

COMMISSION DECISION**of 27 November 2002****on the State aid implemented by Germany for Doppstadt GmbH***(notified under document number C(2002) 4482)***(Only the German text is authentic)****(Text with EEA relevance)**

(2003/282/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 interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

(5) Doppstadt GmbH is a hive-off vehicle (Auffanggesellschaft), which arose out of the former LandTechnik Schönebeck GmbH (LTS) and its wholly-owned subsidiary GS Fahrzeug- und Systemtechnik GmbH. LTS belonged to a group of eight former eastern German companies, from which, under the initial privatisation in 1994, the EFBE Verwaltungs GmbH & Co Management KG, now Lintra Beteiligungsholding GmbH, emerged. Since the original privatisation plan failed in December 1996, the Federal Agency for Special Tasks associated with unification (BvS: Bundesanstalt für vereinigungsbedingte Sonderaufgaben) decided in January 1997 to continue the restructuring of potentially viable Lintra subsidiaries with a view to preparing them for sale. Since LTS had received aid that was to be assessed in the context of the other notified restructuring aid, the case was registered as non-notified aid. The aid paid to LTS via Lintra Beteiligungsholding was the subject of the Commission's decision on aid to Lintra Beteiligungsholding GmbH ⁽³⁾ (Lintra decision).

I. PROCEDURE

- (1) By letter dated 5 October 1999, Germany notified the Commission pursuant to Article 88(3) of the EC Treaty of restructuring aid for the privatisation of former LandTechnik Schönebeck GmbH to Mr Ferdinand Doppstadt. The company was renamed Doppstadt GmbH in May 1999.
- (2) By letter dated 1 August 2000, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.
- (4) The Commission received no comments from interested parties.

II. DETAILED DESCRIPTION OF THE AID

- (6) The aid recipient, Doppstadt GmbH, is a hive-off vehicle, which arose out of the former LandTechnik Schönebeck GmbH (LTS) and its wholly-owned subsidiary GS Fahrzeug- und Systemtechnik GmbH (GS).
- (7) On 10 May 1999 the operational business of LTS and GS was transferred to a new company with a share capital of EUR 25 641 ⁽⁴⁾. On the same day the

⁽³⁾ Commission Decision 2001/673/EC of 28 March 2001 on State aid implemented by Germany for EFBE Verwaltungs GmbH & Co Management KG (now Lintra Beteiligungsholding GmbH, together with Zeitzer Maschinen, Anlagen Geräte GmbH; LandTechnik Schlüter GmbH; ILKA MAFA Kältetechnik GmbH; Motoren- und Systembautechnik GmbH; SKL Spezialapparatebau GmbH; Madgeburger Eisengießerei GmbH, Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH) (OJ L 236, 5.9.2001, p. 3).

⁽⁴⁾ Converted into euro at EUR 1 = DEM 1,95; the values have been rounded up.

⁽¹⁾ OJ C 278, 30.9.2000, p. 17.

⁽²⁾ See footnote 1.

company's shares were transferred to Mr Ferdinand Doppstadt. The company's name is Doppstadt GmbH. LTS and GS were subsequently dissolved.

- (8) Doppstadt has its registered office in Schönebeck, Saxony-Anhalt. It produces various categories of carrier vehicle, environmental-engineering equipment, chaff cutters and system components. It employed 305 persons in May 2002.
- (9) The investor, Mr Doppstadt, was chosen under open tendering procedure early in 1999. There were 21 interested firms. Mr Doppstadt's offer emerged from negotiations with the bidders as the best bid. The purchase price for the newly established company was EUR 25 641.
- (10) The investor is operations manager of a group of seven companies active in the vehicles, customer service and foreign distribution sector. Prior to the acquisition, his companies had a total workforce of 38.

1. Restructuring

- (11) The restructuring period was originally intended to last from May 1999 to the end of December 2002. The original restructuring plan provided for investments and restructuring measures (including public funding) amounting to EUR 39 722 million. The object of the investment is, in particular, to replace obsolete machinery and tools, increase the quality and flexibility of the production process and comply with environmental standards.
- (12) The investor will increase the share capital of the company to EUR 10,25 million by 31 December 2002 and provide the company with the necessary working capital of at least EUR 14 million.

- (13) According to the information provided, the aim of the restructuring is the completion and targeted extension of the Doppstadt product range. An essential part of the restructuring plan is to use the synergies of the Doppstadt group by marketing the vehicles under the established Doppstadt brand. The future strategy is to concentrate on municipalities and positioning Doppstadt GmbH as a supplier of a complete range of carrier vehicles. In addition, under the new plan, up to 25 % of production capacity will be used for subcontracting for Doppstadt Calbe GmbH. The remaining capacity will be used to produce models in their current and developed versions plus new products. It was also explained that 25 % of future turnover would be generated by shifting production from the plants located in Velbert and Calbe.

