

COMMISSION

COMMISSION DECISION

of 16 September 1997

on State aid for Gemeinnützige Abfallverwertung GmbH

(notified under document number C(1997) 2903)

(Only the German text is authentic)

(Text with EEA relevance)

(98/353/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with Article 93 of the EC Treaty,

Whereas:

I

On 15 December 1995, in response to several complaints, the Commission initiated proceedings pursuant to Article 93(2) of the EC Treaty against aid for the Aachen company Gemeinnützige Abfallverwertung GmbH (GAV). GAV is a non-profit-seeking enterprise operated by Sozialwerk Aachener Christen eV. It operates on the waste disposal market, where, as part of the Germany dual system (Duales System Deutschland — DSD), it collects and sorts recyclable waste and sells it as secondary raw materials. GAV competes in this sector with profit-seeking private firms. They consider that GAV has displayed aggressive market behaviour, which is why they lodged complaints with the Commission.

GAV normally employs between 40 and 60 persons, 25 % of whom are handicapped and 50 % of whom are long-term unemployed persons who are difficult to place in employment. These 'problem' categories, who are not selected by GAV itself but by the local social services and

labour office, are given contracts of employment for a limited period. The aim in employing them with GAV is to train such persons and subsequently to reintegrate them into the 'normal' labour market. So as to be able to perform this particular task of training and reintegrating persons facing special problems, GAV also employs specialist staff (social workers, educational staff) to look after them. From 1987 to 1995, GAV employed and trained a total of 440 persons through the use of temporary employment contracts. In 1993, GAV's turnover amounted to DEM 2,8 million, equivalent to 0,004 % of the overall German market, whose total turnover was DEM 75 billion. GAV had a turnover of DEM 3,6 million in 1994 and a turnover of DEM 4,1 million in 1995. The company's balance sheet total was DEM 4,7 million in 1995.

Until 1992, GAV performed the collection of recyclable waste (which at that time was a purely municipal function) solely for the city of Aachen and received from the city an amount to offset the costs involved in performing this activity. Since GAV was running up substantial deficits, the city of Aachen decided to integrate it into the new municipal waste-disposal plan. The city of Aachen's decision was based on the conclusions and recommendations of an independent consultant whose job it was to submit annual reports to the city of Aachen on GAV's economic situation and, if necessary, recommendations for improving its viability and hence reducing the financial support for GAV provided by the city of Aachen. The consultant's report for 1992 recommended that GAV's activities should be integrated in the German dual system (DSD), which is a non-State-assisted private-sector system for the collection of packaging waste and is based on an

agreement between a large number of commercial firms which are in competition with one another. GAV was obliged to collect, sort and market all recyclable waste in the city of Aachen. Since the owner of the sorting-depot originally leased by GAV had given notice to terminate the lease, GAV undertook, with a view to performing this activity, to build a new sorting-depot on a site belonging to the city of Aachen, to which it acquired the leasehold. The annual lease currently amounts to DEM 118 000.

Since, because of its precarious financial situation, GAV was not in a position to finance the new sorting-depot entirely from its own resources (the total capital costs amounted to some DEM 4 million), it received an *ad hoc* subsidy from the Cologne municipal government. According to its administrative decision, however, the subsidy was granted with the proviso that the firm should use the building only for the sorting of recyclable waste and that it should continue to employ disadvantaged people for at least 25 years. If that condition was not met, GAV would have to repay the subsidy immediately.

In addition, GAV received from the city of Aachen annual subsidies for measures connected with work motivation. According to the agreement between the city of Aachen and GAV, the financial contribution consisted of a payment of up to DEM 240 000 in 1992, plus a subsidy that would be necessary in order to fully cover the lease. For 1993, it was provided that the total payments including a lease subsidy should not exceed DEM 240 000. The agreement provided that, as from 1994, the subsidies would decrease to a level amounting to no more than the annual lease. In accordance with the agreement, GAV received the following amounts from the city of Aachen:

1992	DEM 244 968
1993	DEM 179 243
1994	DEM 59 621.

Although they were not based on any approved aid schemes, neither the subsidy for the building of the new sorting-depot nor the payments by the city of Aachen were notified to the Commission, as both the Aachen and the Cologne authorities took the view that no State aid within the meaning of Article 92(1) of the EC Treaty was involved. They based this view on two arguments. Firstly, they argued that GAV was not a profit-seeking enterprise, but an undertaking of public utility. Secondly, the money made available to GAV served only to offset additional costs imposed by the employment, training and support of young unemployed people and the disadvantaged. The authorities did concede that GAV was in competition with other firms. However, they said that they monitored GAV and had not identified any aggressive market behaviour on its part.

