

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 21 December 2000

on the State aid granted by the Federal Republic of Germany to Zeuro Möbelwerk GmbH,  
Thuringia

(notified under document number C(2000) 4401)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/779/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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 the interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup>,

Whereas:

(2) By letter dated 12 August 1997, the Commission informed the German authorities that it had decided to initiate the procedure laid down in Article 88(2) in respect of the aid.

(3) The Commission decision to initiate that procedure was announced in the *Official Journal of the European Communities* <sup>(2)</sup>. The Commission there called on interested parties to submit their comments. The Commission received no comments from interested parties.

### 1. PROCEDURE

(1) By letter dated 8 July 1996, received on 9 July 1996, Germany informed the Commission of the restructuring of Zeuro Möbelwerk GmbH. By letters of 30 July 1996, 7 October 1996 and 2 April 1997 the Commission requested additional information, which was supplied by letters of 11 September 1996, 17 February 1997 and 15 May 1997, this last received on 23 May 1997. On 7 April 1997 the Commission received an amendment to the initial notification. The case was discussed at a meeting with the German authorities on 3 February 1997. At the time of the notification the aid had already been granted, so that Article 88(3) of the EC Treaty had been infringed. The Commission accordingly entered the aid in the register of non-notified aid measures.

(4) On 22 September 1997, after the procedure had been initiated, a meeting took place between the German authorities and the Commission. By letter of 14 November 1997, received on 19 November 1997, the German authorities supplied further information. On 15 October 1998 and 22 September 1999 the German authorities and the Commission discussed the case again. On 5 October 1999 the Commission asked for information on some outstanding points, which the German authorities supplied on 4 November 1999.

<sup>(1)</sup> OJ C 25, 24.1.1998, p. 2.

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

## 2. DESCRIPTION

### 2.1. THE UNDERTAKING

#### 2.1.1. BACKGROUND

(5) Zeuro Möbelwerk GmbH (Zeuro) is a furniture manufacturer based in Thuringia. The unemployment rate in the area is 17,9 %.

(6) The German market accounts for 85 % of Zeuro's sales; 10 % of its sales are in other Member States, and 5 % in eastern Europe.

(7) According to the information supplied by the German authorities, Zeuro is an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises<sup>(3)</sup> and of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises<sup>(4)</sup>.

(8) The Treuhandanstalt privatisation agency took over Zeuro in 1990 from the former VEB Möbelkombinat Zeulenroda, and converted it into Zeulenrodaer Möbel GmbH. VEB Möbelkombinat Zeulenroda had nine plants and employed more than 2 500 people. Since the firm could not be privatised as a whole, the Treuhandanstalt allowed it to go bankrupt. In 1991, the Treuhandanstalt founded Zeuro Möbel GmbH in Berlin, which took over most of the assets and liabilities of the main firm in Zeulenroda. In March 1993 the movable assets and the bulk of the liabilities were transferred to the private firm Furnica GmbH. The firm was renamed Zeuro Möbelwerk GmbH; in 1994 it experienced severe liquidity problems.

(9) In June 1994, Thüringer Industriebeteiligungs GmbH und Co. KG (TIB) therefore acquired Zeuro's entire share capital, at a price of DEM 1.

(10) The liquidity crisis of 1994 had the following causes:

(a) the firm had acquired too many materials at excessive prices;

(b) it had too many employees;

(c) it could therefore not even cover its production costs;

(d) it was keen to increase its turnover but did not check the liquidity situation of its customers;

(e) its range still contained unfashionable products which it was unable to sell;

(f) it had evidently suffered from mismanagement since 1990.

(11) Mr Wohlfahrt was appointed manager. He devised a restructuring plan intended to solve the firm's problems. On 1 February 1996, in a capital increase, he took over 51 % of the shares.

(12) Mr Wohlfahrt started a joint venture in Lithuania which evidently involved a holding by Zeuro, and transferred machinery, services and money from the German firm to Lithuania. He then disappeared. Not only did he fail to implement the restructuring plan, but he caused serious damage to Zeuro (misappropriation of some DEM 0,5 million and the damage caused by the Lithuanian joint venture). By a resolution of 23 July 1996 TIB removed him as manager; his shares were confiscated, and TIB again became Zeuro's sole owner.

#### 2.1.2. MORE RECENT DEVELOPMENTS

(13) Mr Gumbel was appointed as the new manager.

(14) A new restructuring plan was drawn up and Mr Wohlfahrt's former plan revised. The firm's difficulties derived from the following factors:

(a) because of the Lithuanian joint venture, the firm was required to supply machinery and services which exceeded its capacities;

(b) the firm had been manufacturing too broad a range of products (55), and its range was not homogeneous. Of the 55 products, two together accounted for 40 % of sales, while many of the other products were not selling at all;

(c) its products had been sold below cost (negative profit of up to 25 %). The calculation of costs had not been properly conducted;

(d) material costs were still much too high;

(e) transport costs were too high;

<sup>(3)</sup> OJ C 213, 23.7.1996, p. 4.

<sup>(4)</sup> OJ L 107, 30.4.1996, p. 4.

