

# COMMISSION

## COMMISSION DECISION

of 1 October 2003

on the State aid which Germany intends to grant to Frenzel Kyffhäuser Tiefkühlkost GmbH

(notified under document number C(2003) 3383)

(Only the German text is authentic)

(2004/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular 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 the interested parties to submit their comments pursuant to those provisions<sup>(1)</sup>,

Whereas:

### I. PROCEDURE

(1) By letter dated 5 December 1997, received on 10 December 1997, Germany notified the Commission pursuant to Article 88(3) of the EC Treaty of various aid measures benefiting Frenzel Kyffhäuser Tiefkühlkost GmbH. It provided the Commission with further information in its letters dated 7 April 1998, received on 14 April 1998, 20 October 1998, received on 26 October 1998, 9 February 1999, received on 12 February 1999, 13 August 1999, received on 24 August 1999, two letters dated 22 November 1999, received on 25 November 1999 and 26 November 1999 respectively, and letters dated 17 August 2000, received on 22 August 2000, and 29 November 2000, received on 5 December 2000.

(2) In its letter dated 8 February 2001, the Commission informed Germany that it had decided to initiate the procedure provided for in Article 88(2) of the EC Treaty in respect of the State aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*<sup>(2)</sup>. The Commission called on the interested parties to submit their comments on the state aid.

(4) The Commission received no comments from interested parties. Germany sent comments to the Commission by fax dated 12 April 2001, received on 17 April 2001. Further information was submitted to the Commission by letter dated 18 July 2003, received on 24 July 2003.

### II. DESCRIPTION OF THE AID

#### 1. Title

(5) Guarantee for a company engaged in the processing of vegetables

#### 2. Legal basis

(6) The German authorities informed the Commission that the aid was to be granted on the basis of the Bürgschaftsrichtlinie des Freistaates Thüringen für die gewerbliche Wirtschaft und die freien Berufe (Thuringian guidelines on guarantees for commercial companies and liberal professions) of 8 November 1995. This aid scheme was approved by the Commission in its letter dated 27 December 1996<sup>(3)</sup> (SG(96) D/11696). In the Decision approving the aid scheme, the Commission notes that the scheme may not be applied to enterprises involved in the production, processing and marketing of products listed in Annex I to the Treaty. The measure was therefore notified to the Commission as an individual aid.

<sup>(1)</sup> OJ C 320, 15.11.2001, p. 12.

<sup>(2)</sup> See footnote 1.

<sup>(3)</sup> State aid N 117/1996.

### 3. Recipient

- (7) The aid benefits the company Frenzel Kyffhäuser Tiefkühlkost GmbH. The company produces frozen food and processes, in particular, root vegetables and potatoes. It is located in the Artern area, which is in an Objective 1 region.

### 4. Objective

- (8) The aid is intended for the acquisition by the recipient of a manufacturing plant in Ringleben (Thuringia). This manufacturing plant is a vegetable processing company with several processing lines and a refrigerator installation with a potato ventilating system and two freezer units. The purchase price for the fixed assets and the inventory amounts to EUR 3 016 622. The existing processing capacity is not being expanded by the investment.

- (9) The recipient has taken out the following loans for this investment:

Loan	Terms	Loan amount
I. European Recovery Programme (1)	Contract concluded on 22 December 1997, to run until 30 September 2017, repayment of EUR 45 114 per semester from 30 February 2001, final repayment of EUR 45 102, interest 4,75 % p.a. fixed for the entire duration.	EUR 1 533 876 (*)
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme) (2)	Contract concluded on 22 December 1997, to run until 31 December 2005, repayment of EUR 31 956 per semester starting on 30 June 2000, interest 4,75 % p.a. fixed for the entire duration of the loan. One-off processing fee of 2 %, disagio of 4 %, risk premium 2 %.	EUR 383 469
III. Loan from the company's bank (Sparkasse Döbeln)	Contract concluded on 8 December 1997, to run until 20 December 2007, monthly repayments of EUR 10 737 starting on 31 January 1998, interest 6,5 % p.a. fixed until 30 December 2004, one-off processing fee of EUR 5 113.	EUR 945 890
Total		EUR 2 863 235

(\*) All amounts have been rounded off after conversion into euro.

(1) Aid scheme approved by the Commission (aid N 563C/94).

(2) Aid scheme approved by the Commission (aid NN 24/96).

### 5. Type of aid

- (10) For the above loans a State guarantee of 65 % of the amount loaned was granted by the Thüringer Aufbaubank (Thuringia Reconstruction Bank) with priority given to the creditor on the agreed collateral. The loans were paid out on 31 December 1997. The guarantee was granted at the same time, subject to approval by the European Commission.