GAV's competitors, who had lodged complaints with the Commission, simultaneously applied to German administrative courts for interim legal protection against the decision of the Cologne government to subsidise the construction of the new sorting-depot. They based their applications on an alleged infringement of German competition law and of Articles 92 and 93 of the EC Treaty. They therefore attempted to persuade two administrative courts to impose an immediate halt on the payments, but were turned down by both courts. Both courts held that the competitors, in contrast to GAV, were achieving large profits and that, if interlocutory decisions were given in favour of the competitors, GAV would have to declare itself bankrupt. Furthermore, both courts harboured doubts that the measures to assist GAV were 'aid' within the meaning of Article 92 of the EC Treaty. Lastly, they held that the competitors had been unable to prove any aggressive market behaviour.

In assessing the financial support for GAV, the Commission came to the conclusion that the measures were individually notifiable aid within the meaning of Article 92(1) of the EC Treaty. In addition, it doubted that the criteria for applying the derogations in Article 92(2) and (3) of the EC Treaty were met. It therefore decided to initiate proceedings.

II

By letter dated 2 April 1996, the German authorities submitted their comments on the Commission's decision to initiate proceedings pursuant to Article 93(2) of the EC Treaty in respect of the aid for GAV.

In that letter, they reiterated their view that the measures did not constitute State aid, since 75 % of GAV's activities related to the collection of household waste. They pointed out that the Commission had taken the view that incentives for such collections did not constitute State aid so long as the secondary raw materials were sold at market prices.

In addition, in their view, the payments to GAV were not aid, since GAV was not a profit-seeking enterprise and, because of this status, could not be compared with 'normal' enterprises operating on the same market.

In this connection, they pointed out once again that GAV's main purpose was not to operate on the waste-recycling market in competition with other firms, but to train disadvantaged persons. Such persons, who would otherwise be excluded from the 'normal' labour market, could be much more easily integrated into that market at the end of their temporary contract with GAV and consequently did not need any further financial support from

the State. The annual subsidies from the city of Aachen merely offset the additional costs which GAV incurred as a result of its special status as a non-profit-seeking firm and its objective of training disadvantaged persons.

The German authorities also emphasised that steps had been taken to ensure that the annual subsidies did not enable GAV to undercut prices for final products. The agreement between the city of Aachen and GAV provided that, before each payment by the city, checks were to be carried out at various levels by mutually independent auditors. The subsidies were granted each year on condition that:

- GAV employed an independent auditor to report continuously on the firm's financial prospects,
- the municipal auditing office had permanent access to the firm's balance sheets and could carry out effective checks,
- the Youth Assistance Committee of the city of Aachen received regular reports on GAV's economic situation and the use made of the subsidies received.

These checks carried out before each payment ruled out any possibility that GAV could abuse its position and behave aggressively on the market.

As regards the investment subsidy of DEM 2,7 million from the Cologne administration for the construction of the new sorting-depot, the German authorities pointed out that the construction of this building had become necessary not only because the owner of the old, leased building had given notice to terminate the lease, but also because the old building did not meet the requirements of German environmental protection legislation, in particular the rules on air and water pollution and the prevention of noise. Since the old building did not meet these environmental requirements, official authorisation for GAV to carry out its activities there had always been provisional and limited in time. The move to a new sorting-depot was therefore necessary for the continued existence of the firm, which, however, was unable to finance the building from its own resources because of its difficult financial situation. In this connection, the German authorities reiterated that the granting of the investment subsidy was, under the administrative decision, subject to the proviso that GAV used the building solely for the sorting of recyclable waste and continued to employ disadvantaged persons for at least 25 years. If it failed to meet this condition, GAV had to repay the subsidy immediately.

Lastly, the German authorities argued that all the measures in support of GAV were in line with the fifth recommendation of the European Council at its meeting in

Essen, since GAV's activities were without exception intended to promote the integration or reintegration of disadvantaged persons into the labour market and GAV would not be able to pursue those activities without financial support from the public authorities.

III

By letter dated 10 July 1996, the Commission communicated to Germany the comments submitted by interested parties in response to the notice on initiation of proceedings⁽¹⁾, namely comments from a lawyer representing a regional competitor in Germany and from the German association 'Sekundärrohstoffe und Entsorgung' (secondary raw materials and disposal). The lawyer representing the German regional competitor expressly agreed with the Commission's view that the measures in support of GAV were to be regarded as aid within the meaning of Article 92(1) of the EC Treaty. In his view, none of the exceptions provided for in Article 92(2) and (3) of the EC Treaty were applicable. Consequently, the aid had to be recovered.

As far as the annual payments by the city of Aachen were concerned, the lawyer acknowledged that, because of its special status, GAV had to bear higher costs than a normal firm, so that some compensation for these extra costs might be justified. However, the payments made by the city of Aachen went beyond mere compensation and enabled GAV to use the funds for its business and to act aggressively on the market. In such circumstances his client, who received no aid, was no longer competitive and was losing his customers. In this connection, the lawyer also denied emphatically that the municipal authorities in Aachen were carrying out an effective monitoring of GAV's pricing policy.