(f) staff costs were too high. After a short period in which the number of employees fell, the payroll had begun to expand again. (The 1995 restructuring plan had projected a total staff of 153. The number of employees fell initially to 190 but then rose again to 224). In addition, staff had been taken on for the joint venture in Lithuania and for the logistics department. (It would appear that a subsidiary was set up to develop Zeuro's logistics. The Commission has no information on this matter.) Some of its employees and of the independent consultants working under contracts concluded by

Mr Wohlfahrt were very highly paid. Wages and salaries had been agreed in March 1995 which were too high given the firm's economic situation;

- (g) the production process was inefficient;
- (h) the firm had purchased too many vehicles and too many mobile telephones;
- (i) the firm had accepted complaints of all kinds, including some that were quite unjustified. The associated costs were estimated at some DEM 1 million.

### 2.1.3. FINANCIAL DEVELOPMENT OF THE FIRM

	(DEM)			
	1993	1994	1995	1996
Turnover	32 657 315	40 326 044	34 846 240	40 440 490
Cost of materials	20 963 097	22 010 081	18 303 113	23 242 390
Staff costs	10 581 499	14 644 379	12 060 895	12 030 664
Operating result	- 5 354 711	- 10 098 722	- 4 476 573	- 13 546 922
Annual profit or loss	- 5 371 022	- 7 113 909	- 3 796 275	+ 6 398 681

- (15) The firm made a profit of DEM 6 838 681 in 1996 on the basis of extraordinary receipts (State aid) of DEM 20 393 762.

## 2.2. THE RESTRUCTURING PLAN

### 2.2.1. RESTRUCTURING MEASURES

- (16) (a) No further supplies of machinery and services (1996 value: DEM 3 million) would be made to the firm in Lithuania; Zeuro sought to enforce payment of its receivables in respect of goods and machinery and to sell its holding.
- (b) The firm's product range would be reduced.
- (c) Prices would be renegotiated to enable its products to be sold at a cost-covering level.
- (d) Material costs would be reduced by DEM 1,5 million through the purchase and use of fewer materials.
- (e) Transport costs were to be reduced. The firm would consider whether it might not be cheaper to farm out its haulage operations rather than use its own hived-off subsidiary. (It was estimated that this would cost 40 % less, i.e. a saving of DEM 1,6 million).
- (f) Staff costs would be reduced by DEM 1,1 million. The firm would negotiate with the works council over wages, working hours, etc. The number of employees would be reduced.

- (g) The production process would be optimised. This would cut 22 jobs.
- (h) The site and buildings were purchased and rehabilitated. The site was bought for DEM 3 million.
- (i) In 1997 investments totalled DEM 1,1 million for construction work and DEM 1,4 million for technical equipment and machinery.
- (j) The number of cars and mobile telephones would be reduced.
- (k) The complaints system would be changed.
- (l) The firm would negotiate with potential new investors.

#### 2.2.2. FINANCING OF THE COMPANY

		(DEM)
A	Increase of nominal capital by shareholder Wohlfahrt, made up of	2 580 000
	— DEM 2 million loan towards the holding (equity assistance granted by German authorities)	2 000 000
	— DEM 580 000 private holding	580 000
B	Extension of repayment of part of TIB shareholder loan of 15 July 1994	1 000 000
C	1996 waiver by TIB of part of shareholder loan of 15 July 1994	4 000 000
D	Increase of nominal capital by TIB	2 500 000
E	1996 waiver by TAB of repayment of an operating loan (wholly guaranteed by the <i>Land</i> )	1 500 000
F	Loans granted in 1996, 65 % TAB <sup>(5)</sup> guarantee	6 900 000 <sup>(6)</sup>
G	Section of the private loans granted in 1996 not guaranteed by TAB	2 100 000
H	'Rescue aid' following Mr Wohlfahrt's departure: TAB loan up to 31 December 1996, repayment extended, interest 7,5 %, 100 % <i>Land</i> guarantee; retreat in rank of DEM 4 million	5 000 000
I	TAB loan up to 30 June 1997 (pre-financing of holding taken by Thuringia Consolidation Fund (Thüringer Konsolidierungsfonds)), 100 % <i>Land</i> guarantee	2 500 000
J	Reduction of purchase price	500 000
K	Waiver of claim to purchase price by Zeuro-Verwaltungs GmbH i.L. (owned by the BvS, the successor to the Treuhandanstalt)	5 701 000
L	BvS waiver of right of recourse in respect of guarantee	5 750 000
M	Holding taken by Thuringia Consolidation Fund (only DEM 1,6 million so far paid up)	5 000 000

N	Grants and investment allowances under the Joint Federal Government/ <i>Länder</i> regional scheme (since 1993)	4 650 000
O	Investment grants not yet paid	450 000
P	AIF grants (since 1993)	900 000
Q	Grants for staff costs	13 000
R	SME grant in 1994	3 000 000
S	Grant for sales promotion/trade fairs from the Thuringia Trade Fair Promotion Programme (Thüringische Messeförderungsprogramm)	111 000
	<b>Total</b>	<b>54 155 000</b>

<sup>(5)</sup> Thüringer Aufbaubank.

<sup>(6)</sup> The loans granted in 1996 amounted to DEM 9 million. They consisted of a KfW loan of DEM 1 million and a loan of DEM 2 million from KfW and the ERP, both of which, therefore, were State loans; a loan of DEM 1 million from Zeuro's own bank, Dresdner Bank; and a private operating credit line of DEM 5 million from Dresdner Bank. These loans carried a 65 % guarantee from TAB. The aid component is accordingly DEM 6,9 million.

