

STATE AID

C 80/97 (ex NN 53/97)

Germany

(98/C 361/03)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93(2) of the EC Treaty to the Member States and other parties concerned regarding aid granted by the German Government to Pittler/Tornos Werkzeugmaschinen GmbH**

The Commission has sent the German Government the following letter, informing it that it has decided to initiate the procedure provided for in Article 93(2) of the EC Treaty.

Democratic Republic. It had 1 826 employees at the end of 1989, of whom 1 341 were still employed at the end of 1990.

1. PROCEDURAL ASPECTS

By letter dated 10 April 1997, registered on 11 April 1997, the German Government notified the Commission under Article 93(3) of the EC Treaty of the restructuring of Pittler/Tornos Werkzeugmaschinen GmbH. By letters dated 28 May and 5 August 1997, the Commission requested further information, which was provided by letters dated 9 July and 17 September 1997. Further information was provided by letter dated 27 October 1997, registered on 28 October 1997. Since the aid was granted before it was notified, there has been a breach of Article 93(3) of the EC Treaty. The aid was therefore registered as not notified.

The business was privatised on 9 August 1991, realising a price of DEM 4 million. Tornos Bechler SA took a 51 % holding, Pittler Maschinenfabrik AG took a 24 % holding while DBF Drehmaschinenbeteiligungsgesellschaft mbH took the remaining 25 % of the shares. In order to enable the privatisation to go through, the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (the BvS) relieved the company of earlier debts amounting to DEM 36 million and debts to cover liquidity amounting to DEM 34 million. The BvS also provided the company with an investment grant of DEM 5,95 million, guarantees amounting to DEM 7 million and loans amounting to DEM 5 million. By a decision of the proprietors of 18 November 1991, the company changed its name to Pittler/Tornos Werkzeugmaschinen GmbH. By agreements dated 27 April and 27 August 1992 the proprietors altered their holdings so that Tornos Bechler SA took 75 % of the shares and Autania AG took the remaining 25 %.

2. GENERAL DESCRIPTION**2.1. DESCRIPTION OF PITTLER/TORNOS WERKZEUGMASCHINEN GMBH**

Pittler/Tornos Werkzeugmaschinen GmbH produces multi-spindle lathes for the manufacture of precision components for use in, for example, the motor-vehicle industry. It is an SME located in Saxony, one of the new German *Länder*, and had 130 employees in 1996. Its 1996 turnover was around DEM 9 million.

The business was established by Wilhelm von Pittler in Leipzig in 1889. It was the sole manufacturer of multi-spindle lathes in the German

After privatisation the company encountered many difficulties as a result of the collapse of the Eastern European market and the worldwide recession in industrial goods. In addition, it was affected by the increasing supersession of multi-spindle technology by CNC technology; in the period 1989-93, the total production of all manufacturers of multi-spindle lathes in Germany fell from a value of DEM 437 million to DEM 80 million. Neither the company itself nor its individual proprietors held reserves sufficient to last out that difficult period. Between 1992 and 1994 losses exceeded DEM 46 million. By order of the

Local Court, Leipzig, proceedings to wind up the company were initiated on 1 November 1995 and a Leipzig solicitor, Dr Braun, was appointed administrator.

After the initiation of the winding-up proceedings, the company ceased trading on 31 December 1995. The business received a sequestration loan of DEM 4 million from the BvS to enable it to continue operations.

On 1 January 1996 a rescue operation was mounted through the formation of a new company, Pittler/Tornos Werkzeugmaschinen, having a capital of DEM 500 000. All shares in the new company were financed through the assets of the company in liquidation and were held by the administrator. The proprietors of the former company cannot influence the new company. The new company acquired from the administrator the current assets and plant necessary to continue the business. The current assets were acquired at a price of DEM 4 million, financed through a loan. This loan was covered by a sequestration loan to the company in liquidation made by the BvS on 4 September 1995. It is not fully clear from the notification whether the latter loan is the loan referred to in the previous paragraph, for which a different date has been indicated.

The current company has 144 employees, compared to 160 when the winding-up proceedings were initiated.