- (11) Securities provided:

- EUR 2 863 235 first-rank mortgage on the company's real estate in Ringleben,
- assignment of machinery by way of security,

- joint and several guarantee (subject up to a ceiling) by the partner and director, Mr Frenzel,
  - assignment of claims under a risk life insurance for Mr Frenzel for an amount of EUR 511 292.
- (12) The following charges applied to the guarantee:
- one-off processing fee of 0,375 % of the oblige,
  - remuneration (0,75 % p.a. of the oblige).
- (13) The German authorities indicated that, notwithstanding the securities provided, the company could not obtain a commercial loan on the free market allowing it to make the purchase without the additional guarantee. The reasons given were as follows: the company's location (Northern Thuringia, where an above-average number of bankruptcies have occurred since German unification), the specific character of the fixed assets (in the event of insolvency, a private investor must be found to take over the assets) and bank practice with regard to the valuation of food stocks.
- (14) Regarding the company's financial position, the German authorities stated that the company's turnover and cash flow had shown constant increases in the period 1994–1996, yet the company had only a limited share of equity capital (4,3 % in December 1996), which is considered low by both the company and its creditors. In the opinion of the German authorities, the company could not be considered as being in financial difficulty.

#### 6. Aid intensity

- (15) The German authorities provided the following overview of their calculation of the cash value of the loans:

Loan	Loan amount	Grant equivalent
I. European Recovery Programme	EUR 1 533 876	EUR 99 912
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme)	EUR 383 469	EUR 13 487
III. Bank loan	EUR 945 890	—
Total	EUR 2 863 235	EUR 113 399

- (16) The value of the guarantee for EUR 1 861 103 (= 65 % of the EUR 2 863 235 loan) amounts to a grant equivalent of EUR 9 306 (= 0,5 % of EUR 1 861 103) according to the German authorities. They justify this value on the basis of the range of 0,5–2 % accepted by the Commission in case N 117/96 for viable enterprises (letter of 27 December 1996, SG (96)D/11696). In a separate letter dated 11 November 1998 (D/54570), the Commission accepted an aid rate of 0,5 % for enterprises which are not in financial difficulty.

#### 7. Duration of the guarantee

- (17) The German authorities provided the Commission with the following information on the period covered by the guarantee:

Loan	Maximum duration of guarantee
I. European Recovery Programme	31 March 2013
II. KfW-Mittelstandsprogramm (reconstruction loan corporation — SME programme)	31 March 2006
III. Bank loan	31 March 2008

### III. GROUNDS FOR INITIATING THE PROCEDURE

- (18) A distinction must be made between the loans themselves and the guarantee in respect of those loans.

#### 1. Information injunction with respect to the loans

- (19) Loans I and II were granted on the basis of two aid schemes approved by the Commission (see footnotes 4 and 5). On the basis of the information available to it, the Commission had doubts as to whether the two aid schemes invoked by the German authorities covered sensitive sectors (including agriculture). In view of these doubts, and in accordance with the judgment of the Court of Justice in case C-47/91 <sup>(4)</sup>, the Commission considered it necessary to give the German Government formal notice to supply within one month all the documentation, information and data necessary to enable the Commission to determine whether the loans were effectively covered by aid schemes which had been approved previously.

#### 2. Commission's objections to the guarantee

- (20) The Commission had doubts about the compatibility of the guarantee with the common market for the following reasons:
- (21) Under point 5.2 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees <sup>(5)</sup>, the Commission examines aid in the form of guarantees according to the same rules as are applied to other forms of aid. On the basis of the available information, it was not clear whether or not the recipient was an enterprise in difficulty. As a result, it was unclear which legal basis was to be applied in evaluating the aid: the guidelines on state aid for rescuing and restructuring firms in difficulty <sup>(6)</sup> (restructuring guidelines) or the Community guidelines for State aid in the agriculture sector <sup>(7)</sup> (Community guidelines).
- (22) The Commission had doubts as to whether the notified aid met all the terms of the restructuring guidelines. In particular, the German authorities had not submitted a restructuring plan for the company. Moreover, it was not clear how undue distortions of competition could be avoided and what the recipient's own contribution was. Likewise, the new restructuring guidelines <sup>(8)</sup> excluded aid to newly created firms.
- (23) The Commission also doubted whether the notified aid met all the conditions of point 4.2 of the Community guidelines (investments to improve the processing and marketing of agricultural products). In particular, it was not possible to check whether the aid intensity ceiling was complied with, as it was difficult to calculate the grant equivalents on the basis of the available information and the data sent to the Commission by the German authorities did not appear justified. Moreover, the German authorities had not sent the Commission any information which could have been used to examine compliance with the other conditions of point 4.2 of the Community guidelines.
- (24) The Commission also had doubts as to whether the notified aid comprised an element of aid to the lender. In particular, it was not clear whether the *Land* of Thuringia was assuming a risk which had formerly been assumed free of charge by the bank. Such aid would be deemed merely operating aid, which would be incompatible with the common market.

