

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 February 2000

on the State aid implemented by the Federal Republic of Germany for Dessauer Geräteindustrie GmbH

(notified under document number C(2000) 515)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/1/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular the first subparagraph of Article 88(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⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 26 May 1998, registered on 29 May 1998 under NN 63/98, Germany informed the Commission of aid for Dessauer Geräteindustrie GmbH (DGI) pursuant to Article 88(3) of the Treaty. By letter dated 23 June 1998, the Commission asked supplementary questions which were answered by letters dated and registered on 7 August and 22 September 1998 respectively. Further information was submitted in letters dated 11 November 1998 (registered on 12 November), 6 December 1998 (registered on 7 December), 18 January 1999 (registered that same day) and 21 January 1999 (registered that same day) and 27 January 1999 (registered on 28 January).
- (2) On 18 February 1998 the Commission had received information from Germany, confirmed on 5 March 1999, that the company was facing impending insolvency.
- (3) By letter dated 18 May 1999, the Commission informed Germany of its decision to initiate the procedure under Article 88(2) of the EC Treaty in respect of those aid measures. By letter dated 25 June 1999, registered on 29 June, Germany replied to the initiation of the procedure and informed the Commission that insolvency proceedings (*Insolvenzverfahren*) for DGI had been opened on 30 March 1999.

⁽¹⁾ OJ C 213, 24.7.1999, p. 12.

- (4) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid measures. The comments it received were forwarded by letters dated 22 September and 18 November 1999 to Germany, which was given the opportunity to react.

II. DETAILED DESCRIPTION

A. Recipient

- (5) DGI is the legal successor to Dessauer Gasgeräte GmbH. It develops, manufactures and distributes gas and electric stoves (both free-standing and built-in models), gas heating appliances and safety enclosures for electrical equipment. Since December 1994 it has operated as a holding company for four subsidiaries: Dessauer Umform-Oberflächentechnik GmbH, Dessauer Gasgeräte GmbH, Dessauer Schaltschrankbau GmbH and Dessanova Vermögensverwaltungs GmbH.
- (6) In 1998 DGI employed 234 people and recorded losses of some DEM 7 million on a turnover of DEM 33,48 million. It qualifies as an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises ⁽³⁾.
- (7) Its main site is at Dessau, Saxony-Anhalt, where the unemployment rate is 23,7 %. Up to 99 % of the company's sales are in the German market and the remaining 1 % in other EU Member States.

B. Privatisation

- (8) In December 1994 DGI was privatised, with retroactive effect from 1 January 1994, after an open, transparent and unconditional competitive tendering procedure. The undertaking was sold for DEM 10 million to the highest bidder, Mr Michael Schröer.
- (9) By the end of 1994 turnover had fallen by 60 % and it was agreed that the purchase price would be reduced to DEM 1. In the context of the privatisation, the Treuhandanstalt (THA) took several measures in favour of the company amounting to DEM 71,05 million. These measures were covered by THA scheme E 15/92 ⁽⁴⁾, which had been approved by the Commission.
- (10) In addition, during the period from 1993 to 1995, the company received grants amounting to DEM 3,95 million under an approved Federal Government/*Länder* scheme for improving regional economic structures ⁽⁵⁾.
- (11) On 30 October 1996 Mr Schröer sold 45 % of the shares to Mr Jürgen Franz Berger and 35 % to Mr Lothar Karl Riegel for DEM 1 each, while keeping 20 % of the shares himself.

⁽²⁾ See footnote 1.

⁽³⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁴⁾ E 15/92, SG (92) D/17613 of 8 December 1992. Under point 3 of the scheme, when no bidder is prepared to offer a positive price but the THA nevertheless decides to go through with the sale, aid may be granted if closure of the undertaking would be the cheaper solution. Such sales at negative prices must be notified to the Commission in cases where the firm employs more than 1 000 workers. DGI employed fewer than 1 000 people and did not exceed the scheme's threshold, so that the measures were covered by the scheme.

⁽⁵⁾ 21. Rahmenplan der Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur: Measures covered by this scheme qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved under the exemption laid down in Article 87(3)(a) (N 292/92).