- (14) Products will be marketed with the help of DVG Doppstadt Vertriebsgesellschaft GmbH, using the current distribution network in Germany and abroad. A sales volume of at least 500 units of the main product, the TRAC special carrier vehicle (Trac) is anticipated, and an annual increase in sales of 10 % to 15 % is forecast by the end of the restructuring operation.

- (15) The company's business development forecast for 2002 assumed a profit of EUR [...] (*) million on a turnover of EUR [...] (*) million. For 2003, the profit forecast was EUR [...] (*) million on a turnover of EUR [...] (*) million.

- (16) The geographic breakdown of Doppstadt GmbH's sales in 2000 was as follows: Germany [...] (*) %, CIS [...] (*) %, western Europe [...] (*) %.

- (17) In the decision to initiate the formal investigation procedure (initiation decision) the Commission established that the financing for the restructuring plan was as follows:

(*) Text which has been omitted is shown as [...] and represents business secrets.

(EUR million)

Costs		Financing		
		BvS/Land		Investor
Investments	27,13	Approved schemes:		6,934
		GA contribution ⁽⁵⁾	8,14	
		Investment premium ⁽⁶⁾	5,42	
		Grant from Saxony-Anhalt	12,079	
Restructuring costs	12,58			
Loss compensation	6,4	BvS grant	13,552	
Working capital	6,685	BvS	2,6	14,07
Original production facilities	6,6	BvS	6,6	
Waiver of claims	5,415	BvS	5,415	
Total	74,901		53,896	21,004
			= 72 %	= 28 %

Note: the table contains rounded figures and is not arithmetically correct.

⁽⁵⁾ 27th Framework Plan for the joint Federal/Länder task 'Improving regional economic structures'. State aid C 84/98, approved by Commission decision of 21 April 1999, communicated to Germany by letter, SG(1999) 03472, 17 May 1999.

⁽⁶⁾ Investment Subsidy Law (Investitionszulagengesetz) 1996; State aid N 494/A/95; decision communicated to Germany by letter, SG (96) 3794, 11 April 1996.

(18) In addition to the above measures, Germany also included an EUR 2,8 million contribution towards the labour costs of the restructuring. This is provided by the Doppstadt GmbH workforce through a partial pay restraint during the restructuring period.

2. The decision to initiate the proceedings under Article 88(2) of the EC Treaty

(19) In the initiation decision, the Commission noted that the investor, Mr F. Doppstadt, had no previous experience in the field of carrier vehicles and had limited financial resources. In addition, the Commission noted that the information on the relevant markets in its possession was not sufficient to enable it to conclude whether the rather ambitious sales targets on which the long-term viability of the company was based were realistic and plausible. Therefore, the Commission had doubts about the ability of the restructuring plan to ensure the company's long-term viability.

(20) In the initiation decision the Commission also noted that it did not have enough information to conclude that the EUR 5,3 million waiver granted to LTS in 1997 was not aid for current restructuring. Account was taken of this, therefore, in the initiation decision, in the restructuring finance. It was consequently established that the public share of the financing would be EUR 53,896 million, or 72 % of the total costs. The beneficiary's contribution would be EUR 21,004 million (28 %). The Commission doubted, therefore, whether the investor's contribution could be significant, as provided for in the rescue and restructuring guidelines.

(21) The Commission further noted that the planned restructuring consisted mainly of investments. In all, EUR 27,133 million (69 %) of the total restructuring cost of EUR 39,732 million would be investment. This indicates that the purpose of the project is to finance new investment rather than a restructuring operation. In this particular case there are doubts about the

proportionality of the aid. If the project is regarded as new investment instead of restructuring, its aid intensity will have to respect the ceiling for regional aid.

- (22) The Commission also pointed out that additional claims against the former LTS might arise out of the final decision in the still-pending case concerning Lintra Beteiligungsholding (C 41/99); these would have to be added to the costs of the present restructuring plan. Such additional claims should be taken into account in assessing whether the restructuring plan will ensure the company's long-term viability and whether the aid is proportional.

III. COMMENTS FROM GERMANY

- (23) Germany submitted its comments on the initiation decision by letter dated 6 November 2000. It informed the Commission of changes to the restructuring plan by letter dated 21 September 2001. Its comments are reproduced below.

1. Liabilities resulting from the 'Lintra' decision

- (24) As regards any additional claims against the former LTS that should be taken into account in this proceeding, Germany would refer to its opinion in case C 41/99 concerning Lintra Beteiligungsholding. The opinion relates to Lintra's claims against LTS⁽⁷⁾, amounting to a total of EUR 4 088 648,54. They were settled by LTS in liquidation.

2. Classification of the project as restructuring

- (25) As regards describing the privatisation of the former LTS as a restructuring operation, Germany would explain that the restructuring plan satisfies all the criteria set out in the guidelines. The new investor has carried on the business of LTS/GS, which had been in liquidation since 1999, without interruption. The first restructuring measure was to set up the hive-off vehicle, Doppstadt GmbH, which continued the businesses of the two earlier companies on the following basis:

- 192, initially, of the original 260 employees,
- same order book,

- existing contracts with the same suppliers,
- same volume of output, but a different product range,
- same production plant,
- same processes, raw materials and inventory,
- same technical conditions.