2.2. THE RESTRUCTURING PLAN

The restructuring plan covers all areas of Pittler/Tornos Werkzeugmaschinen GmbH's business. The research and development department is to update and further develop current products. Some R&D services are to be bought in.

Suppliers are to be reduced from 1 000 to 200 and a just-in-time system introduced.

Product flow is to be improved by moving production to another building on the premises. Throughput times are to be improved (30 % faster in 1997 and 50 % faster in 1998). A software programme will be introduced for the planning and control of the production process. Some activities with no added value will be

outsourced. The company is to concentrate more on its core business.

The company intends to focus mainly on a niche where competition is not so keen. Pittler/Tornos Werkzeugmaschinen GmbH operates in the upper market segment, like the quality leader, Schütte. The current project business, which mainly calls for intensive development, is to be supplemented by a greater proportion of standard work. The proportion of export work is to be increased to 60 % up to 1998, provided that the current renaissance in multi-spindle lathes continues.

The organisational structure will also be flattened. A department for logistics will be established. The new company employed 130, compared to 144 in Pittler/Tornos Werkzeugmaschinen GmbH. In 1997 a slight increase in the number of employees is planned.

Mr Otto, who has considerable experience in this sector, is responsible for the management of the business. An external consultant provides technical know-how. This management set-up will remain in place until a strategic investor is found.

The restructuring so far carried out has cost DEM 8,5 million. In 1996 the business made losses exceeding DEM 6 million and anticipates further losses in 1997. The restructuring period will end in 1997 and it is expected that operations will again be profitable.

It is hoped to sell Pittler/Tornos Werkzeugmaschinen GmbH to a new investor. Although negotiations have started, the German Government was unable to provide any information on the prospects of selling the business.

2.3. THE PROPOSED AID MEASURE

The following table shows the individual aid measures (according to the latest information provided by your Government) and the time when the grants were paid (the amounts shown are in DEM 1 million):

(DEM millions)

Aid measure	1.1.1996 to 31.12.1996	1.1.1997 to 31.8.1997	Total
BvS loan (*)	4,522	0,378	4,9 (**)
Liquidity grant from the BvS	3,000		3,000

(*) In the information provided by your Government, only the sequestration loan (loan to the company's proprietors) of 4 September 1995 is mentioned but not the sequestration loan in connection with the termination of business operations on 31 December 1995. For this reason only the loan to the company's proprietors is shown in the table. However, your Government is requested to provide further particulars of the loans.

(**) Your Government calculates a total amount of DEM 4,948 million.

Additional measures are mentioned in your Government's notifications: DEM 2,8 million of GA funds, DEM 7,8 million in guarantees provided by the *Land* and DEM 2,2 million from the THA consolidation fund. The omission of these measures from the above table is without prejudice to the question whether they are in accordance with the respective aid programmes ⁽¹⁾.

However, certain figures have altered with the passage of time: the notification refers to GA funds of DEM 2,8 million while the most recent figures in the latest letter from your Government indicate DEM 1,817 million. Similarly, the loan to the proprietors has risen from DEM 4,0 million in the notification to DEM 4,9 million in the latest letter from your Government. Due to absent or inconsistent data, the Commission cannot quantify the total amount of aid which has so far been granted. In its letter of 5 August 1997 to your authorities it requests more detailed information on all aid which has been granted. Your Government's answer of 19 September 1997 does not provide clearer information and its last letter (of 27 October 1997) merely contains a table concerning financial measures, without explaining why some figures have been altered and whether additional aid has been granted.

⁽¹⁾ Those aid programmes are as follows: the twenty-fifth framework plan for common duties for the improvement of regional economic structures, special programme of guarantees of the *Land* of Saxony for business, liberal professions and agriculture and forestry (authorised on 13 March 1996) and the Guidelines on guarantees for funds from the Consolidation Fund of the *Land* of Saxony for the restructuring of small and medium-sized industrial enterprises.

Moreover, it is not clear whether further aid will be necessary in future and, if so, how much. According to the notification, the purpose of the aid previously granted is to continue the business's operations and to promote restructuring.