- (17) The firm has therefore received State funds totalling DEM 49,475 million, plus a further DEM 2 million in aid to the investor, Mr Wohlfahrt, which was paid to the firm before his departure and for which he is personally liable. The private investor's own contribution is DEM 2,680 million, made up of an increase of DEM 0,58 million in nominal capital and the section of the Dresdner Bank loan not covered by State guarantee (measure L), which amounts to DEM 2,1 million.

### 2.3. EFFECTS ON CAPACITIES

Year	Pieces produced per year
1993	1 784 924
1994	1 826 919
1995	1 560 722
1996	1 635 872
1997	1 528 642

- (18) Some production facilities were closed in 1995. The production capacity therefore stood at some 1,7 million pieces per annum in 1997. Zeuro planned not to increase its capacity but to manufacture less on the basis of the remaining capacities.

### 2.4. PRODUCTS AND MARKETS

- (19) The furniture industry is one of the largest processing industries in the Community. It is highly fragmented, and SMEs play an important role.
- (20) Furniture sales fluctuate, and are largely dependent on the general economic climate and the income of households. Until the recession at the beginning of the 1980s, however, the industry showed healthy growth.
- (21) Between 1986 and the beginning of 1991 furniture manufacturing resumed an upward trend. It fell again thereafter. Production fell in real terms by 3,2 % between 1992 and 1993, and 46 000 jobs were lost in the industry in Europe between 1991 and 1993. A further 12 000 job losses occurred in 1994, although new furniture production rose in 1994 by 1,6 %.
- (22) Demand was expected to increase further and to have a positive impact on the industry in the near future <sup>(7)</sup>.

<sup>(7)</sup> See Panorama of EU Industry 1997, Chapter 18.

### 3. ASSESSMENT

#### 3.1. AID AMOUNT

(23) Of the measures listed in section 2.2.2, measures A and E-S constitute State aid caught by Article 87(1) of the EC Treaty. This is because they confer an advantage on a particular firm, they were paid out of State resources, and they affect trade between Member States, since the recipient firm operates on a market on which there is brisk cross-border trade within the Community, so that there is a danger that competition may be distorted.

(24) Measures B, C and D listed in section 2.2.2 are measures taken by the owner of the firm, TIB, but it has to be said that they do not satisfy the private investor test. As explained in section 3.2.1, the money was invested in a company in serious difficulty, with no reliable indication that its long-term profitability might be restored; in such circumstances a private investor would not normally invest. The Commission is strengthened in this view by the fact that repeated efforts to find an investor have proved fruitless. These measures too, therefore, constitute State aid.

#### 3.1.1. AID TO THE FIRM WHICH WOULD HAVE TO BE REPAID BY THE INVESTOR

##### Measure A

(25) The investor, Mr Wohlfahrt, invested DEM 2,58 million, part of which was provided under the equity assistance scheme (Eigenkapitalhilfe) and part of which was contributed by Mr Wohlfahrt himself.

(26) A sum of DEM 2 million was granted under the equity assistance scheme to the investor. The amount was paid to the firm and remained with it after Mr Wohlfahrt's departure. Mr Wohlfahrt, and not the firm, is liable for its repayment.

(27) The German authorities state that the aid was granted in accordance with the equity assistance scheme for the new *Länder*, which has been notified to and approved by the Commission (aid measure N 510/95) <sup>(8)</sup>.

(28) The scheme is restricted to SMEs. When it initiated the procedure in the present case the Commission expressed doubts as to whether Zeuro could be classed as an SME. According to the information supplied by the German authorities Zeuro was indeed an SME at the time the holding was taken. The SME requirement is therefore satisfied.

(29) The Commission's approval of the equity assistance scheme was also made conditional on the existence of a restructuring plan designed to restore the firm's long-term viability. The German authorities had told the Commission that it was only exceptionally that loans granted under the scheme would be used to restructure firms in difficulty. Germany is in any event under an obligation to apply the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(9)</sup>. The aid was granted before the publication of the new Community guidelines <sup>(10)</sup>, and consequently, in accordance with point 101 of the new guidelines, it has to be assessed under the guidelines of 1994 (hereinafter the guidelines). Among other things the guidelines require:

- (a) that a viable restructuring programme be submitted and put into effect;
- (b) that the aid be limited to the strict minimum needed.

(30) In Zeuro's case a restructuring plan was indeed submitted; but it has to be considered whether the plan was at all capable of restoring the firm to viability, and whether the aid was confined to the minimum.

#### 3.1.2. OTHER AID TO THE FIRM

##### 3.1.2.1. Measures taken by TIB

##### Measures B, C and D

(31) TIB owns all of the shares in Zeuro. When it took over the firm in 1994, it granted a shareholder loan of DEM 5 million (measures B and C). In 1996, it waived repayment of DEM 4 million of this amount; the repayment period of the remaining DEM 1 million was extended to 30 September 1999. TIB also increased the nominal capital by a further DEM 2,5 million.

<sup>(8)</sup> N 510/95, SG (95) D/11491.

<sup>(9)</sup> OJ C 368, 23.12.1994, p. 12.