- (26) The firm was therefore initially continued under the same unprofitable conditions as existed when the predecessor companies went into liquidation. At the same time, the restructuring plan devised by the buyer was gradually put into effect.

- (27) According to Germany, the restructuring plan consists the following measures:

(a) Internal measures

- personnel: training of the workforce taken over; providing for the future by expanding training activities,
- sales: integration into the Doppstadt group's established sales network,
- product range: adapting the existing range by discontinuing unprofitable vehicles and replacing them with new, modern products and promising market segments,
- non-capitalisable restructuring measures: review of the production-line layout and rationalisation of work processes with the aim of converting the firm from being a mass-production manufacturer to a modern supplier of customised special machines;

(b) Investments

- dealing with the investment backlog: modernisation of existing plant to satisfy statutory environmental protection requirements, improving quality, increasing flexibility, replacing old tools and machinery;

(c) Financial measures

- capital contribution by buyer, workforce, BvS and Saxony-Anhalt; loss compensation.

⁽⁷⁾ When it was part of Lintra, LTS was called LandTechnik Schlüter GmbH.

- (28) According to Germany, the investments are only part of the firm's restructuring and are an inseparable component of the overall restructuring plan. The investments alone cannot make the firm profitable in the long term without the work processes also being reorganised and rationalised, the product range modernised and the finances restructured.
- (29) Therefore, according to Germany, the restructuring plan satisfies the criteria of the rescuing and restructuring guidelines and cannot be considered as a new investment for the purposes of regional development.

3. Viability of the restructuring plan

- (30) As far as the investor is concerned, Germany explains that the Doppstadt family, in whose firm Ferdinand Doppstadt worked before he went into business on his own, has more than 30 years' experience of manufacturing carrier vehicles. Direct use was made, in the development of the carrier vehicles, of the practical experience gained, in the family's own business, of agriculture, services for local authorities, and sales and other customer services for Unimog and other brands. In the early 1970s Doppstadt developed the control hydraulics for the Mercedes Benz MB-trac 65. At that time Doppstadt also carried out trials for the Deutz-Intrac.
- (31) The focus of the Doppstadt group has always been on developing highly customised specific system solutions in niche markets. In the past, Doppstadt has drawn on its own or, in some cases, other manufacturers' existing carrier vehicles to power or connect up with Doppstadt-developed attachments (for example the Grizzly as a combination of the Steyr-Tracs with the Doppstadt converter).
- (32) As regards the financial resources of the investor, Germany explains that under the privatisation contract, the buyer's financial obligations are secured by a bank guarantee of EUR 2,05 million, a commitment by a bank in the usual form to secure investment obligations of EUR 6,934 million and a commitment by a bank for a capital loan to secure operational financing amounting to EUR 14,07 million. According to Germany, these undertakings for funding from the company's banks should be sufficient to allay the Commission's doubts as to the investor's credit standing.
- (a) *The modified restructuring plan*
- (33) Germany also provided a modified restructuring plan. According to Germany, the plan had to be amended due to problems that were encountered in relation to the main product, the Trac, after it had been introduced onto the market.
- (34) Germany explains that the failure to reach the initially planned turnover and financial targets was mainly due to not reaching the turnover targets for carrier vehicles. When the investor took over the company, it was assumed that the main product of the LTS, the Trac, could be brought to the market immediately. The implementation of the restructuring measures (production, logistics and distribution) started on the basis of the assumption that the Trac was market-ready. Consequently, personnel and stocks were increased considerably. The first Tracs were delivered at the end of 2000, and only then did it become evident that the Trac was technically outdated and did not correspond to the customers' requirements for a modern multi-purpose carrier vehicle.
- (35) The modified restructuring plan prolongs the restructuring period by one year. Positive results are expected in 2003 instead of 2002 as originally forecast. The main elements of the modified plan are the following:
- (36) A new manager was appointed for production, engineering and development in January 2001. A special design team was set up for the modernisation of the Trac series, and a new product was developed. The work processes were optimised and teamwork introduced. The workforce was reduced by 71 persons by 30 June 2001.
- (37) Cooperation with dealers was rethought, and requirements in this respect were redefined. An additional manager is being sought, and external consultants were commissioned to help the company through the restructuring process. An advisory committee was set up in August 2001 to improve controls and to help identify potential problems in time.
- (38) As regards investments, it was explained that by 18 June 2001 investments worth EUR 10,063 million had already been carried out. However, the total amount of investment is EUR 9,581 million less than what is was, since the company will no longer build its own power station. Due to liberalisation of the energy markets, it will not be necessary or economic to operate a company power station.
- (39) The cost of other restructuring measures will go up from the original EUR 12,589 million to EUR 17,367 million, an increase of EUR 4,777 million. By June

2001 measures worth EUR 13,603 million were being carried out. The need for additional financing was caused by the need to modernise the Trac-series. EUR [...] (*) million is needed for the development of the Tracs. For presentation of the product in trade fairs and for other measures supporting the marketing and sales of the Tracs, EUR [...] (*) million is needed. An additional EUR [...] (*) million is needed for reorganisation of the company (introducing teamwork, improvement of internal communication, increase of productivity and external consultants). In addition, the current situation of the company requires additional working capital of EUR [...] (*) million.