2.4. MARKET ANALYSIS

Pittler/Tornos Werkzeugmaschinen GmbH produces machine tools for metalworking. The recession, which in 1993 reached its lowest point, affected manufacturing industries with particular severity. Declining profits and excess capacity induced a slump in investment and EU machine-tool manufacturers experienced the worst recession since the Second World War. Following the general recovery in Europe in 1994, most European manufacturers had double-figures growth rates for new orders for machine tools and this dynamic growth was sustained until the middle of 1995. Estimates place the average annual growth rate for 1996 production between 5 % and 10 %. It is expected that basic economic conditions will continue to be favourable beyond 1996 and demand for machine tools will grow in the medium term ⁽²⁾.

The EU machine-tool industry has for long been a significant player in international trade. Despite the appearance of new competitors on the market such as the Japanese in the 1970s and 1980s and the Asian tiger economies in the 1980s and 1990s, the EU has been able to maintain its share of around 30 % of world trade. From an international standpoint, the EU is the biggest machine-tool manufacturer and in 1995 the 15 Member States accounted for 38 % of world production. Japan is in second place with 25 %, far ahead of the USA with 13 %. The EU forms the biggest single market in machine tools. Foreign manufacturers, who hold a market share of about one fifth, do not encounter particularly serious trade barriers. Nevertheless, the EU's international trade balance for machine tools maintains a constantly high surplus. In view of the size of the internal market, the export rate

⁽²⁾ Panorama of EU Industry 1997, NACE 29.4.

of 38 % is significant and shows that the industry is competitive at international level ⁽³⁾.

Metalworking machine tools are produced throughout Europe and in a number of countries this is to some extent concentrated in certain regions. The businesses in this industry are usually SMEs. Compared with the average production capacity of its main competitors, Pittler/Tornos Werkzeugmaschinen GmbH is a fairly small business. The principal customers for machine tools are mechanical engineering firms, the motor-vehicle industry and electrical goods manufacturers. Pittler/Tornos Werkzeugmaschinen GmbH includes Volkswagen, Ford and suppliers to the motor-vehicle industry among its customers.

In recent years machines incorporating multi-spindle technology have been experiencing a renaissance since they are cheaper than machines using CNC technology and, through their very low unit costs, enjoy a competitive advantage. It is reported in the press (*Frankfurter Allgemeine Zeitung*, 15 September 1997) that the firm has orders until the middle of 1998 and introduced a world innovation at the 1997 Hanover Fair.

these provisions were not designed as a general exception to Article 92(1) of the EC Treaty and are limited to special cases to make up for inadequate infrastructure in areas bordering on the former German Democratic Republic. The relevant measures do not come into this geographical category.

Furthermore, the Commission has not received any information enabling it to appraise whether the conditions laid down in Article 92(2)(c) of the EC Treaty have been met. Your Government has not produced evidence that the areas in question remain affected by the division of Germany and that the aid granted to Pittler/Tornos Werkzeugmaschinen GmbH is necessary to compensate for those disadvantages. The European Court of Justice has laid down in Case C-364/90 *Italy v. Commission* [1993] ECR I-2097, at paragraph 20 that Member States seeking to rely on these derogatory provisions have a duty to provide all the information to enable the Commission to verify that the conditions for the derogation sought are fulfilled.

3. ASSESSMENT

3.1. DEROGATION

Article 92(2) and (3) of the EC Treaty incorporates derogations from the general principle that state aid must be compatible with Article 92(1) of the EC Treaty.

3.1.1. Article 92(2) of the EC Treaty

The derogations in Article 92(2)(a) and (b) of the EC Treaty are not applicable in view of the features of the aid and the circumstance that the notification is not intended to meet the conditions for the application of those derogations.

The aid measures are not covered by the derogation in Article 92(2)(c) of the EC Treaty. The aid granted to Pittler/Tornos Werkzeugmaschinen GmbH could be covered by Article 92(2)(c) only on a very wide interpretation of these provisions. The Commission's view is that

3.1.2. Article 92(3)(a) of the EC Treaty

The plants of Pittler/Tornos Werkzeugmaschinen GmbH are located in Saxony, a regional development area for the purposes of Article 92(3)(a) ⁽⁴⁾. Aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment may be considered to be compatible with the common market. However, in the present case the principal aim of the one-off aid is not to promote the economic development of an area but to restructure a firm in difficulty. Even if it is accepted that a restructured firm can contribute to the development of an area, the aid is to be appraised on the basis of Article 92(3)(c), not Article 92(3)(a).