<sup>(4)</sup> Case C-47/91 (Italgrani/Commission) of 5 October 1994, ECR [1994] p. I-4635.

<sup>(5)</sup> OJ C 71, 11.3.2000, p. 14.

<sup>(6)</sup> OJ C 283, 19.9.1997. As the aid was notified before 30 April 2000, see OJ C 288 of 9.10.1999, as amended by OJ C 121 of 29.4.2000.

<sup>(7)</sup> OJ C 232, 12.8.2000, p. 17.

<sup>(8)</sup> OJ C 288, 9.10.1999, p. 2.

## IV. COMMENTS BY GERMANY

- (25) Germany has not replied to the information injunction (see point III.1).
- (26) The German authorities have said that the recipient was never in financial difficulty. Moreover, it was not a matter of continuing an insolvent enterprise, but a newly established one. The German authorities sent the following data from the company accounts to the Commission, which it believed showed that the company could not be classified as an enterprise in difficulty within the meaning of the restructuring guidelines in the period 1997–1999.

Balance sheet: key figures	1999	1998	1997 (*)
Turnover	EUR 6 149 307	EUR 3 136 264	EUR 887 603
Operating outturn	EUR 161 568	EUR 11 248	EUR 3 579
Cash flow	EUR 436 132	- EUR585 429 (**)	EUR 49 084
Own capital	EUR 219 344	EUR 77 205	EUR 55 220

(\*) Incomplete financial year.

(\*\*) Fire damage meant cash flow was severely reduced that year.

- (27) In addition, by letter dated 18 July 2003 the German authorities sent the Commission updated key balance sheet figures for the company, which they believed showed that even at that moment the company was not in financial difficulty. The German authorities sent the following data from the company accounts to the Commission:

Balance sheet: key figures	2000	2001	2002 (*)
Turnover	EUR 5 941 000	EUR 5 758 000	EUR 6 598 000
Operating outturn	EUR 26 000	EUR 23 000	EUR 65 000
Cash flow	EUR 632 000	EUR 556 000	EUR 402 000
Own capital	EUR 256 000	EUR 258 000	EUR 353 000

(\*) Provisional annual accounts.

- (28) The German authorities submitted further comments on the basis of the Community Guidelines for State aid in connection with investments in the processing and marketing of agricultural products<sup>(9)</sup> and the Commission Decision of 22 March 1994 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products and repealing Decision 90/342/EEC<sup>(10)</sup>. They believed that the aid met the terms of these legal provisions.
- (29) In their letter dated 18 July 2003, the German authorities sent the Commission additional information which it can use to examine the compliance with the conditions of the Community guidelines for State aid in the agriculture sector<sup>(11)</sup>.
- (30) As regards the intensity of the aid, the German authorities made the following comments:

<sup>(9)</sup> OJ C 29, 2.2.1996, p. 4.

<sup>(10)</sup> OJ L 79, 23.3.1994, p. 29.

<sup>(11)</sup> See footnote 7.

- (31) The grant equivalents of the loans were to be calculated as follows:

Loan	Nominal interest rates	Real interest rates	Grant equivalent based on the real interest rate
I. European Recovery Programme	4,75 %	4,84 %	EUR 88 044
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme)	4,75 %	5,65 %	—
III. Bank loan	6,5 %	No data	—
Total			EUR 88 044

The differences between the nominal and real interest rates were explained by bank fees and a 2 % disagio, i.e. the real rate that the company had to pay was higher than the nominal rate. The German authorities did not believe that the second loan (KfW) was aid within the meaning of Article 87 of the EC Treaty, as the real interest rate was higher than the Commission's reference rate at that time (5,54 %).

- (32) The grant equivalent of the guarantee was, however, still to be calculated as shown in point II.6. The German authorities have not provided the Commission with any new information on this matter.
- (33) In the opinion of the German authorities, this produced the following calculation of (cumulative) aid intensity: The total grant equivalent from the loans and guarantee was EUR 97 350. Based on the eligible costs of EUR 3 016 622, this gives a (cumulative) aid intensity of 3,23 %.
- (34) The German authorities also informed the Commission that there was no element of aid to the lender. It was not a question of a retroactive guarantee of a loan that had already been granted, but of a loan granted subject to an approved guarantee. The guarantee offer was made to the lender on 21 November 1997. It was subject to approval by the Commission. The loan agreements between the lender and the recipient date from 22 November 1997. The loan agreements signed with the company's bank include the 65 % performance guarantee by the Thüringer Aufbaubank under the clause on collateral. On the basis of these loan agreements and the guarantee (provisionally not in force) the lender granted provisional payment of the loans. This was subject to the purchase price obligation being met without delay and the start-up of business activity. Had the loans not been paid out provisionally, the recipient would have been at risk of losing its market foothold and its entire business strategy would have been jeopardised. The lender did not query the approval of the guarantee as State aid when evaluating the loan, as it expected the Commission to approve it. In the view of the signatories to the loan agreement, therefore, as yet there is no permanent financing of the investment projects.