<sup>(10)</sup> OJ C 288, 9.10.1999, p. 2.



(32) According to the information supplied by the German authorities, TIB's holding is based on a scheme which has been notified to and approved by the Commission (aid measure N 183/94 <sup>(1)</sup>). It should be pointed out here that the Commission has now initiated proceedings in respect of that measure, on the ground that it is not being properly applied <sup>(12)</sup>. The Commission has not yet taken a final decision in that case, but there is evidence that the conditions attached to the Commission's earlier authorisation of the scheme have not been complied with.

(33) Under the scheme, firms which receive aid from TIB may not, for the duration of that aid, receive aid from any other scheme involving capital injections from State funds, such as the equity assistance scheme and the ERP holdings programme. But Zeuro did receive such aid. It may be questionable whether the equity assistance loan would rule out aid from TIB, because equity assistance is officially granted to investors and not to firms. This question need not be conclusively settled here, however, because the firm in any case received additional aid in the form of a holding taken by the Thuringia Consolidation Fund, loans from TAB, etc. These measures are clearly caught by this provision of the scheme. Consequently, TIB's holding cannot be deemed to have been acquired under an authorised aid scheme, and has to be classed and examined as a one-off measure.

(34) When the Commission authorised the scheme it did allow TIB to provide capital for firms in difficulty, but only on condition that a restructuring plan was submitted and put into effect which would restore the firm's profitability. A restructuring plan was indeed submitted here, but the Commission must now consider whether that plan was such as to return the firm to profitability.

(35) Moreover, the Commission's approval of the scheme relates solely to minority holdings. In the case of majority holdings individual notification is required. Germany has failed to comply with this obligation under Article 88(3) of the EC Treaty, and the aid is therefore unlawful on formal grounds. It remains to be seen whether it is compatible with the common market.

### 3.1.2.2. *Measures taken by TAB*

#### **Measure E**

(36) The Commission was first informed in May 1997 of the waiver of the repayment of the operating loan of DEM 1,5 billion, which was fully guaranteed by the *Land* of Thuringia. This aid was not granted on the basis of any scheme, and consequently ought to have been notified. Germany has therefore failed to meet its obligation to notify under Article 88(3) of the EC Treaty, so that the aid is unlawful on formal grounds, and must be assessed for compatibility with the common market as a one-off restructuring measure.

#### **Measures F and G**

(37) In 1996 TAB granted a 65 % guarantee on the following loans, totalling DEM 9 million:

- (a) a KfW/ERP loan of DEM 2 million at an interest rate of 5 % and with a term of 15 years (up to 30 June 2011);
- (b) a KfW loan of DEM 1 million at an interest rate of 5,9 % and with a term of 15 years;
- (c) a loan of DEM 1 million from Zeuro's main bank, Dresdner Bank, at an interest rate of 5,9 % and with a term of 10 years (up to 30 June 2006);
- (d) an operating credit line of DEM 5 million at an interest rate of 6,75 % and with a term of 15 years; this can be used for discounts, guarantees, letters of credit and cash subsidies.

(38) The KfW/ERP loan and the KfW loan were State loans, and they were granted to a firm in difficulty, so that the aid intensity is 100 % and the aid amounts to DEM 3 million (measure F). The Dresdner Bank loan and credit line are of private origin, but carry a 65 % guarantee from TAB. The amount of aid therefore amounts to DEM 3,9 million (measure G).

(39) The German authorities state that the guarantee was granted in accordance with the TAB rules on guarantees (*Bürgschaftsrichtlinie*), which were notified to the Commission and approved by it on 6 November 1996 (aid measure N 117/96 <sup>(13)</sup>). But this guarantee had already been granted before the Commission authorised TAB's guarantee rules as a notified aid measure, so that it cannot be regarded as covered by that scheme <sup>(14)</sup>.

<sup>(1)</sup> N 183/94, SG (94) D/11661.

<sup>(12)</sup> SG (99) D/1972, 15.3.1999.

<sup>(13)</sup> N 117/96, SG (96) D/11696.

<sup>(14)</sup> See also case No C 36/2000, State aid to Graf von Henneberg Porzellan GmbH, Ilmenau, Thuringia.