- (40) Germany explains that the additional measures are being financed by state aid. However, since the reduced investment costs result in a corresponding decrease in investment aid, total restructuring aid under the new plan will be EUR 45,409 million, which is less than the amount provided for in the original plan. The financing by the investor remains the same. Consequently, the modified restructuring plan results in total restructuring costs of EUR 69,26 million. This is EUR 3,071 million less than the costs in the original plan.

- (41) With regard to the financing of the restructuring as identified by the Commission in the initiation decision, Germany acknowledges that the BvS loan of EUR 2,6 million and the transfer of assets worth EUR 6,6 million are restructuring aid. However, Germany stresses that the price of EUR 25 641 paid by the investor for the new company should be included in the investor contribution.

- (42) The forecast in the new plan for the future financial development of the firm is shown in the following table:

(EUR million)

	2001 (original)	2001 (new)	2002 (original)	2002 (new)	2003 (original)	2003 (new)
Turnover	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Result	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)

Note: the table contains rounded figures.

- (43) Germany explains that under the new plan the return of the company to viability is deferred by one year compared with the original plan. Positive results are anticipated in 2003 instead of 2002 as originally

planned. Initially, the increase of turnover will be mainly generated by production on the environmental-engineering side. From 2003, after the new Trac-series has been brought to market, these products will be a cornerstone of the new plan, generating one-third of turnover. Trac vehicles (including spare parts) will account for some [...] (*) % of total turnover in 2003.

Expected share of total company turnover accounted for by Trac vehicles (including spare parts)

	2001		2002		2003	
	EUR million	%	EUR million	%	EUR million	%
Total turnover	28,8	100	[...] (*)	100	[...] (*)	100
Trac	3,8	13,3	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Spare parts	2,8	9,9	[...] (*)	[...] (*)	[...] (*)	[...] (*)

Note: the table contains rounded figures.

- (44) Germany states that to achieve the estimated turnover for Tracs the new planning provides for sales of [...] (*) Trac vehicles in 2002 and [...] (*) in 2003. At the end of the restructuring, sales of between [...] (*) and [...] (*) units a year are envisaged.

(b) *Market information*

- (45) Germany explained that Doppstadt GmbH is active in the carrier vehicles of various categories segment of the market. Its range includes customised municipal and special vehicles that can be used in a variety of situations and in many different areas. The vehicles can be used as conventional tractors for farming but in other areas too, as they are able to use a wide range of accessories and special-purpose equipment found in other sectors. The information supplied shows that it is possible to use a wide range of equipment in the agricultural, local authority, forestry and construction sectors. The target markets for Doppstadt carrier vehicles are mainly local authorities (towns and municipalities), private agricultural contractors and forestry firms. The new product range offered by Doppstadt in carrier vehicles covers categories from 60 kW up, but is aimed in particular at the upper segment above 85 kW.