#### V. ASSESSMENT OF THE AID

- (35) It should be pointed out that the measure affects both the root vegetable and the potato sectors. Potatoes are listed in Annex I to the Treaty but are not subject to common organisation of the market. Therefore the Commission, in accordance with Article 36 of the EC Treaty and Article 4 of Regulation (EEC) No 26/62<sup>(12)</sup>, must assess that part of the measure affecting potatoes in accordance with Article 88(1) and the first sentence of Article 88(3) of the EC Treaty, pursuant to which it can only make proposals regarding the compatibility of a measure with Community policy. For that part of the measure relating to root vegetables, the competition rules and the rules on State aid apply<sup>(13)</sup>.

<sup>(12)</sup> OJ 30, 20.4.1962, p. 993/62.

<sup>(13)</sup> See Article 43 of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables, OJ L 297, 21.11.1996, p. 1.

### 1. Application of aid schemes N 563C/94 and NN 24/96 in the agricultural sector

- (36) Both aid schemes involve regional aid. In its communication of 9 December 1999, after the entry into force of the 1998 regional guidelines (the implementation of appropriate measures) <sup>(14)</sup>, Germany gave an assurance that it was taking into account the fact that the regional guidelines were not applicable to the processing and marketing of Annex I products.
- (37) The Commission Decision on aid No N 563C/94 (approval of changes) lays down that 'Community rules in the agricultural sector and the obligations arising therefrom apply, in particular the requirement individually to notify all cases of application'. A similar statement is also found in an earlier decision approving aid No N 108B/94.
- (38) The Commission Decision on aid No NN 24/96 (ex N 1004/95) refers back to aid No NN 109/93 and stipulates that the 'Community rules for [...] agriculture and fisheries are to be applied'.
- (39) Despite a request to provide information, the German authorities did not provide the Commission with any further information showing that the aid schemes concerned also apply in sensitive sectors (which include agriculture). The Commission cannot therefore assume, on the basis of the available information, that the two aid schemes cover the agricultural sector. The two loans granted (I and II) are therefore to be examined in the light of existing case law <sup>(15)</sup> as one-off aid.
- (40) Since the aid schemes concerned (Nos NN 24/96 and N 563C/94) may have been misused within the meaning of Article 16 of Council Regulation (EC) No 659/1999 of 22 March 1999 <sup>(16)</sup>, the Commission reserves the right to examine their application more closely.

### 2. Existence of State aid

- (41) Article 87(1) of the EC Treaty prohibits any aid granted by a Member State or payable out of State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain enterprises or the production of certain goods, in so far as it affects trade between Member States.
- (42) An examination of the available information reveals that these conditions are fulfilled. The measures described above (loans I and II and the guarantee) are financed from State resources. They favour a particular enterprise in the agricultural sector in Thuringia. The measure is therefore likely to distort competition <sup>(17)</sup> and restrict trade between Member States <sup>(18)</sup>.
- (43) The German authorities take the view that loan II (KfW-Mittelstandsprogramm) does not involve aid (see recital 31). However, on the basis of the available information, the existence of aid cannot be ruled out. Loan II (like Loan I) was granted under an aid scheme approved by the Commission. In its decision approving the scheme, the Commission stated that it constituted State aid within the meaning of Article 87(1) of the EC Treaty.

<sup>(14)</sup> OJ C 74, 10.3.1998, p. 9.

<sup>(15)</sup> See footnote 4.

<sup>(16)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(17)</sup> According to the case law of the European Court of Justice, when the competitive position of a firm is improved through State aid, competition with rival firms not receiving such aid will generally be distorted (Case 730/79, Philip Morris Holland, [1980] ECR 2671, POINTS 11 and 12).

<sup>(18)</sup> German intra-Community trade in agricultural products in 2002 was EUR 28 459 million (imports) and EUR 20 573 million (exports). No figures are available for Thuringia. (Source: DG AGRI).