- (40) In addition, the conditions attached to the scheme were evidently not complied with. Where, under the rules, guarantees were to be given to firms in difficulty, Germany had undertaken to observe the criteria laid down in the guidelines.
- (41) The TAB guarantee is therefore not covered by the guarantee rules, and has to be classed as a one-off aid measure. As Germany did not meet its obligation to notify under Article 88(3) of the EC Treaty, the aid is unlawful on formal grounds.
- (42) The 100 % guarantees granted by the *Land* of Thuringia on the DEM 5 million and DEM 2,5 million loans were also granted under TAB's guarantee rules<sup>(15)</sup>. When the Commission approved the rules it required Germany to notify any cases in which there was renewed aid to the same firm, unless the need for such fresh financing was due to factors external to the firm. Measures H and I are renewed measures to overcome repeated difficulties in the firm, and these difficulties were caused at least in part by the firm itself, which failed to implement the restructuring plan. The TAB guarantee ought therefore to have been notified on an individual basis. It has to be classed as a one-off aid measure.
- (43) In 1993 the BvS granted a guarantee of DEM 6 million to Furnica GmbH, now Zeuro Möbelwerk GmbH, on the financing obtained for the purchase price that Furnica paid to Zeuro Verwaltungs GmbH i.L., which was owned by the BvS. A DEM 6 million loan was provided by Deutsche Bank. Of the DEM 6,25 million purchase price, however, Zeuro paid only DEM 250 000; it diverted the remaining funds to cover its losses. In 1995 the purchase price was reduced by DEM 500 000 (measure J). A DEM 5,701 million payment to Zeuro Verwaltungs GmbH i.L. and a debt of DEM 5,75 million to Deutsche Bank were still outstanding.
- (44) In 1996 the BvS took over the payment of the DEM 5,75 million to Deutsche Bank (measure L), waived its right of recourse against Zeuro in respect of the guarantee, and instructed Zeuro Verwaltungs GmbH i.L. to waive its claim to the rest of the (unpaid) purchase price, that is to say DEM 5,701 million (measure K).
- (45) The guarantee given by the BvS to Furnica is a State aid measure; the Commission accepts that it is within the terms of the Treuhand scheme of 1992<sup>(16)</sup>. The BvS's waiver of its right of recourse against Zeuro in respect of the guarantee is not a fresh aid measure.
- (46) The reduction of the purchase price by DEM 500 000 constitutes State aid outside the scope of the Treuhand scheme, because it is neither a loan nor a guarantee. The 1996 waiver of the claim to rest of the purchase price, amounting to DEM 5,701 million, is likewise State aid, and is not covered by any scheme. Both these sums are therefore to be assessed as one-off restructuring measures.

### Measures H and I

- (42) The 100 % guarantees granted by the *Land* of Thuringia on the DEM 5 million and DEM 2,5 million loans were also granted under TAB's guarantee rules<sup>(15)</sup>. When the Commission approved the rules it required Germany to notify any cases in which there was renewed aid to the same firm, unless the need for such fresh financing was due to factors external to the firm. Measures H and I are renewed measures to overcome repeated difficulties in the firm, and these difficulties were caused at least in part by the firm itself, which failed to implement the restructuring plan. The TAB guarantee ought therefore to have been notified on an individual basis. It has to be classed as a one-off aid measure.

#### 3.1.2.3. Measures taken by the BvS

### Measures L and K

- (43) In 1993 the BvS granted a guarantee of DEM 6 million to Furnica GmbH, now Zeuro Möbelwerk GmbH, on the financing obtained for the purchase price that Furnica paid to Zeuro Verwaltungs GmbH i.L., which was owned by the BvS. A DEM 6 million loan was provided by Deutsche Bank. Of the DEM 6,25 million purchase price, however, Zeuro paid only DEM 250 000; it diverted the remaining funds to cover its losses. In 1995 the purchase price was reduced by DEM 500 000 (measure J). A DEM 5,701 million payment to Zeuro Verwaltungs GmbH i.L. and a debt of DEM 5,75 million to Deutsche Bank were still outstanding.
- (44) In 1996 the BvS took over the payment of the DEM 5,75 million to Deutsche Bank (measure L), waived its right of recourse against Zeuro in respect of the guarantee, and instructed Zeuro Verwaltungs GmbH i.L. to waive its claim to the rest of the (unpaid) purchase price, that is to say DEM 5,701 million (measure K).

#### 3.1.2.4. Holding taken by the Thuringia Consolidation Fund

### Measure M

- (47) A holding of DEM 5 million was taken by the Thuringia Consolidation Fund; the Commission has initiated proceedings against the Consolidation Fund scheme (aid measure NN 74/95)<sup>(17)</sup> on the ground that it is not being properly applied. The Commission has not yet decided whether or not the scheme is compatible. But in any event there is evidence that in Zeuro's case the conditions which the Commission attached when it originally approved the scheme have not been complied with.
- (48) The Commission approved the scheme on condition that financing would be available from the Consolidation Fund only where a restructuring plan was submitted which would restore the profitability of the firm. This means that in order to establish whether or not a measure is within the terms of the scheme an assessment has to be made of the restructuring plan. The scheme does not allow continued financing and restructuring.
- (49) The holding taken by the Thuringia Consolidation Fund cannot be regarded as authorised aid, and is therefore subject to the obligation to notify. Only a part of the aid has so far been paid out; this amounts to DEM 1,6 million.

#### 3.1.2.5. Investment grants

### Measures N and O

- (50) The firm received a grant under the twenty-fifth outline plan of the joint Federal Government/*Länder* scheme for improving regional economic structures (aid measure N 186/96), a scheme that was notified to the Commission and approved by it. The grant was in accordance with the authorised scheme.

<sup>(15)</sup> N 117/96, SG (96) D/11696.

<sup>(16)</sup> Aid scheme E 15/92.

<sup>(17)</sup> NN 74/95, SG (96) D/1946.



(51) The firm also received a grant under the Investment Allowance Act (aid measure N 49A/95). This scheme has also been notified to and approved by the Commission.

(52) The investment grants given under these two schemes total DEM 4,65 million. Further investment grants of DEM 450 000 are planned but have not yet been granted. They are likewise in accordance with the Investment Allowance Act scheme.

#### 3.1.2.6. *Grants for staff costs (measure Q)*

(53) The Commission has not been informed of the legal basis for these grants, which amount to DEM 671 839. They have therefore to be treated as one-off measures.

