F** State owned land, being possessed by PKP on 5 December 1990, to which it didn't have legal documents confirming its rights, on the date the law became effective, become land in hereditary tenure of PKP. PKP is released from obligation to pay the first rate due to hereditary tenure. Free of any charge PKP became by law the owner of structures, premises and other installations fixed on such land. Acquiring of these rights are being confirmed by the Voivode upon submission of related application of PKP. Also receivables of the State Budget on account of PKP acquiring the ownership title to structures, facilities and premises should be terminated in whole or in part not paid before the date the law became effective.

The land being part of railways, in use on 28 February 2003 of PKP not owned by State Treasury or regional or local authorities became by law property of State Treasury on 1 June 2003, after payment of compensation, financed by PKP. PKP is given the right of hereditary tenure of this land, without obligation to pay the first charge. PKP acquires also the property right of structures, premises and other installations fixed on such land free of any charge.

PKP income on account of free of charge acquiring of titles to a.m. assets is exempted from the income tax.

- II. The cancelled debts, including debts related to loans or credits do not constitute revenues for corporate income tax purposes, provided that these debts were cancelled on the basis of the Law of 8 September 2000 on commercialisation, restructuring and privatisation of "Polish State Railways" State Enterprise;
- III. The information is provided in the enclosed restructuring program;

**Budget: give the overall budget made available for the measure (in local currency and Euro)**

I.

**A** No estimation is available;

**B** The value of shares was following:

- in 2002 (for support granted in years 2001 and 2002):  
    PLN 275 578 000,  
    EUR 61 616 098\*
- in 2003 (for support granted in 2002):  
    PLN 190 630 000,  
    EUR 42 622 694\*

- estimated amount for year 2004 (prognosis):

PLN 270 000 000

EUR 60 368 921;

### C

The estimated amount of State aid related to write-off of the liabilities (prognosis):

Restructuring authority:		2003 (PLN thousand)	2003 (EUR thousand)*	2004 (PLN thousand)	2004 (EUR thousand)*
local authorities and National Fund for Environment Protection and Water Management	nominal value:			10 293,3	2 301,5
	interests:			2 717,7	607,6
Tax Offices	nominal value:			48 413,5	10 824,7
	interests:			16 477,7	3 684,2
Social Insurance Fund – liabilities write-off	nominal value:			453 055,3	101 297,9
	interests:			258 101,7	57 708,6
Social Insurance Fund – repayment of pension collections in instalments		98 714,0	22 071,3		

\* average foreign exchange rate announced by the National Bank of Poland prevailing as at the 20<sup>th</sup> August 2004 (Tabela kursów nr 163/A/NBP/2004 z dnia 2004-08-20) – 1 EUR = 4.4725 PLN;

### D

The estimated amount of State aid related to the emission of bonds and guarantees (prognosis):

State guarantees		2003 (PLN thousand)	2003 (EUR thousand)*	2004 (PLN thousand)	2004 (EUR thousand)*
Bonds	nominal value	500 000,0	111 794,3	1 000 000,0	223 588,6
	net grant equivalent	425 000,0	95 025,1	850 000,0	190 050,3
Bonds' interests	nominal value	255 000,0	53 968,2	510 000,0	114 030,2
	net grant equivalent	216 750,0	48 462,8	433 500,0	96 925,6
credit with interests	nominal value	1 127 599,0	252 118,3	-	-
	net grant equivalent	958 459,2	214 300,5	-	-
prolongation of credit guarantee	nominal value	1 306 792,5	292 183,9	-	-
	net grant equivalent	1 110 773,6	248 356,3	-	-
conversion of guaranteed credit	nominal value	-	-	1 650 000,0	368 921,2
	net grant equivalent	-	-	1 402 500,0	313 583,0
interests on	nominal value	-	-	1 200 000,0	268 306,3

converted guaranteed credit	net grant equivalent	-	-	1 020 000,0	228 060,4
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\* average foreign exchange rate announced by the National Bank of Poland prevailing as at the 20<sup>th</sup> August 2004 (Tabela kursów nr 163/A/NBP/2004 z dnia 2004-08-20) – 1 EUR = 4.4725 PLN;

## **E**

The agreement on restructuring certain civil and legal liabilities encompassed liabilities on the amount of PLN 1 902.3 Million (EUR 425.3 Million). The cancelled liabilities amount to PLN 759.2 Million (EUR 169.7 Million). The liabilities in the amount of PLN 1 143.2 Million (EUR 255.6 Million) were mainly arranged into instalments, to be repaid by the end of 2007.\*

\* average foreign exchange rate announced by the National Bank of Poland prevailing as at the 20<sup>th</sup> August 2004 (Tabela kursów nr 163/A/NBP/2004 z dnia 2004-08-20) – 1 EUR = 4.4725 PLN;

**F** In case of restructuring of assets there is no estimation on budget available for this aid measure.

II. No estimations are available;

III. The information is provided in the enclosed restructuring program;

**Is the budget adopted annually? If yes, what is the average annual budget?**

No

**Specify the eligible beneficiaries (i.a. their character and estimated number).**

“PKP” Joint Stock Company and other companies in PKP Group;

**Is the aid available on non-discriminatory basis, open to all potential beneficiaries, irrespective of nationality?**

There is fixed number of beneficiaries, as aid measure aims at restructuring of the group of companies originating from "Polish State Railways" State Enterprise;

**What are the eligible costs?**

The eligible costs are costs of the restructuring of companies in PKP Group, costs of investments and costs of providing services of general economic interest;

**What is the maximum aid intensity?**

The maximum aid intensity does not exceed the restructuring costs in case of restructuring aid, investment costs and the costs of providing services of general economic interest;

**Specify the criteria according to which the amount of aid and/or the aid intensity has been calculated.**

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**Does the measure provide “operating aid”? If “Yes”, please provide details.**

No

**If the measure relates to services of general economic interest or public service obligations, please specify by what means this task has been entrusted to the undertaking and how compensation is calculated.**

The Law of 8 September 2000 on commercialisation, restructuring and privatisation of “Polish State Railways” State Enterprise states purposes for which the resources from the issue of bonds should be assigned. One of these purposes is co-financing of uneconomic regional passenger carriage performed by PKP and its subsidiaries. The uneconomic carriages are executed, as they constitute services of general economic interest.

**May the aid in question be cumulated with any other aid measures in operation and if so, does the measure contain provisions limiting the cumulation of aid?**

The aid granted on the basis of the Law in question may be cumulated with other aid measures, which are envisaged in the restructuring plan and must not exceed the costs of restructuring of the group of companies originating from PKP. Apart from that these companies may be granted investment aid and aid related to services of general economic interest.

**Does the aid measure fall within existing exemption regulations or guidelines? If so, please specify.**

Article 3(1) (d) of Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway;

Community Guidelines on State aid for rescuing and restructuring firms in difficulty (*Official Journal C 288, 09.10.1999, p. 0002-0018*);

According to the Polish authorities support granted on the basis of the measure described under ‘E’ does not constitute State aid in the meaning of Article 87 of the EC Treaty, as the private investor (creditor) principle in this case applies. Moreover, the a.m. measure was already granted before the accession of Poland to the European Union.

Enclosures:

1. The Law of 8 September 2000 on commercialisation, restructuring and privatisation of “Polish State Railways” State Enterprise (Journal of Laws of 2000, No 84 item 948, as amended),
2. The program of Further Restructuring and Privatisation of the PKP Group Companies until the year 2006 adopted by the Council of Ministers of the Republic of Poland on 16<sup>th</sup> December 2003,
3. The list of the public assistance granted to PKP and its subsidiaries in the form of guarantees.