- (44) The fact that the effective interest rate for the loan is above the Commission's reference rate is not in itself sufficient grounds not to apply Article 87 of the EC Treaty. This reference rate is a floor rate that may be increased in situations involving a particular risk. In such cases, the premium may amount to 400 basis points or more if no private bank would have agreed to grant the relevant loan. In the case in question, the enterprise's bank granted a capital market loan at 6,5 % only when the authorities of Thuringia had taken over a guarantee for all three loans, although a series of securities were agreed upon (see point II.5). While the correct reference rate is difficult to determine on the basis of the available information, it cannot at present be assumed that the reference rate of 5,54 % applying during the period concerned is directly applicable, particularly since, as has been shown, the interest rate for the capital market loan is higher, despite the additional security provided by the guarantee. For these reasons, loan II (KfW) must also be regarded as State aid within the meaning of Article 87(1) of the EC Treaty.
- (45) Whether State guarantees constitute State aid must be assessed in the light of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees <sup>(19)</sup>. Point 2.1.4 of this Commission notice stipulates that guarantees given by the State directly, and guarantees given by enterprises under the dominant influence of public authorities, may constitute State aid within the meaning of Article 87(1) of the Treaty.
- (46) Point 4.2 of the Commission notice lists the conditions that must be met in order for a State guarantee not to be considered State aid. The German authorities have confirmed that the borrower was unable to obtain a loan on the financial markets under market conditions without State intervention. Condition (c) of point 4.2 of the Commission notice is thus not met. Furthermore, although a premium is paid to cover the risk associated with the guarantee borne by the State, it would appear, in the circumstances (limited own capital and confirmation by the German authorities that the guarantee is necessary to obtain the financing), that this premium does not reflect the market price for the guarantee. Condition (d) of point 4.2 is thus not met. In the light of the above, the guarantee must also be regarded as State aid within the meaning of Article 87(1) of the EC Treaty.
- (47) Therefore, Article 87(1) of the EC Treaty definitely applies to the above measures.
- (48) When the decision to open formal proceedings was adopted, the Commission could not rule out that the measure also contained an element of aid in favour of the lender (see point III.2). On the basis of the information which Germany has sent the Commission (see paragraph 34), this can now be ruled out. The guarantee was not taken over for an existing loan or for another financial commitment that had already been entered into, nor was a guaranteed loan used to repay another, non-guaranteed loan. The actions of the company's bank in granting the loan, in particular regarding the provisional use of the loan, seem to favour the borrower rather than the lender. Therefore, on the basis of the available information, the measure is not regarded as State aid in favour of the lender.

### 3. Applicable legal framework

- (49) Aid in the form of guarantees must be assessed in accordance with the criteria which the Commission normally applies to this kind of aid (investment, rescue and restructuring aid, etc.) <sup>(20)</sup>. Therefore, the appropriate framework for examining the acquisition of assets must be established.

<sup>(19)</sup> OJ C 71, 11.3.2000, p. 14.

<sup>(20)</sup> See point 5.2 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to state aid in the form of guarantees.

- (50) The information supplied by the German authorities in their letters dated 12 April 2001 and 18 July 2003 (see recitals 26 and 27) shows that the company's financial position has consistently improved since its creation in 1997. At no point was the registered capital drawn on. Rather, the company capital shown in the balance sheet steadily increased between the company's creation and 2002. Turnover constantly increased, from EUR 888 000 in 1997 to EUR 6 598 000 in 2002. Gross cash flow has declined slightly in recent years, but in 2002 a rate of 6,2 % of total output was achieved, which, according to the German authorities, is in line with the average for the sector. Similarly, the results for the financial year improved. In the light of the above, the company cannot be considered to be in difficulty within the meaning of the restructuring guidelines.
- (51) The Commission normally examines aid for investments to improve the processing and marketing of agricultural products in the light of point 4.2 of the Community guidelines<sup>(21)</sup>. The German authorities based their initial position of 12 April 2001 on the Community guidelines for State aid in connection with investments in the processing and marketing of agricultural products<sup>(22)</sup> and the Commission Decision on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products<sup>(23)</sup>. However, this legislation was no longer in force when the formal investigation procedure was opened. In their letter dated 18 July 2003, the German authorities provided further information, which permits the measure to be assessed in the light of the abovementioned Community guidelines.

#### 4. Exemption from the prohibition on State aid under Article 87(3) of the EC Treaty

- (52) Aid for investment to improve the processing and marketing of agricultural products may be granted, provided that the following conditions are met:
- (a) The maximum aid intensity is normally 40 %. For investments in Objective 1 regions the maximum rate is 50 % (point 4.2.3 of the Community guidelines).
  - (b) Investment aid may only be granted to enterprises that can be shown to be economically viable, based on an assessment of their prospects (point 4.2.3).
  - (c) The enterprises must comply with the Community minimum standards regarding the environment, hygiene and animal welfare. Where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene and animal welfare, aid may be granted for that purpose (point 4.2.3).
  - (d) Only the costs referred to under point 4.2.3 of the Community guidelines are eligible for support.
  - (e) Investment aid may be granted only where normal market outlets for the products concerned can be found. This must be assessed at the appropriate level in relation to the products concerned, the types of investment and existing and expected capacities (point 4.2.5).