#### 3.1.2.7. *Grant for sales promotion/trade fairs from the Thuringia Trade Fair Promotion Programme (measure S)*

According to the German authorities this aid was granted under the *de minimis* rule<sup>(18)</sup>. In order to fall within the *de minimis* rule the total amount of aid over a period of three years from the date on which the first such aid is granted must not exceed EUR 100 000. This ceiling applies to all aid granted under the *de minimis* rule; it does not prevent the recipient firm from qualifying for aid under other schemes approved by the Commission. The grant given by the Thuringia Trade Fair Promotion Programme, at DEM 111 000 (measure S), is below the *de minimis* threshold. According to the information supplied by the German authorities, therefore, the requirements of the *de minimis* rule are met, and the measure is accordingly within the scope of the rule.

#### 3.1.2.8. *AIF grants (measure P)*

(54) The Commission has not been informed of the legal basis for this grant, which amounts to DEM 900 000. The grant has therefore to be treated as a one-off measure.

#### 3.1.2.9. *SME grant (measure R)*

(55) No information has been supplied on this grant, which amounts to DEM 3 million. It has therefore to be treated as a one-off aid measure.

### 3.2. EXEMPTIONS

(56) The Commission has to examine whether the content of the aid measures is compatible with the common market, and whether the exemptions provided for in Article 87(2) and (3) of the EC Treaty apply in the present case.

(57) The Commission notes that Article 87(2) and (3)(b), (d) and (e) are quite clearly not relevant here, and indeed have not been invoked by Germany.

(58) The other possible exemptions are those in Article 87(3)(a) and (c) of the EC Treaty. The Commission takes the view that the guidelines on State aid for research and development, environmental protection, SMEs, employment or training are not applicable here.

(59) Zeuro is located in a region which is eligible for aid under Article 87(3)(a) of the EC Treaty because the standard of living there is abnormally low and there is serious underemployment: the unemployment rate is 17,9 %, compared with the Community average of 10,8 %. Nevertheless, the Commission takes the view that in the present case Article 87(3)(c) has to be considered, because the main purpose of the aid was not to promote the development of a disadvantaged region but rather to restore a firm in difficulty to profitability. Under Article 87(3)(c) the Commission can authorise State aid to facilitate the development of certain economic activities provided the aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of Zeuro's past losses it may be held to constitute a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

(60) Restructuring aid is authorised only if the tests set out in the guidelines are satisfied:

(a) the restructuring must restore the long-term viability of the firm (point 3.2.2.i of the guidelines).

<sup>(18)</sup> Commission notice on the *de minimis* rule for State aid, (OJ C 68, 6.3.1996, p. 9).

- (b) there must be no undue distortions of competition (point 3.2.2.ii);
- the volume and intensity of the aid must be confined to the strict minimum necessary, and the costs may not be greater than the benefits (point 3.2.2.iii),
- aid of the kind at issue here may be granted
- only if a restructuring plan which restores the firm to profitability is implemented in full.
- 3.2.1. RESTORATION OF VIABILITY
- (61) Zeuro's restructuring plan must be so designed that it can reasonably be expected to restore the firm's long-term profitability and viability within a reasonable time. As a rule restructuring aid may be granted only once.

- (62) The restructuring measures taken were those described in recital 16. According to the German authorities they could be expected to restore Zeuro's viability. The financial forecast was as follows:

	DEM		
	1997	1998	1999
Turnover	34 388 000	37 827 000	38 500 000
Cost of materials	16 851 000	18 165 000	18 519 000
Staff costs	9 084 000	9 084 000	9 324 000
Operating result	18 000	444 000	
Annual profit or loss	1 182 000	444 000	480 000

- (63) When the Commission initiated the proceedings it had doubts as to whether the timescale provided for in the restructuring plan was reasonable, given that the restructuring operation began in 1994/95. The Commission pointed out that the steps being taken to rescue Zeuro did not constitute a one-off operation, as the measures envisaged under the first restructuring plan had not been fully implemented, and new ones had been added. The measures that had been undertaken in 1994/95 had not guaranteed the firm's long-term viability; indeed they had made the situation even worse.
- (64) The Commission also doubted whether the restructuring plan was based on realistic assumptions. Most of the measures were at the planning stage, and it might not be possible to implement all of them. Moreover, the new restructuring plan had not been made dependent on a new investor being found.
- (65) After the proceedings had been initiated the German authorities put forward their view of the matter. They said that fundamentally speaking the initial plan still held; since 1996 the new management had been seeking to correct deviations and to implement the original strategy.
- (66) One of the key points in the restructuring plan had been the reduction and adaptation of the product range. As a result of the measures taken in this respect the costs of materials had been reduced. The planned reduction in staff was going ahead too, despite the substantial costs incurred as a result of social legislation. In transport costs, expenses had been reduced from 11 % to 7 %. Zeuro's management was convinced that the poor turnover figures for 1998 would recover thanks to the products exhibited at the furniture fair in September and October 1997. The German authorities concluded that a new restructuring plan would not be necessary. The original plan had been adjusted and implemented in full.