C. Restructuring

1. Difficulties

- (12) The expansion in turnover between 1991 and 1993 was the result of the conversion from city gas to natural gas in the new *Länder*. Turnover decreased considerably in 1994 as the conversion was completed. In 1995 it fell again by 30 % compared with the previous year. In 1996 the first measures were taken to increase productivity and reduce costs.
- (13) A further problem was a technical defect in production which had appeared in 1993, forcing the company to recall stoves it had manufactured ⁽⁶⁾. The defect in the stoves involved a serious health and safety risk, so remedial action had to be taken immediately. The overall cost of removing defective products comes to DEM 14,55 million. DGI's insurer, Colonia Versicherung AG, will cover 20 % of these costs ⁽⁷⁾.
- (14) In the past the company concentrated on the low-price segment of the market in the new *Länder*. Its traditional market is saturated and subject to strong competition from cheap suppliers in eastern Europe. DGI intends to establish itself as a supplier of higher-value products, which requires a shift towards the development of modern, high-quality products.
- (15) In order to obtain liquidity, DGI sold real estate which was bought by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS - the successor to the Treuhand privatisation agency) on 13 March 1997 for DEM 5,4 million ⁽⁸⁾. Of this amount, DEM 4,45 million was paid out and the remaining DEM 0,95 million was used to offset an outstanding claim the BvS had on DGI amounting to DEM 2,88 million. Payment of the remaining debt of DEM 1,93 million was deferred ⁽⁹⁾. The Commission notes that, in the report on DGI's insolvency proceedings, the total amount of this deferred debt is given as DEM 2,66 million.

2. Restructuring plan

- (16) The restructuring plan covered the years 1997 to 2000. According to the information submitted by Germany, the overall restructuring costs amounted to DEM 27,1 million and concerned a number of different aspects:
- new product orientation and related product innovation
 - plant automation and modernisation
 - cost reductions;
 - increases in productivity.
- (17) The 'Herd 2000' programme was supposed to enable DGI to manufacture a wider range of modern-design gas and electric stoves. As regards safety enclosures for electrical equipment, the aim was to tailor production to demand, taking greater account of customers' wishes and reducing delivery times. Through this new product orientation in its main relevant markets, DGI expected to position itself at the upper end of the market.
- (18) Much of the existing production plant was not state-of-the-art and therefore had to be modernised. The plan included the purchase, automation and modernisation of equipment and machinery in order to rationalise production and reduce costs.

⁽⁶⁾ By October 1998, 27 000 stoves had been checked. The company expects to complete the operation by the end of 2000.

⁽⁷⁾ As DGI assigned its claim against Colonia Versicherung AG to the BvS, the amount covered by Colonia will be transferred direct to the BvS.

⁽⁸⁾ This sale complies with the Commission communication on State aid elements in sales of land and buildings by public authorities (OJ C 209, 10.7.1997). The sale was made under market conditions and the market value was established by an independent asset assessor (architect Mr Heinz Spies, appointed by the Dortmund Chamber of Commerce and Industry) on the basis of generally accepted market indicators and valuation standards.

⁽⁹⁾ It was agreed that this amount should be paid back in two instalments, on 30 June 1999 and 30 June 2000, subject to interest (two points above the official discount rate of the Deutsche Bundesbank). The payment was covered by a personal guarantee given by Mr Schroer amounting to DEM 1 million and a further DEM 0,931 million secured by the company on inventory and stocks.

- (19) The closure of the site in Merenberg/Reichborn was the first measure taken to reduce costs. The company also intended to reduce the purchase price of materials by up to 10 % by renegotiating with suppliers, to cut staff costs through flexible working hours and to reduce debts by practising greater discipline in payments.
- (20) DGI intended to increase its productivity by introducing a series of measures: prospective payment system, daily control of stocks, demand-based product availability, cost projection principle, unit cost calculation system, optimisation of business processes, team work and bonuses, performance-related pay and a reorganisation of management and its objectives.
- (21) The information submitted by Germany attributing the company's collapse to, among other things, the inability to obtain additional finance implies that further restructuring steps were taken the details of which have not been communicated by Germany.