(a) *Maximum rate of aid*

- (53) The investment is to be made in an Objective 1 area. The maximum aid intensity is therefore 50 %.
- (54) Since it is difficult, in the light of the available information, to determine the aid intensity accurately, the Commission will calculate it as follows: three variants, a 'minimum', a 'standard' and a 'maximum' variant, are examined to determine whether one of them exceeds the maximum aid rate. The Commission used the method of calculation given in Annex I to the regional guidelines<sup>(24)</sup> (see Annex to this Decision).

<sup>(21)</sup> See footnote 7.

<sup>(22)</sup> See footnote 9.

<sup>(23)</sup> See footnote 10.

<sup>(24)</sup> See footnote 14.

## Minimum variant:

- (55) The minimum variant is the calculation proposed by the German authorities. The total grant equivalent of the loans and the guarantee is EUR 97 350. Compared with the total eligible cost of EUR 3 016 622, this gives a (cumulative) aid intensity of 3,23 %.

## Standard variant:

- (56) The following assumptions are made for the standard variant: in order to calculate the grant equivalents of the loans, the nominal interest rate is compared with the reference interest rate that the Commission determined for the period concerned. In order to calculate the grant equivalent of the guarantee, the average (1,25 %) of the rates accepted by the Commission for viable enterprises in case N 117/96 is used (see point II.6).

## Maximum variant:

- (57) For this variant, the following assumptions are made: in order to calculate the grant equivalents of the loans, the nominal interest rate is compared with a 'market interest rate' for a capital market loan. The 'market interest rate' is taken to be the interest rate fixed by the undertaking's bank for the capital market loan. In order to calculate the grant equivalent of the guarantee, the upper limit (2,0 %) accepted in the Commission Decision for viable enterprises in case N 117/96 is used (see point II.6).

- (58) As can be seen from the following table, in no case is the maximum permissible aid intensity of 50 % exceeded. This condition can therefore be regarded as fulfilled.

	Minimum variant	Standard variant	Maximum variant
Cash value of loans I and II	EUR 88 044	EUR 112 912	EUR 237 476
Cash value of the guarantee	EUR 9 306	EUR 23 264	EUR 37 222
Cumulative aid intensity	3,23 %	4,51 %	9,11 %

(b) *Viability of the enterprise*

- (59) The German authorities examined the company's economic viability and gave assurances that it was sound. As stated in points IV and V.2, the company's financial position has improved over recent years. In addition, capital repayments on the outstanding loans were made according to plan. In the light of the above, it can therefore be assumed that company's favourable development will continue over the next few years. This condition can therefore be regarded as fulfilled.

(c) *Compliance with Community minimum standards*

- (60) The German authorities have expressly confirmed that the recipient fulfils the minimum standards regarding the environment, hygiene and animal welfare within the meaning of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations<sup>(25)</sup>. This condition can therefore be regarded as fulfilled.

<sup>(25)</sup> OJ L 160, 26.6.1999, p. 80.

(d) *Eligible costs*

- (61) The cost of building works and technical facilities for processing root vegetables and potatoes as part of the project constitutes eligible expenditure. This expenditure is eligible for subsidies under the Community guidelines. The aid covers part of the cost of purchasing a manufacturing plant in respect of which collective bankruptcy proceedings have been initiated. The recipient acquired the entire fixed capital, including the immovable assets and new and used machinery. Pursuant to point 4.2.4 of the Community guidelines, in conjunction with point 4.4 of the regional guidelines, <sup>(26)</sup> fixed capital formation resulting from the acquisition of an establishment which has been closed down or which would have been closed down if it had not been acquired, can also be regarded as an initial investment in so far as the establishment does not belong to an enterprise in difficulties. The cost of acquiring the manufacturing plant can therefore be regarded as eligible expenditure under the terms of the Community guidelines.

(e) *Market outlets*

- (62) The German authorities have confirmed that the existence of normal market outlets was assessed at the appropriate level. There are sufficient market outlets. The recipient's products are stocked by all leading retail food outlets in eastern Germany and some of its products are available throughout the country. Customers were also found among discount outlets, which constitute the fastest-growing segment of the retail trade. Furthermore, the recipient's customers include wholesalers and businesses in the expanding home-delivery market for frozen foods. The investment project does not increase the existing processing capacity. This condition can therefore also be regarded as fulfilled.