- (67) The German authorities said that TIB had made further efforts to find a new investor. But the success of the restructuring plan did not hinge on whether or not an investor was found. Zeuro itself believed that its prospects of stabilisation and long-term viability were good.
- (68) The guidelines state that a restructuring plan must allow for the foreseeable movement of supply and demand on the relevant product market. The Commission takes the view that Zeuro's restructuring plan is not based on realistic assumptions. This is true especially of the sales figures. The Commission considers that the restructuring plan cannot restore the firm to profitability, because it does not comprise any sufficiently precise market analysis. The German authorities have argued that Zeuro has been prevented from increasing its sales as it had planned by the difficult situation on the furniture market; but this argument is unsound, because the restructuring plan took no account of foreseeable market developments, and sales remained far behind the forecast figures.

(DEM)

	1997	1998	1999
Sales	22 500 000 <sup>(19)</sup>	23 800 000 <sup>(20)</sup>	24 000 000

<sup>(19)</sup> Figures supplied by the German authorities.<sup>(20)</sup> Dunn & Bradstreet Report.

- (69) Prospects for growth in the furniture industry were not at all bad once the industry had recovered from the recession in the middle of the 1990s. The fact that Zeuro was unable to take advantage of this development to increase its sales confirms the Commission in its assessment of the restructuring plan.
- (70) The Commission also takes the view that participation by a private investor is an essential component of the restructuring plan. Despite its efforts TIB has failed to find an investor prepared to commit himself financially to Zeuro; in the Commission's view this is further proof of the rightness of its own assessment of the restructuring plan. Despite a five-year search, and an encouraging trend on the furniture market, no private investor has been found who shares the German authorities' estimate of the viability of the restructuring plan: so far nobody has been prepared to bear the financial risk associated with the restructuring operation.
- (71) The Commission concludes that the requirement that long-term viability be restored is not met.
- (72) The restructuring of Zeuro must be accompanied by measures which as far as possible prevent adverse effects on competitors; otherwise the aid would be contrary to the common interest and would not qualify for exemption under Article 87(3)(c) of the EC Treaty.
- (73) The furniture industry was not suffering from overcapacity, so that there was no obligation to reduce capacity. Zeuro did not in fact increase capacity, but instead reduced it until the end of 1997, as provided in the plan.
- (74) When the Commission initiated proceedings, however, it expressed the doubt that the measures might be causing undue distortion of trade. The investigation of the firm's problems showed that the former investor had sold goods below cost, and that the current management was having difficulty negotiating new terms for some of these contractual obligations. The Commission asked interested third parties for their observations. No such observations were received.
- (75) The German authorities stated that no sales were taking place at prices below production cost, but did not comment on the conduct of the previous investor. The Commission cannot rule out the possibility, therefore, that there has been undue distortion of competition. Thus the second requirement of the guidelines is not met either.

### 3.2.2. DISTORTIONS OF COMPETITION

### 3.2.3. AID IN PROPORTION TO THE COSTS AND BENEFITS OF RESTRUCTURING

- (72) The restructuring of Zeuro must be accompanied by measures which as far as possible prevent adverse effects on competitors; otherwise the aid would be contrary to the common interest and would not qualify for exemption under Article 87(3)(c) of the EC Treaty.
- (76) 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.

- (77) For this reason, the investor is required to make a contribution to the restructuring process from his own resources.
- (78) The former investor injected only DEM 2,58 million into the company, and of that figure DEM 2 million came out of public funds. The investor was thus contributing DEM 580 000 of his own; there was also DEM 2,1 million in private loans not carrying a State guarantee. The private contribution to the restructuring, therefore, amounts to DEM 2,68 million. All the other funding, amounting to DEM 49,475 million, was provided by the German authorities; this figure includes only the aid granted to the firm itself. The investor's share of the restructuring costs amounted to just 5 %.
- (79) Despite TIB's efforts no fresh investor has so far been found, so that TIB continues to hold the entire share capital.
- (80) Thus the amount of the aid bears no reasonable relation to the contribution made by the recipient. The requirement that the aid be in reasonable relation to the costs and benefits of restructuring is not satisfied.
- (81) TAB's waiver of the repayment of the operating loan of DEM 1,5 million, wholly guaranteed by the *Land* of Thuringia, is not within the terms of any aid scheme, and must accordingly be classed as a one-off aid measure. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. TAB's waiver of the repayment of the operating loan of DEM 1,5 million wholly guaranteed by the *Land* of Thuringia is therefore incompatible with the common market within the meaning of Article 87(1).
- (82) The KfW/ERP loan of DEM 2 million and the KfW loan of DEM 1 million likewise constitute restructuring aid. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The KfW/ERP loan of DEM 2 million and the KfW loan of DEM 1 million are therefore incompatible with the common market within the meaning of Article 87(1).
- (83) The 65 % guarantee on loans totalling DEM 9 million is not within the terms of aid measure N 117/96. The guarantee covers 65 % of the KfW loan and the KfW/ERP loan, both of which are incompatible with the common market, and likewise 65 % of loans of private origin amounting to DEM 6 million. The public loans and the guarantee together comprise State aid of DEM 6,9 million. This aid has to be assessed as restructuring aid. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The 65 % guarantee on loans totalling DEM 9 million is therefore incompatible with the common market within the meaning of Article 87(1).