3. Restructuring costs

- (22) Overview:

		(million DEM)
Measures		Amount
Payment of deferred debt ⁽¹⁾		1,93
Removal of defective products		14,55
Investments:		
— Product innovation	'Herd 2000'	4,20
	Enclosures	0,40
— Factory automation	Hardware and software	0,98
	Communications	0,15
— Deformation technology	Machines and installations	0,40
	Tool production	1,25
— Surface engineering	Machines and installations	0,47
	Environment, waste disposal	0,35
— Assembly technology	Testing technology	0,36
— Storage and shipment	Lift trucks and vehicles	0,15
	Means of loading and transport	0,10
	Tools for component production	0,42
	Reconstruction/reorganisation	1,39
Total		27,10

⁽¹⁾ According to the report on the insolvency proceedings, this amount is effectively DEM 2,66 million.

- (23) The original restructuring costs, as notified by Germany, included the sum of DEM 13,2 million, for which a private bank loan and a guarantee by the *Land* of Saxony-Anhalt were required. In subsequent correspondence, Germany explained that neither the loan nor the guarantee had been granted. In its view, this implied that the original level of necessary restructuring costs had been overstated by DEM 13,2 million.

- (24) However, the statement attributing the company's collapse to, among other things, the failure to obtain a loan of DEM 13,2 million implies that the overall restructuring costs were considerably higher than those presented in the revised overview and totalled around DEM 40,3 million. This means that the information submitted by Germany in support of the revised account was either incomplete or misleading and in any case did not correspond to the economic reality.

D. Financial measures

- (25) The financial measures break down between the BvS, the *Land* of Saxony-Anhalt and the investors as follows:

Financial contribution by the BvS

		<i>(million DEM)</i>
Type		Amount
Costs of removing defective products not covered by Colonia Versicherung AG	Grant	5,00
	Loan	6,64
Deferral of payment ⁽¹⁾		1,93
Total		13,57

⁽¹⁾ According to the information provided to the Commission, the deferred payment amounts to DEM 2,66 million. In this case, the BvS's total financial contribution comes to DEM 14,3 million.

- (26) The BvS financed the costs of removing the defective products, which totalled DEM 14,55 million, through a grant of DEM 5 million and an interest-free loan of DEM 9,55 million. This loan was secured on DGI's claims against its insurance company, Colonia Versicherung AG, which were assigned to the BvS. After a settlement the insurance would cover 20 % of the total costs, some DEM 2,91 million. The loan would be reduced by that amount, which would consequently form part of the investor's own contribution.

Financial contribution by the *Land* of Saxony-Anhalt

		<i>(million DEM)</i>
Type		Amount
Investment grants ⁽¹⁾		3,38
Investment allowances ⁽²⁾		0,27
Total		3,65

⁽¹⁾ Investitionszuschüsse granted under the 27. Rahmenplan der Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur (1998-2001). Measures covered by this scheme qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved under the exemption laid down in Article 87(3)(a)(N 100/98).

⁽²⁾ Investitionszulagegesetz: Measures covered by this Law qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved by the Commission under the exemption laid down in Article 87(3)(a) (N 494/A/95).

Financial contribution by investors

<i>(million DEM)</i>	
Type	Amount
Credit from Commerzbank and Deutsche Bank ⁽¹⁾	2,52
Revenues from sale of real estate	4,45
20 % of costs of removing defective products ⁽²⁾	2,91
Total	9,88

⁽¹⁾ Repayment of the credit is secured against the registration of mortgage debts and the assignment of entitlements.

⁽²⁾ The DEM 2,91 million covered by Colonia Versicherung AG will be transferred direct to the BvS.

- (27) The above figures show that total assistance from the public authorities amounted to at least DEM 17,22 million, of which DEM 3,38 million was made available in the form of investment grants and DEM 0,27 million in the form of investment allowances, both approved aid schemes. Aid measures amounting to at least DEM 13,57 million, namely the payment deferral and the grant and loan for the removal of defective products, are not covered by approved aid schemes and must therefore be assessed by the Commission.