#### VI. CONCLUSIONS

- (63) The Commission regrets that Germany failed to respond to the request for information dated 8 February 2001. This is a clear infringement of the obligation to provide legal cooperation laid down in general terms in Article 10 of the EC Treaty and in more specific terms in Article 88 of the EC Treaty and Regulation (EC) No 659/1999 <sup>(27)</sup>. The Commission reserves the right to take further steps against the Federal Republic of Germany on this matter.
- (64) For the reasons set out above, the Commission considers that the aid can be regarded as compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty since it fulfils the conditions laid down in point 4.2 of the Community guidelines for State aid in the agriculture sector and the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid, in the form of two low-interest loans with a combined value of EUR 1 917 345 and a guarantee for a loan of EUR 1 861 103, which Germany intends to grant to Frenzel Kyffhäuser Tiefkühlkost GmbH, is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 October 2003.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(26)</sup> OJ C 74, 10.3.1998, p. 9.

<sup>(27)</sup> OJ L 83, 27.3.1999, p. 1.

## ANNEX

## Loan I — Standard variant

Half year	Interest	Repayment	Capital repayment	Reduction of interest	Net capital repayment	Outstanding balance	Cash value
1/1998	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 895,50
2/1998	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 736,60
1/1999	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 581,98
2/1999	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 431,53
1/2000	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 285,13
2/2000	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 142,68
1/2001	42 488,37	45 114,00	87 602,37	6 058,81	81 543,56	1 488 762,00	5 004,06
2/2001	41 238,71	45 114,00	86 352,71	5 880,61	80 472,10	1 443 648,00	4 725,98
1/2002	39 989,05	45 114,00	85 103,05	5 702,41	79 400,64	1 398 534,00	4 459,24
2/2002	38 739,39	45 114,00	83 853,39	5 524,21	78 329,18	1 353 420,00	4 203,46
1/2003	37 489,73	45 114,00	82 603,73	5 346,01	77 257,73	1 308 306,00	3 958,22
2/2003	36 240,08	45 114,00	81 354,08	5 167,81	76 186,27	1 263 192,00	3 723,15
1/2004	34 990,42	45 114,00	80 104,42	4 989,61	75 114,81	1 218 078,00	3 497,87
2/2004	33 740,76	45 114,00	78 854,76	4 811,41	74 043,35	1 172 964,00	3 282,03
1/2005	32 491,10	45 114,00	77 605,10	4 633,21	72 971,90	1 127 850,00	3 075,29
2/2005	31 241,45	45 114,00	76 355,45	4 455,01	71 900,44	1 082 736,00	2 877,31
1/2006	29 991,79	45 114,00	75 105,79	4 276,81	70 828,98	1 037 622,00	2 687,77
2/2006	28 742,13	45 114,00	73 856,13	4 098,61	69 757,52	992 508,00	2 506,35
1/2007	27 492,47	45 114,00	72 606,47	3 920,41	68 686,07	947 394,00	2 332,76
2/2007	26 242,81	45 114,00	71 356,81	3 742,21	67 614,61	902 280,00	2 166,71
1/2008	24 993,16	45 114,00	70 107,16	3 564,01	66 543,15	857 166,00	2 007,91
2/2008	23 743,50	45 114,00	68 857,50	3 385,81	65 471,69	812 052,00	1 856,10
1/2009	22 493,84	45 114,00	67 607,84	3 207,61	64 400,24	766 938,00	1 711,02
2/2009	21 244,18	45 114,00	66 358,18	3 029,41	63 328,78	721 824,00	1 572,41
1/2010	19 994,52	45 114,00	65 108,52	2 851,20	62 257,32	676 710,00	1 440,02
2/2010	18 744,87	45 114,00	63 858,87	2 673,00	61 185,86	631 596,00	1 313,63
1/2011	17 495,21	45 114,00	62 609,21	2 494,80	60 114,41	586 482,00	1 193,01
2/2011	16 245,55	45 114,00	61 359,55	2 316,60	59 042,95	541 368,00	1 077,94
1/2012	14 995,89	45 114,00	60 109,89	2 138,40	57 971,49	496 254,00	968,20
2/2012	13 746,24	45 114,00	58 860,24	1 960,20	56 900,03	451 140,00	863,60
1/2013	12 496,58	45 114,00	57 610,58	1 782,00	55 828,58	406 026,00	763,93
2/2013	11 246,92	45 114,00	56 360,92	1 603,80	54 757,12	360 912,00	669,00
1/2014	9 997,26	45 114,00	55 111,26	1 425,60	53 685,66	315 798,00	578,64
2/2014	8 747,60	45 114,00	53 861,60	1 247,40	52 614,20	270 684,00	492,66
1/2015	7 497,95	45 114,00	52 611,95	1 069,20	51 542,75	225 570,00	410,90
2/2015	6 248,29	45 114,00	51 362,29	891,00	50 471,29	180 456,00	333,19
1/2016	4 998,63	45 114,00	50 112,63	712,80	49 399,83	135 342,00	259,37
2/2016	3 748,97	45 114,00	48 862,97	534,60	48 328,37	90 228,00	189,28
1/2017	2 499,32	45 114,00	47 613,32	356,40	47 256,92	45 114,00	122,79
2/2017	1 249,66	45 114,00	46 363,66	178,20	46 185,46	0,00	59,74
						Total	99 456,96