#### 4. CONCLUSIONS

- (81) The aid to the investor in the form of an equity assistance loan of DEM 2 million is not within the terms of the equity assistance scheme for the new *Länder*, State aid measure N 510/95, because the restructuring plan was not such as to restore the firm to viability. The aid has therefore to be treated as a one-off aid measure. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The equity assistance loan of DEM 2 million to Mr Wohlfahrt is therefore incompatible with the common market within the meaning of Article 87(1).
- (82) The shareholder loan of DEM 5 million granted by TIB to Zeuro and the increase of DEM 2,5 million in Zeuro's nominal capital contributed by TIB are not within the terms of State aid scheme No 183/94, and have consequently to be treated as restructuring aid. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The shareholder loan of DEM 5 million and the capital increase of DEM 2,5 million are therefore incompatible with the common market within the meaning of Article 87(1).
- (83) The waiver by Zeuro-Verwaltungs GmbH i.L. of its DEM 5,701 million claim to the purchase price and the reduction of the purchase price by DEM 500 000 have been classed as one-off restructuring aid. The criteria in the guidelines have not been met, and the aid is consequently incompatible with the common market. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The waiver by Zeuro-Verwaltungs GmbH i.L. of its purchase price claim of DEM 5,701 million and the reduction of the purchase price by DEM 500 000 are therefore incompatible with the common market within the meaning of Article 87(1).
- (84) The BvS's waiver of its right of recourse in respect of a guarantee of DEM 5,7 million is within the terms of the Treuhand scheme of 1992.

- (88) The holding of DEM 5 million taken by the Thuringia Consolidation Fund, of which DEM 1,6 million has been paid up, is not within the terms of State aid measure NN 74/95. As the requirements of the guidelines have not been met, the tests of Article 87(3)(c) are not satisfied. The holding of DEM 5 million taken by Thuringia Consolidation Fund, of which DEM 1,6 million has been paid up, is therefore incompatible with the common market within the meaning of Article 87(1).
- (89) The investment grants of DEM 4,65 million already paid out and the investment grants of DEM 450 000 not yet paid out were granted under arrangements which the Commission has authorised, and are therefore covered by that authorisation.
- (90) The grants for staff costs of DEM 13 000 are one-off restructuring measures. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The grants for staff costs of DEM 13 000 are therefore incompatible with the common market within the meaning of Article 87(1).
- (91) The grant of DEM 111 000 from the Thuringia Trade Fair Promotion Programme is covered by the *de minimis* rule.
- (92) The AIF grant of DEM 900 000 is a one-off aid measure. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The AIF grant of DEM 900 000 is therefore incompatible with the common market.
- (93) The SME grant of DEM 3 million is a one-off aid measure. As the requirements of the guidelines have not been complied with, the tests of Article 87(3)(c) are not satisfied. The SME grant of DEM 3 million is therefore incompatible with the common market.
- (94) The measures classed here as restructuring aid cannot be authorised as such because they do not ensure the long-term viability of the firm; and for the same reason they cannot make any contribution to regional development. Thus they do not qualify for exemption under Article 87(3)(a) either.
- (95) The Commission observes that Germany inadmissibly granted the aid in breach of Article 88(3). The aid of DEM 2 million granted by Germany to Mr Wohlfahrt in the form of an equity assistance loan must be recovered by Germany in accordance with the requirements and procedures of German law.
- (96) The aid of DEM 35,114 million granted by Germany to Zeuro in various forms must be recovered in accordance with the requirements and procedures of German law,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The State aid of DEM 2 million granted by Germany to the investor Mr Wohlfahrt is incompatible with the common market.
2. The following State aid granted by Germany to Zeuro Möbelwerk GmbH, Thuringia (Zeuro), totalling DEM 35,114 million, is incompatible with the common market:
  - (a) the TIB shareholder loan of DEM 1 million;
  - (b) the waiver by TIB of the repayment of a shareholder loan of DEM 4 million;
  - (c) the increase of DEM 2,5 million in the nominal capital of Zeuro carried out by TIB;
  - (d) the waiver by TAB of the repayment of an operating loan of DEM 1,5 million previously granted;
  - (e) the public loans granted by KfW, amounting to DEM 3 million;
  - (f) the 65 % guarantee given by TAB on private loans amounting to DEM 3,9 million;
  - (g) the TAB loan of DEM 5 million;
  - (h) the TAB loan of DEM 2,5 million, wholly guaranteed by the *Land*;
  - (i) the BvS's reduction of the purchase price by DEM 500 000;
  - (j) the waiver by the BvS of the remainder of the purchase price, amounting to DEM 5,701 million;
  - (k) the paid-up portion, amounting to DEM 1,6 million, of a holding taken by the Thuringia Consolidation Fund;
  - (l) the AIF grants amounting to DEM 900 000;
  - (m) the grants towards staff costs of DEM 13 000; and
  - (n) the SME loans of DEM 3 million.

3. The State aid of DEM 3,5 million which Germany intends to grant in the form of the portion of the holding taken by the Thuringia Consolidation Fund which has not yet been paid up is incompatible with the common market.

*Article 2*

1. Germany shall take all necessary measures to recover from the recipients the aid referred to in Article 1(1) and (2) and unlawfully made available to them.

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 recipients 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 it has taken to comply with it.

*Article 4*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 December 2000.

*For the Commission*

Mario MONTI

*Member of the Commission*