E. Market analysis

1. Gas and domestic electrical appliances

- (28) The company's main relevant market is at least Europe-wide. There are no barriers to trade and, as far as technical harmonisation is concerned, Community legislation on electrical appliances is applicable in the EFTA countries which have signed the EEA Agreement. As a rule, large European manufacturers have a strong presence in their respective 'home' territories. However, the integration of EU and EFTA States and the resulting removal of barriers to trade mean that markets are no longer national in scope ⁽¹⁰⁾.
- (29) The Community remains one of the largest markets for manufacturers, but Europe's importance is declining in comparison with Asia. Competition from outside the Community, especially from Asian and east European producers, which is already having a negative effect on Community manufacturers' market share, is likely to increase. Because of the general market trend, concentration is proceeding apace, with a growing number of acquisitions and joint ventures and the emergence of pan-European products and operations.
- (30) Germany is the major European producer for both electrical and non-electrical heating appliances. Together with Italy, it has modestly optimistic consumption prospects, with expected growth rates of around 2,5 % for the next few years. The general trend is towards product innovation, end-user comfort, environmental protection and energy saving ⁽¹¹⁾.
- (31) This market is saturated and suffers from overcapacity ⁽¹²⁾. Modest growth rates of around 2 % to 3 % are expected in the European markets in the coming years.
- (32) According to the information submitted in response to the opening of the formal investigation procedure, the market for stoves has been declining for some years and is dominated by eastern European producers, who are able to offer much lower prices.

⁽¹⁰⁾ Commission Decision of 21 June 1994, Case No IV/M.458 (OJ C 187, 9.7.1994, p. 14).

⁽¹¹⁾ *Panorama of EU Industry 1997*, Vol.2, 13-60, NACE (Revision 1) 29.7.

⁽¹²⁾ Letter from DG III dated 17 February 1999 (ref. 01520).

2. Industrial safety enclosures

- (33) DGI's secondary activity is the production and distribution of enclosures constructed for indoor use to provide protection for personnel against incidental contact with the enclosed equipment and to provide a certain degree of protection to the equipment against dirt, dust and corrosion. This market is closely linked to that of the equipment it encloses (switching equipment). Growth in this market has slowed down in the past five years because of overcapacity in electricity generation and the decline in investment ⁽¹³⁾.

III. INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

- (34) On 24 April 1999 the Commission initiated the formal investigation procedure. It requested information since a return to profitability seemed highly unlikely, mainly because the plan to restore the company's viability did not seem to be based on realistic assumptions. The information submitted by Germany on the overall restructuring costs was either incomplete or misleading and did not seem to correspond to the economic reality. Not least, the market was saturated and suffered from overcapacity, but the plan made no provision for any appreciable capacity reduction.

IV. COMMENTS FROM INTERESTED PARTIES

- (35) In response to the publication of the letter addressed to Germany in the *Official Journal of the European Communities* in July 1999, the Commission received comments from DGI's receiver and from the United Kingdom. These comments were forwarded to Germany, which was given the opportunity to react.

V. ASSESSMENT

- (36) On 18 May 1999 Germany was requested by means of an information injunction to provide the Commission within one month with enough information to assess the measures under investigation. The Commission regrets that the German authorities did not respond to the injunction. In accordance with Article 13(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty ⁽¹⁴⁾, the assessment will therefore be based on the information available.

A. Aid within the meaning of Article 87(1) of the EC Treaty

- (37) Financial measures from State resources taken in support of a company in difficulty in the abovementioned sector may tend to distort competition and affect trade between Member States. The individual measures must be examined under Article 87(1) of the EC Treaty.
- (38) The sale of real estate to the BvS cannot be regarded as aid because it was carried out under market conditions and in accordance with the Commission communication on State aid elements in sales of land and buildings by public authorities ⁽¹⁵⁾.
- (39) Investment grants amounting to DEM 3,38 million were made available under a scheme approved by the Commission and fell below that scheme's thresholds ⁽¹⁶⁾. Investment allowances amounting to DEM 0,27 million were also based on an approved aid scheme and fell below the corresponding thresholds ⁽¹⁷⁾. Consequently, the Commission need not assess these measures, although they will be taken into account in evaluating proportionality.

⁽¹³⁾ *Panorama of EU Industry* 1997, Vol.2, 15-8, NACE (Revision 1) 31.20.

⁽¹⁴⁾ OJ L 83, 27.3.1999.

⁽¹⁵⁾ OJ C 209, 10.7.1997.

⁽¹⁶⁾ Investitionszuschüsse granted under the 27. Rahmenplan der Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur (N 100/98): Under point 2.5 of the scheme, funds may cover up to 50 % of the necessary investments.

⁽¹⁷⁾ Under the Investitionszulagegesetz, up to 10 % of the eligible investments of SMEs made by the end of 1998 may be covered by investment allowances. From 1999 on, this limit is increased to 20 %.