- (46) According to Germany, the tractor market is used to define the market volume on the Community market and of competitors. It must be borne in mind, however, that both tractors and carrier vehicles are not entirely homogeneous markets with interchangeable products, since the potential applications of rival products are not entirely the same. Doppstadt carrier vehicles are designed as multi-purpose vehicles for the use of special equipment. Even though to some extent the vehicles can perform the same functions as lorries, they are generally not to be used for tasks where one would expect lorries to be used. The overlaps with lorries are not particularly great, therefore, and in more than 90 % of all products tractors and carrier vehicles are interchangeable. Tractors are therefore the reference market for determining the relevant market volume.
- (47) From 1995 to 1997 demand for tractors on the Community market was marked by annual growth rates of around 6 %. From 1997 to 1998 the growth rate fell to 2 %. Since 1998, demand for new vehicles has been stagnant. In contrast to other segments, however, the demand for tractors with a rating of more than 85 kW has significantly increased in recent years. This segment's share of registrations in Germany increased from 25 % to 33 % between 1995 and 1999.
- (48) The biggest competitors in the German tractor market include Fendt (21 %), John Deere (20 %), Case/Steyr (13 %), Deutz-Fahr (9 %), New Holland (6 %) and Massey Ferguson (5 %), which together account for about three quarters of the market. The remaining 25 % of the market is shared by a number of European and Asian manufacturers. Before the launch of the new Trac, Doppstadt had about a 3 % share of the carrier vehicle market in 2001.
- (49) The Community tractor market is dominated by the manufacturers New Holland (16 %), Agco (12 %), John Deere (12 %), Case/Steyr (10 %) and Massey Ferguson (8 %) as the major competitors. At 0,2 % in 1999, Doppstadt's market share was negligible.
- (50) As regards the future prospects of the market, Germany explains that since the market is regulated by the Community, demand for tractors and carrier vehicles for the agricultural machinery sector in western Europe is relatively stable and unaffected by world trends in the price of wheat, etc. However, farmers' requirements regarding the commercial vehicles they use have changed in recent years, especially as regards flexibility and power. Many former small farmers now also work as contractors for larger farms and/or local authorities and therefore need powerful and versatile carrier vehicles, working very different types of ground at higher speeds and capable of covering longer distances.
- (51) According to Germany, demand for carrier vehicles in the local government sector (road maintenance, parks and landscaping) is influenced essentially by more demanding statutory requirements in environmental matters and must therefore be considered stable.
- (52) As a conclusion Germany states that the market for tractors and carrier vehicles is stagnant at present. Nevertheless, there is market potential for Doppstadt GmbH in the growth regions, especially since the company offers customised special vehicles in niche sections of the upper and lower performance classes, which are marked by high growth rates despite the stagnation in demand overall.
- (53) According to the information submitted by Germany, in particular one main product, the Trac, has to be considered a niche product between the traditional tractor (Ackerschlepper) and Daimler-Chrysler's multi-purpose vehicle the Unimog. Germany supplied a market analysis by Management Engineers, a consultancy with a special focus on engineering, which in particular explains the prospects of the new Trac. According to the market analysis, the previously encountered technical problems have been solved by the new Trac. The Trac now meets the technical requirements demanded by the target market. The study concludes that there exists a niche in the market for the Trac, which has not been occupied by competitors. According to the study the niche arises for the following reasons:
- (54) The new Trac mainly targets the segment above 85 kW, where there has been ingrowth over recent years, despite the stagnation on the overall tractor market. Vehicle registrations in that segment in Germany have increased from 31 % to 40 % of the total from 1995 to 2001.
- (55) The Trac is based on the former Mercedes Benz model 'MB-Trac', which is not produced any more but is still widely used, although it will soon be out of date. The new Trac is the likely choice for the replacement. Doppstadt, which bought the patent for the MB-Trac, can use its former distribution channels.

(56) The new Trac can be used for many different purposes, even outside the traditional target market for tractors (agriculture), where there is a growing need for these products. Other customers are municipalities and firms that need special- and multi-purpose vehicles, e.g. airports, construction firms and railway companies.

(57) As Daimler-Chrysler plans to concentrate its multi-purpose concept (the Unimog) on road-going vehicles, this niche is expected to grow. The market study estimates possible sales figures of [...] (*) to [...] (*) Tracs per annum in Europe after the year 2003. An inquiry at Doppstadt sales agents included in the analysis produced the following estimated sales figures:

Estimated Trac sales figures (as indicated by sales agents)

	2003	2004	2005	2006
Germany	[...] (*)	[...] (*)	[...] (*)	[...] (*)
Europe	[...] (*)	[...] (*)	[...] (*)	[...] (*)

(c) *Development of the company*

(58) Besides the Trac the company's turnover is mainly to be generated by environmental-technological machines. The turnover of that segment after the integration of some of the investor's activities at another location in 2000 could be increased from the earlier EUR 294 358 to EUR 9,6 million and in 2001 exceeded the EUR 13 million forecast by the plan.

(59) Furthermore, Germany states that the new Trac has now been launched successfully on the market. According to Germany, [...] (*) models were sold by Doppstadt in the first three months after the market launch in March. A first positive monthly result of EUR [...] (*) was achieved in April 2002. Current orders up to May 2002 numbered [...] (*). Compared to the previous year turnover could be increased by 40 %. Latest figures show that the turnover and result up to July 2002 kept in line with the plan. Unfortunately in August the company faced a downturn as it had to close its production due to the eastern German floodings.

4. Financing of the restructuring and proportionality of the aid

(a) *Workers' contribution to the restructuring*

(60) As regards the workers contribution of EUR 2,82 million to the restructuring, Germany takes the view that the fact that the workforce is foregoing part of its wages or salaries must be considered as a contribution from the firm's own resources within the meaning of point 3.2.2.(iii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁸⁾. The crucial factor in respect of this criterion is whether there is a contribution by the firm being restructured, which is the beneficiary of the aid. This may mean either the contribution of funding by the investor or some other contribution by the firm. The waiver by employees of income in the form of wages must be a relevant contribution to a successful restructuring and may be added to the beneficiary's contribution. Consequently, Germany argues that the EUR 2,82 million wage reduction accepted by the workforce must be considered as an integral part of the financing plan and taken into account when calculating the overall costs of restructuring.

(b) *The waiver by BvS of the claim for EUR 5,424 million against LTS*

(61) Germany explains that BvS had not waived its claims against LTS in liquidation. In April/May 2000, the auditors corrected LTS's annual accounts, so that EUR 5,424 million (including accrued interest) is again shown as a liability vis-à-vis the BvS in the accounts for the year ending 31 December 1998. The sum will be paid from the liquidation proceeds of LTS. Since BvS has not waived the claim, the amount should not be considered as aid to the present restructuring, as claimed by the Commission in the initiation decision.