3.1.3. The general rules on state aid

In the case of Pittler/Tornos Werkzeugmaschinen GmbH, the Commission is focusing on

⁽³⁾ Panorama of EU-Industry 1997, NACE 29.4.

⁽⁴⁾ N 464/93; N 613/96, arrangements valid until the end of 1999.

the derogation in Article 92(3)(c) of the EC Treaty concerning "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" since the primary aim of the aid is not to promote the development of areas but to restructure a firm in difficulty. Such aid may be considered to be compatible with the common market provided it meets the criteria in the Community guidelines on state aid for rescuing and restructuring firms in difficulty⁽⁵⁾.

The problem with the application of the guidelines on restructuring is that they are not usually applied to newly established firms taking over or hiring the assets of businesses where liquidation proceedings have begun. However, exceptions can be made in the case of businesses in the new *Länder* for the special difficulties involved in the transition from a centrally planned economy to a market economy. In view of this particular situation and the special role of the BvS in the transitional procedure, aid for companies taking over companies where liquidation proceedings have been initiated can in certain cases be considered restructuring aid⁽⁶⁾. In those cases private investors who took over newly established companies provided a considerable contribution for restructuring. However, no investor has yet been found for Pittler/Tornos Werkzeugmaschinen GmbH. It is therefore doubtful whether the aid for that company may be considered restructuring aid for the purposes of the guidelines on restructuring, the more so if the aid for the company is appraised in the light of these guidelines. The Commission can only approve aid on the basis of the guidelines on restructuring if there is a restructuring plan which meets the general conditions set out below.

Restoration of viability

The *sine qua non* of all restructuring plans is that they must restore the long-term viability and health of the firm within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. The aid should normally only need to be granted once.

It is difficult to assess the prospects for the longterm viability of Pittler/Tornos Werkzeugmaschinen GmbH. On the one hand, it seems to have buyers for its products up to the middle of 1998 and to have developed a competitive product. Given the renaissance in the multi-spindle lathes, general market conditions have clearly improved. On the other, the information provided by your authorities does not permit a sound assessment of long-term viability. Moreover, it is not clear why no strategic investor has been identified for the company. This circumstance in fact jeopardises the implementation of the restructuring plan presented in the notification; a new investor might have completely different ideas as to how the company should be restructured. Furthermore, the company could have sold its current production up to mid-1998 by fixing prices below production cost.

Avoidance of undue distortions of competition through the aid

A further condition of aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. Otherwise the aid would be contrary to the common interest and ineligible for exemption pursuant to Article 92(3)(c).

In this case too, owing to the uncertain future and lack of data on the company's capacity, it is impossible to analyse the effect on competition even if the favourable developments in the industry since 1993 seem to indicate that there is no short and medium-term overcapacity in the market.

⁽⁵⁾ OJ C 368, 23.12.1994.

⁽⁶⁾ See Commission decisions of 16 April 1997 and 29 April 1997, State aid N 874/96 and NN 139/96 for Union Werkzeugmaschinen GmbH — Commission letter D/3428 of 2 May 1997; State aid N 892/96 for Foron Haus- und Küchentechnik GmbH — Commission letter D/4047 of 28 May 1997.

Aid in proportion to the restructuring costs and benefits

The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing.

At present, no private investor is making a contribution to the company's restructuring. The administrator can scarcely be considered a private investor for the purposes of the guidelines on restructuring. As your authorities confirmed in the notification, the administrator's duty is to continue the business until a private investor is found. It follows that this third condition has not been fulfilled.

Furthermore, the lack of a private investor leaves it open whether further aid will be necessary in future and if the restructuring plan can be implemented as specified in the notification. The Commission is thus unable to appraise whether the aid is in proportion to the restructuring costs and benefits.

Since the conditions for approval of the restructuring aid have not been fulfilled, there is serious doubt whether the aid can be approved on the basis of the Community guidelines on state aid for rescuing and restructuring firms in difficulty.