- (40) The deferred payment of either DEM 1,93 million or DEM 2,66 million, the grant of DEM 5 million and the loan of DEM 6,64 million are considered to be new aid. State resources were used for these measures and there is a distortion or a threat of distortion of competition and a threat of trade between Member States being affected. The measures also conferred advantages on the company which, given its difficult situation, it would not have received from a private investor. The new aid for restructuring DGI which is not covered by approved aid schemes and must be assessed by the Commission totals at least DEM 13,57 million.

B. Exemptions under Article 87(3)(c) of the EC Treaty

- (41) Under Article 87(1) of the EC Treaty, State aid granted to certain undertakings is incompatible with the common market where it affects trade between Member States and distorts or threatens to distort competition in the common market. Such aid is generally incompatible with the common market unless it falls within the scope of the exemptions laid down in Article 87(2) or (3).
- (42) The exemptions in Article 87(2) do not apply in the present case as the aid does not have a social character, is not granted to individual consumers, does not make good the damage caused by natural disasters or exceptional occurrences, and is not granted to the economy of certain areas of the Federal Republic of Germany.
- (43) Further exemptions are laid down in Article 87(3)(a) and (c). In this case, Article 87(3)(c) is relevant because the main objective of the aid is not regional development but the restoration of the long-term viability of a company in difficulty. Under this provision, the Commission has the discretion to permit State aid granted to promote the development of certain economic sectors where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission spelled out the preconditions for exercising this discretionary power in its guidelines on rescue and restructuring aid⁽¹⁸⁾. It considers that none of the other Community guidelines or frameworks, such as those on research and development, small and medium-sized enterprises or employment and training, could apply here.

1. Restoration of viability

- (44) The granting of restructuring aid requires a feasible, coherent and far-reaching restructuring plan capable of restoring the firm's long-term viability within a reasonable timescale and on the basis of realistic assumptions. As regards DGI, the current plan was put into effect in 1997 and was to be fully implemented by 2000. The Commission notes that the expected results have not been achieved.
- (45) Overview

	<i>(million DEM)</i>			
	1997	1998	1999	2000
Turnover (net)	35,779	33,481	36,222	45,205
Personnel costs	13,767	13,684	10,176	11,000
Material costs	19,843	17,328	18,006	22,275
Depreciation	2,768	2,920	3,200	3,350

⁽¹⁸⁾ JO C 368 de 23.12.1994.

	(million DEM)			
	1997	1998	1999	2000
Other costs	10,694	9,450	7,977	8,415
Operating result	- 11,293	- 9,901	- 3,137	0,165
Extraordinary income	5,668	3,090	0,700	0,700
Extraordinary expenditure	2,349	0,150	0,050	0,050
Provisions	4,700	—	—	—
Interest	0,661	0,190	0,450	0,470
End-of-year result	- 13,335	- 7,151	- 2,937	0,345

- (46) An analysis of the figures shows that turnover decreased in 1998 and was supposed to recover in 1999 and then to increase by 25 % in the last year of the restructuring plan. The plan relied mainly on the success of the new stoves and custom-tailored safety enclosures to be developed by DGI, which were to give a considerable boost to turnover, thus restoring long-term viability. In view of the state of the market, this assumption did not seem realistic and was based on external factors over which the company had no influence.
- (47) The report on DGI's insolvency proceedings clearly states that the company's market strategy was wrong and that it was unrealistic to offset falling demand for stoves with the expected success of a new stove. As regards the custom-tailored safety enclosures, the report states that entry into this market, which was dominated by a competitor, was not based on realistic price assumptions ⁽¹⁹⁾.
- (48) The restructuring plan submitted in support of the revised account of the restructuring costs was either incomplete or misleading. Overall restructuring costs were considerably higher than those presented in the revised account, which were understated by DEM 13,2 million. The company's planned return to long-term viability was therefore not based on the economic reality.
- (49) The Commission concludes that the plan was not based on realistic assumptions and was therefore not suitable to restore DGI's long-term viability.