IV. ASSESSMENT OF THE AID

1. Existence of state aid

(62) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it

⁽⁸⁾ OJ C 368, 23.12.1994, p. 12.

affects trade between Member States, be incompatible with the common market. Pursuant to the established case-law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

- (63) The Commission notes that in the present case the aid is granted through State resources to an individual company favouring it by reducing the costs it would normally have to bear if it wanted to carry out the notified restructuring project. Moreover, the recipient of the aid, Doppstadt GmbH, is a company whose activities are the production of carrier vehicles and environmental-engineering equipment, which are economic activities involving trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.
- (64) The Commission further notes that, as regards this aid, the German authorities failed to comply with their obligation under Article 88(3) EC Treaty to inform the Commission in sufficient time of the plans to grant the aid. From a formal point of view, therefore, the aid is unlawful. This does not necessarily mean, however, that the aid is incompatible with the common market. Thus, the individual measures must be examined under Article 87 EC Treaty.

2. Possible grounds of compatibility

- (65) A derogation from Article 87(1) of the EC Treaty can result from either Article 87(2) or Article 87(3) of the EC Treaty.
- (66) Germany is not claiming that the aid should be regarded as compatible with the common market under Article 87(2). Indeed, it is evident that this provision does not apply.
- (67) This case falls under Article 87(3) of the EC Treaty, a provision that gives the Commission discretion to permit State aid in certain specified circumstances. The derogations of Article 87(3)(b), (d) and (e) were not invoked in the present case and are indeed not relevant. Article 87(3)(a) empowers the Commission to approve State aid meant to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Saxony-Anhalt falls within this definition. In this case, however, the main purpose of the aid is to promote the development of a particular economic sector rather than to promote the economic development of a region. Thus the aid should be assessed under Article 87(3)(c) rather than Article 87(3)(a) EC Treaty.
- (68) The project concerns the restructuring of the company in accordance with the restructuring plan submitted by the investor. Restructuring aid for firms in difficulty is assessed pursuant to the Community guidelines on State aid for rescuing and restructuring firms in difficulty. Rescue and restructuring aid may, under Article 87(3)(c) of the Treaty, facilitate the development of certain economic activities where it does not adversely affect trading conditions to an extent contrary to the common interest if the conditions laid down in the guidelines are met.
- (69) In the present case, under paragraph 101 of the 1999 Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁹⁾, the 1994 guidelines are applicable, since neither the total aid nor a portion thereof was granted after the 1999 guidelines were published.

3. Scope of the assessment

- (70) In the initiation decision, the Commission found that further claims against Doppstadt might arise out of the Lintra decision⁽¹⁰⁾.
- (71) The Lintra decision was adopted on 28 March 2001. By letter dated 29 June 2001 Germany informed the Commission that the unlawful aid of EUR 3 252 373 allocated to the former LTS by the decision of 28 March 2001 had been recovered with interest, being a total of EUR 4 088 648,54. A payment instruction dated 22 June 2001 was forwarded to the Commission. The unlawful aid was paid back by LTS in liquidation. The measures in question, therefore, are no longer the subject of the assessment in the present decision.
- (72) The Commission further notes that, according to the modified restructuring plan, EUR 6,165 million of the total public contributions to the restructuring of EUR 45,409 million is being granted under approved schemes. Therefore, this aid is considered as existing aid within the meaning of Article 1(b)(ii) of Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 93 of

⁽⁹⁾ OJ C 288, 9.10.1999, p. 2.

⁽¹⁰⁾ See footnote 3.

the EC Treaty ⁽¹¹⁾ and the compatibility of it with the common market need not be further assessed by the Commission in this decision. Consequently, aid to the amount of EUR 39,244 million is being examined as ad hoc aid in the present decision. It is pointed out, however, that the existing aid of EUR 6,165 million will also be taken into account in the assessment of the aid's proportionality under point 3.2.2(iii) of the guidelines.

- (73) In the initiation decision, the Commission provisionally assessed the aid in the light of the original restructuring plan. Germany subsequently submitted a modified version of the restructuring plan, which must now be taken into account in order to assess the aid. The Commission must therefore consider developments that occurred after the aid was granted but before the date when the modified plan was submitted, to the extent necessary to assess the new plan.

4. Firm in difficulty

- (74) In general, a newly founded company cannot be considered as a firm in difficulty. However, due to the exceptional transformation process in the new *Länder*, the Commission has agreed to apply the restructuring guidelines in cases where companies are offered a new chance (*Auffanglösungen*) ⁽¹²⁾, if it is not a question of simply selling individual assets and the activity of the insolvent company is continued. Applying the guidelines to such companies can be justified in the light of the problems in the new *Länder* in general and of the company in particular.
- (75) Doppstadt has its registered office in the new *Länder*. All assets of the former LTS and GS which were necessary for the production to be taken over were transferred to it. The activities of the former LTS and GS were continued by Doppstadt. Consequently, Doppstadt constitutes a genuine 'new opportunity' and the measures in favour of it can be regarded as restructuring aid.