**Loan II — Standard variant**

Half year	Interest	Repayment	Capital repayment	Reduction of interest	Net capital repayment	Outstanding balance	Cash value
1/1998	10 622,09	0,00	10 622,09	1 514,70	9 107,39	383 469,00	1 473,88
2/1998	10 622,09	0,00	10 622,09	1 514,70	9 107,39	383 469,00	1 434,15
1/1999	10 622,09	0,00	10 622,09	1 514,70	9 107,39	383 469,00	1 395,50
2/1999	10 622,09	0,00	10 622,09	1 514,70	9 107,39	383 469,00	1 357,88
1/2000	10 622,09	31 955,75	42 577,84	1 514,70	41 063,14	351 513,25	1 321,28
2/2000	9 736,92	31 955,75	41 692,67	1 388,48	40 304,19	319 557,50	1 178,53
1/2001	8 851,74	31 955,75	40 807,49	1 262,25	39 545,24	287 601,75	1 042,51
2/2001	7 966,57	31 955,75	39 922,32	1 136,03	38 786,29	255 646,00	912,97
1/2002	7 081,39	31 955,75	39 037,14	1 009,80	38 027,34	223 690,25	789,66
2/2002	6 196,22	31 955,75	38 151,97	883,58	37 268,39	191 734,50	672,33
1/2003	5 311,05	31 955,75	37 266,80	757,35	36 509,44	159 778,75	560,75
2/2003	4 425,87	31 955,75	36 381,62	631,13	35 750,50	127 823,00	454,69
1/2004	3 540,70	31 955,75	35 496,45	504,90	34 991,55	95 867,25	353,95
2/2004	2 655,52	31 955,75	34 611,27	378,68	34 232,60	63 911,50	258,31
1/2005	1 770,35	31 955,75	33 726,10	252,45	33 473,65	31 955,75	167,56
2/2005	885,17	31 955,75	32 840,92	126,23	32 714,70	0,00	81,52
Total							13 455,48

**Loan II — Maximum variant**

Half year	Interest	Repayment	Capital repayment	Reduction of interest	Net capital repayment	Outstanding balance	Cash value
1/1998	12 462,74	0,00	12 462,74	3 355,35	9 107,39	383 469,00	3 249,74
2/1998	12 462,74	0,00	12 462,74	3 355,35	9 107,39	383 469,00	3 147,45
1/1999	12 462,74	0,00	12 462,74	3 355,35	9 107,39	383 469,00	3 048,37
2/1999	12 462,74	0,00	12 462,74	3 355,35	9 107,39	383 469,00	2 952,42
1/2000	12 462,74	31 955,75	44 418,49	3 355,35	41 063,14	351 513,25	2 859,49
2/2000	11 424,18	31 955,75	43 379,93	3 075,74	40 304,19	319 557,50	2 538,69
1/2001	10 385,62	31 955,75	42 341,37	2 796,13	39 545,24	287 601,75	2 235,25
2/2001	9 347,06	31 955,75	41 302,81	2 516,52	38 786,29	255 646,00	1 948,40
1/2002	8 308,50	31 955,75	40 264,25	2 236,90	38 027,34	223 690,25	1 677,40
2/2002	7 269,93	31 955,75	39 225,68	1 957,29	37 268,39	191 734,50	1 421,53
1/2003	6 231,37	31 955,75	38 187,12	1 677,68	36 509,44	159 778,75	1 180,10
2/2003	5 192,81	31 955,75	37 148,56	1 398,06	35 750,50	127 823,00	952,46
1/2004	4 154,25	31 955,75	36 110,00	1 118,45	34 991,55	95 867,25	737,98
2/2004	3 115,69	31 955,75	35 071,44	838,84	34 232,60	63 911,50	536,07
1/2005	2 077,12	31 955,75	34 032,87	559,23	33 473,65	31 955,75	346,13
2/2005	1 038,56	31 955,75	32 994,31	279,61	32 714,70	0,00	167,62
Total							28 999,08