2. No undue distortions of competition

- (50) Under the restructuring plan, measures must be taken to offset as far as possible adverse effects on competitors; otherwise, the aid granted in the context of privatisation would be contrary to the common interest and ineligible for exemption under Article 87(3)(c).
- (51) Where an objective assessment of the demand and supply situation indicates structural overcapacity in a relevant market in the Community, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry serving the relevant market by irreversibly reducing or closing capacity.

⁽¹⁹⁾ In this area, a turnover of DEM 15 million to DEM 18 million was expected for 1998, but a figure of only DEM 5 million was actually achieved.

- (52) Measures to adapt production were taken in the context of restructuring ⁽²⁰⁾. Germany states that, after implementation of the restructuring plan, the company's annual production would have been reduced by 8 500 units. This would have been achieved mainly by transferring part of production to the Czech Republic. Since the relevant market is at least Europe-wide, the Commission cannot consider a transfer of production to another European country as a permanent capacity reduction within the meaning of the guidelines. Moreover, according to Germany, total output after adaptation represents capacity utilisation of only 54 %. It is therefore clear that the company's potential capacity remains unaltered and that the reduction is by no means permanent.
- (53) The Commission notes that both the main and secondary markets in which DGI is active are saturated and suffer from overcapacity. Nevertheless, DGI did not plan any reduction in capacity and was expecting to increase turnover. Even allowing for the fact that DGI is an SME located in an assisted area under Article 87(3)(a) ⁽²¹⁾, the Commission cannot rule out the possibility that competitors may have been adversely affected in view of the manifest overcapacity on the relevant markets. It also notes that DGI employs 234 people and only just meets the criteria for an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises ⁽²²⁾.

3. Aid in proportion to restructuring costs and benefits

- (54) 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 viewpoint. Therefore, the investors must make a contribution to the restructuring plan from their own resources. Moreover, the way in which the aid is granted must be such as to avoid providing the company with surplus liquidity which could be used for aggressive, market-distorting activities not linked to the restructuring process.
- (55) DGI was granted liquid resources totalling DEM 15,29 million. The payment deferral does not have any liquidity effect. However, the recipient benefits from aid measures amounting to at least DEM 17,22 million.
- (56) According to the revised account submitted by Germany, the restructuring costs amount to DEM 27,11 million. However, they seem to have been understated by some DEM 13 million and should total DEM 40,31 million. It is therefore impossible to determine whether the financial aid to cover these costs was sufficient for the restructuring exercise.
- (57) The investors have undertaken to contribute a total of DEM 9,88 million from their own resources. As the overall restructuring costs are uncertain, it is difficult to evaluate the proportionality of the investors' own contribution, which seems to cover 24 to 36 % of the restructuring costs.

4. Full implementation of the restructuring plan

- (58) The company must fully implement the restructuring plan submitted to the Commission. Germany has not informed the Commission to what extent the restructuring plan was implemented before insolvency proceedings were opened, although this was specifically required when the investigation procedure was initiated and the information injunction issued. In view of the missing information and the fact that the restructuring period was from 1997 to 2000 and the company filed for insolvency on 3 March 1999, the Commission considers that this condition of the guidelines has not been met.

⁽²⁰⁾ These included transferring production of spare parts to other companies, outsourcing maintenance activities and adapting several areas of production.

⁽²¹⁾ Case C 169/95 *Spain v Commission* [1997] ECR I-135.

⁽²²⁾ See footnote 3.

VI. CONCLUSIONS

- (59) The Commission finds that Germany has unlawfully implemented the aid for Dessauer Geräteindustrie GmbH in breach of Article 88(3) of the Treaty and that the aid is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Dessauer Geräteindustrie GmbH, amounting to at least EUR 6,93 million (DEM 13,57 million), plus interest, is incompatible with the common market. According to the information available, the aid consists of the following measures:

- loan from the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) amounting to EUR 3,39 million (DEM 6,64 million),
- grant from the BvS amounting to EUR 2,55 million (DEM 5 million),
- the repayment of a deferred debt to the BvS which amounts to EUR 0,98 million (DEM 1,93 million) according to Germany, or EUR 1,36 million (DEM 2,66 million) according to the report on DGI's insolvency proceedings, whichever sum is correct, together with the interest due thereon.

Article 2

1. Germany shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to it.
2. Recovery shall be effected in accordance with the procedures of national law. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 15 February 2000.

For the Commission

Mario MONTI

Member of the Commission