⁽¹¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹²⁾ See the Commission's approvals of 16 and 30 April 1997: State aid N 874/96 and NN 139/96 in favour of UNION Werkzeugmaschinen GmbH (letter D/3428, 2.5.1997); State aid N 892/96 in favour of FORON Haus- und Küchentechnik GmbH (letter D/4047, 28.5.1997). This approach is now confirmed by point 7, footnote 10, of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty: 'The only exceptions of this rule are any cases dealt with by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben in the context of its privatisation remit and other similar cases in the new *Länder*, involving companies emerging from a liquidation or a take-over of assets occurring up to 31 December 1999'.

- (76) According to point 2.1 of the guidelines, typical symptoms of a firm in difficulty are deteriorating profitability or increasing losses, diminishing turnover, declining cash flow and low net asset value. The Commission notes that LTS has been loss-making since its establishment in 1995 ⁽¹³⁾. The losses in 1998 were EUR 8,3 million and in 1999, when the Commission was informed of the present plan, the losses were EUR 4,652 million. Doppstadt is a firm in difficulty, therefore, and the aid for its restructuring is being assessed under the guidelines.

5. Classification of the project as restructuring

- (77) In the initiation decision, the Commission expressed doubts about whether the project was basically a restructuring operation, since the restructuring measures consisted mostly of investments.
- (78) The Commission notes that the modified project as communicated by Germany assumes a total reduction in investment costs of EUR 9,515 million ⁽¹⁴⁾. This would result in the investment costs being 50 % of the costs of the restructuring measures. The share of investments in the restructuring plan has therefore considerably decreased. In addition, Germany rightly claims that the investments alone would not be sufficient to make the firm profitable in the long term without the work processes also being reorganised and rationalised and the product range and distribution modernised, as provided for in the restructuring plan. For these reasons, the Commission considers that the plan as a whole fulfils the criteria of being a restructuring, and not just an investment, project.

6. Restoration of viability

- (79) According to point 3.2.2(i) of the guidelines, the restructuring plan must restore the long-term viability of the company within an appropriate period and on the basis of realistic assumptions as to its future operating conditions. The improvement of the company's situation and its return to viability must mainly result from internal measures contained in the restructuring plan

⁽¹³⁾ Transformation of LandTechnik Schlüter GmbH into LandTechnik Schönebeck GmbH on 31 May 1995.

⁽¹⁴⁾ The reduction in costs is due to the decision not to invest in a company power station on account of the liberalisation of the energy markets.

and may not be based only on external factors such as price and demand increases, over which the company has no great influence.

- (80) In the initiation decision, the Commission expressed its doubts about the ability of the restructuring plan to ensure the long-term viability of the company, since the investor, Mr Doppstadt, appeared not to have any previous experience in the field of carrier vehicles and had limited financial resources. In addition, the Commission noted that the market information in its possession was not sufficient to enable it to conclude whether the rather ambitious sales targets on which the long-term viability of the company was based were realistic and plausible.
- (81) As regards the investor's lack of experience, Germany States that the family firm of Doppstadt, in which Mr Doppstadt worked before becoming the manager of Doppstadt GmbH, had 30 years of experience in the manufacture of carrier vehicles. Moreover, due to the technical problems encountered with the initial market launch of the Trac, Germany has submitted a modified restructuring plan according to which the management has been exchanged and reinforced by external advisors in order to ensure a successful modernisation of the Trac-concept. Therefore a potential lack of expertise now appears to be adequately addressed. This is also confirmed by the expert study submitted by Germany which States that the initial technical shortcomings have now been removed in the newly developed Trac.
- (82) Concerning the viability of the new plan, the Commission notes that around [...] (*) % of the turnover is achieved with environmental-engineering products (mainly sieve seed cleaners and verge mowers), which according to the available information appear to perform successfully on the market. Both in the old and the new plan, the sale of the Trac carrier vehicle forms a considerable part of the turnover. The proportion of total turnover accounted for by Tracs in the old plan was some [...] (*) %, and in the new plan some [...] (*) %. Together with the sale of spare parts, Tracs account for about [...] (*) % of total anticipated turnover in the new plan as well. The success of the product Trac is essential, therefore, if the company is to break even and hence to restoring long-term viability.
- (83) It is noted that the modified plan defers the return of the company to viability by one year, compared with the original plan. A profit is now expected in 2003 instead of 2002 as originally anticipated. Initially the increase in turnover will come from sales of environmental-engineering equipment. In 2002 the sales following the market launch of the new Trac will lead to a further increase. The new plan assumes sales of

[...] (*) Tracs in 2002 and [...] (*) in 2003. At the end of the restructuring period, sales of between [...] (*) and [...] (*) units a year are envisaged.