3.2. CONCLUSION

The aid for Pittler/Tornos Werkzeugmaschinen GmbH was notified as restructuring aid. The Commission has already stated that the guidelines on restructuring are to be applied very strictly when aid is granted to businesses established after a winding-up. It has taken account of the special role played by the BvS in privatising industry in the former German Democratic Republic. In previous privatisations, private investors taking over newly established businesses have made substantial contributions to their restructuring. However, in this case no investor has been found yet. In view of this, the aid really constitutes bridging finance to enable a business in liquidation to continue its operations. This is no longer acceptable. For those reasons it is doubtful whether the case of Pittler/Tornos Werkzeugmaschinen GmbH is covered by the guidelines on restructuring.

Even if it is accepted that the guidelines on restructuring are applicable, it appears that the aid is not justifiable since the company's long-term viability is not secured and it is impossible to appraise whether the aid is in proportion to the restructuring costs and benefits.

In addition, the information provided by your Government does not bring out clearly the total amount of aid involved. Moreover, your Government has failed to provide any information on the following points:

- the amount of future aid,
- the financial plans for the next three years,
- alterations in capacity since 1990.

On the basis of the information currently available and of the present situation, a positive appraisal of the aid is impossible.

The Commission has therefore decided to initiate the procedure under Article 93(2) of the EC Treaty in respect of the aid.

The Commission will also invite third parties to give their comments.

The Commission would remind you of the suspensory effect of Article 93(3) of the EC Treaty and would draw your attention to the communication published in *Official Journal of the European Communities*, C 318 of 24 November 1983, p. 3 and C 156 of 22 June 1995, p. 5, in which it is stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93(2) of the EC Treaty, may have to be recovered from the recipient.

The annulment of aid unlawfully received gives rise to the obligation to repay it in accordance with the procedures and provisions of German law, with interest starting to run on the date on which the unlawful aid was granted, at a rate corresponding to the reference rate used for regional aid. This measure is necessary to remove all the financial benefits that the firm receiving the unlawful aid has improperly enjoyed from the date on which the aid was paid and to restore the status quo.

The Commission would also request your Government to notify the recipient undertaking of the initiation of the procedure without delay and to inform it that it may have to repay any aid unduly received.

The Commission would inform your Government that, by means of publication of this letter in the *Official Journal of the European Communities* and in the EEA supplement thereto, it will give the other Member States, EFTA States and interested parties the opportunity to submit their observations.

The Commission therefore invites your Government to inform the Commission, addressed to the Director for State Aid, Directorate General IV, within 15 working days of

receiving this letter if elements are contained in the decision, which according to your opinion are of a confidential nature.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate for State Aid,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,
Fax: (32-2) 299 27 58.

The observations will be communicated to the German Government.

Authorisation for State aid pursuant to Articles 92 and 93 of the EC Treaty

Cases where the Commission raises no objections

(98/C 361/04)

Date of adoption: 5.8.1998

Member State: Italy

Aid No: N 328/98

Title: Aid for Parmacotto project — RIS operation

Objective: To improve processing and marketing structures

Legal basis: Legge n. 266/97, articolo 23

Budget:

- ITL 4,6 billion (approximately ECU 2,3 million) as equity financing,
- ITL 10,4 billion (approximately ECU 5,2 million) as a low-interest loan

Aid intensity: 22,2 %

Duration: One-off aid

Title: Woodland Grant Scheme — modification

Objective: To promote woodlands and forestry products

Legal basis:

- Forestry Acts 1967 and 1979 (Great Britain)
- Forestry Act (Northern Ireland) 1953

Budget:

Expenditure on the new measure:

- 1998/1999: GBP 1,1 million (ECU 0,7 million),
- 1999/2000: GBP 1,1 million,
- 2000/2001: GBP 1,1 million

Aid intensity: Up to 50 % of the eligible costs

Duration: Unlimited

Date of adoption: 13.8.1998

Member State: United Kingdom

Aid No: N 322/98

Date of adoption: 27.8.1998

Member State: Germany

Aid No: N 223/98