- (84) According to Germany, this increase in sales figures can be achieved despite the general stagnation on the tractor market, since the Trac is aimed at a niche where such sales appear feasible. As evidence that the proposed sales figures are realistic, Germany has submitted a market analysis that in particular assesses the prospects for Doppstadt's new Trac concept.
- (85) According to this information the technical shortcomings of the previous product have been solved and the product is now competitive in technical terms. The analysis of the product segment in this market study States that the proposed sales figures are achievable with the new Trac, as there appears to be an increasing demand for this product. This is also supported by the fact that the predecessor of the Trac needs to be replaced and hitherto there has been no similar all-purpose product on the market. Furthermore, according to the most recent information, a partially comparable product will be withdrawn from the market. Accordingly, the market analysis submitted by Germany concludes that sales figures of [...] (*) to [...] (*) Tracs per year are achievable by the end of 2003.
- (86) The extension of the restructuring period in the plan appears sufficient for bringing the new product onto the market. According to the latest information submitted by Germany, the proposed sales figures for the Trac are achievable. Even if the company should not fully meet its targets, the break-even point may be deferred, but the return to viability as such would not be jeopardised, since, in the light of the latest information, the new product appears generally competitive. This seems to be confirmed by the latest developments following the market launch of the Trac.
- (87) The Commission's doubts as to whether the restructuring plan can restore the viability of the company have thus been allayed.

7. Proportionality of the aid

- (88) According to the guidelines, the aid should be proportional to the restructuring costs and benefits. Point 3.2.2(iii) of the guidelines stipulates that 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. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources. No aid should go to finance new investment not required for the restructuring.

- (89) In the initiation decision, the Commission raised doubts whether the beneficiary had made a significant contribution to the restructuring from its own or external commercial resources, since its contribution appeared to amount to only 28 %.

- (90) By letter dated 21 September 2001, Germany communicated changes to the original restructuring plan. Part of the changes relate to changes in financing of the restructuring and the amount of aid. Aid for investments was significantly reduced, whereas aid for some other restructuring costs was increased. However, the total aid was reduced by EUR 3,071 million compared with the original restructuring plan. The financing of the restructuring according to the communicated changes would be the following:

(EUR million)

Costs		Financing			
		BvS/Land	Investor	Workers	
Investments	17,617	Approved schemes:		6,934	
		GA contribution and investment premium	6,165		
		Grant from Saxony-Anhalt	12,079		
Restructuring costs	17,367				
Loss compensation	6,4	BvS	16,215		
Working capital	18,352	BvS	4,28	14,095	
Original production- relevant assets	6,6	BvS	6,6		
Contribution to personnel costs	2,8				2,8
Total	69,26		45,409	21,03	2,8
			= 66 %	= 30 %	= 4 %

Note: table contains rounded figures.

- (91) As regards the employees' contribution of EUR 2,8 million to the restructuring, the Commission notes that this amount is included in the restructuring costs, since it is a genuine contribution to the total costs of the restructuring. However, it is not considered as an investor contribution, since it constitutes neither financing from the financial resources of the investor, nor by the company Doppstadt GmbH ⁽¹⁵⁾.

- (92) The EUR 5,424 million given in the initiation decision as restructuring costs is no longer taken into account in

the table in recital 90, since Germany has corrected LTS's the annual accounts and this amount will, according to Germany, thereby be paid back to the BvS from the proceeds of LTS's liquidation. Since the amount has consequently not been waived by the BvS in favour of the restructured company, it is not included in the restructuring costs as aid to the restructuring.

- (93) As regards the doubts expressed in the initiation decision concerning the amount of the investor's contribution to the restructuring, the Commission notes that the reduced amount of aid and the non-consideration of the EUR 5,424 million as a

⁽¹⁵⁾ See Commission Decision 2002/186/EC in Zemag (OJ L 62, 5.3.2002, p. 44).

restructuring cost and a restructuring aid result in an investor contribution of 30 %. In accordance with its previous practice in eastern German restructuring aid cases, this can be considered as a significant contribution within the meaning of the guidelines ⁽¹⁶⁾ and therefore the doubts whether the aid is in proportion to the restructuring costs and benefits have been allayed.

V. CONCLUSION

- (94) The Commission finds that Germany has unlawfully implemented EUR 39,127 million in aid to Doppstadt GmbH in breach of Article 88(3) of the Treaty. In view of the above explanations, however, the Commission concludes that these measures are compatible with Article 87(3)(c) of the Treaty and hence with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany has implemented for Doppstadt GmbH, amounting to EUR 39,244 million, is compatible with the common market within the meaning of Article 87(3) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27 November 2002.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁶⁾ See the Decision of 9 June 1999 in Wismarer Propeller- und Maschinenfabrik (NN 152/98) (OJ C 88, 25.3.2000, p. 3) and the Decision of 26 June 2000 in Hydraulik Markranstädt GmbH (NN 48/98) (OJ C 62, 4.3.2000, p. 18).