As regards the investment subsidy provided by the Cologne government, the lawyer doubted that there was any connection between such payment and the offsetting of the additional costs incurred by GAV. On the contrary, the construction of the new building actually allowed GAV to expand its activities and hence to step up the competition with other firms in the recycling sector that did not receive any public funds. Consequently, the support provided for the construction of the new sorting-depot also resulted in an unacceptable distortion of competition.

The German association 'Sekundärrohstoffe und Entsorgung' shared the lawyer's opinion that the payments made by the city of Aachen overcompensated for the economic disadvantages of GAV. The association also disputed any connection between the investment subsidy provided by the Cologne government and the ad-

⁽¹⁾ OJ C 144, 16. 5. 1996, p. 9.

ditional costs to be borne by GAV. GAV had received more public money than was required to offset its disadvantages and had thereby been enabled to act aggressively on the market and to distort competition. Such conduct was not justified under the Community rules on State aid. Consequently, the aid must be recovered.

IV

By letter dated 29 August 1996, Germany sent its reply to the comments submitted by interested third parties. At the Commission's specific request, made in a letter dated 28 October 1996 and at a meeting held on 15 April 1997, the reply was supplemented by two letters dated 11 December 1996 and 7 July 1997. Numerous annexes were attached to these letters in order to substantiate GAVS's special status, its pricing policy and the monitoring carried out by the authorities, and also the need for State support for the building of the sorting-depot.

The company's balance sheets for the period from 1990 to 1995 indicated that, while the firm had equity capital of DEM 350 000 in 1990, this contrasted with a loss carryover of DEM 370 000. This loss carryover was reduced over the reporting period as a result of modest annual profits, but still amounted to DEM 42 400 at the end of 1995.

A detailed list of names showed that from 1987 to 1995, 440 persons had been employed and trained on a temporary basis by GAV.

A report drawn up in November 1994 by an independent consultant contained, amongst other things, a comparison between the public funds received and the extra costs which GAV incurred as a result of the employment and training of disadvantaged persons in the period from 1991 to 1995. The comparison showed that the amount of public funds exceeded the economic disadvantages of GAV in 1991 — the last year in which GAV had been exclusively active in waste disposal for the city of Aachen and had thus performed an exclusively municipal function — by DEM 700 000, but that this excess was continually reduced to the point where, in 1994, the economic disadvantages exceeded the public allocations by DEM 124 000. For 1995, it was even estimated that the economic disadvantages would be DEM 393 000 higher than the public allocations.

A further report drawn up in March 1996 by an independent consultant contained a comparison between the average prices for recycled paper calculated monthly by the independent market research company Europäischer Wirtschaftsdienst GmbH (EUWID) and the prices

charged by GAV between February 1994 and January 1996. The figures contained in this report showed that GAV had not at any time undercut the prices determined by EUWID. Extracts from contracts between GAV and some of its customers were also submitted to the Commission, and these confirmed the conclusions of the consultant, since it had consistently been agreed that the prices for each delivery of recycled paper would be based on the EUWID price index valid at such time.

A copy of the framework agreement between the city of Aachen and GAV governing their respective tasks and obligations showed that each payment by the city of Aachen had to be preceded by checks carried out at several levels by mutually independent auditors. The minutes of the Youth Assistance Committee meeting held on 3 September 1991, which was presented as an example of the carrying-out of the checks, confirmed that such a check had in fact been carried out and that the firm had presented all economic data in accordance with the framework agreement.

The copies of two administrative decisions taken on 24 February and 3 September 1993 in which GAV was exceptionally and provisionally authorised to continue its activities in the old sorting-depot pending the construction of the new building confirmed that production in the old building did not comply with German environmental protection rules (in particular, those governing air pollution and the prevention of noise). A copy of the notice served on 27 December 1994 showed that the owner of the old building wished to terminate the lease at the end of 1995 and was not prepared to extend the leasing agreement beyond then.

V

In the course of the Article 93(2) proceedings, the view taken by the Commission in initiating the proceedings that the measures taken by the city of Aachen and by the Cologne government were to be regarded as State aid within the meaning of Article 92(1) of the EC Treaty became more firmly established.

As was explained above, GAV received payments from the public authorities totalling DEM 3 183 832, including DEM 2,7 million in the form of an investment subsidy in 1992 and DEM 483 832 in the form of annual subsidies in the period 1992, 1993 and 1994 (in the agreement between the city of Aachen and GAV, such subsidies were no longer provided as from 1995).

The classification of such payments as aid within the meaning of Article 92(1) of the EC Treaty is not to be ruled out simply because GAV collects household waste. The Commission has in the past stated (answer to Written Question No 2057/92)⁽¹⁾ that incentives for such collections do not constitute State aid so long as the secondary raw materials are sold at market prices. Germany has emphasised to the Commission, and has substantiated

⁽¹⁾ OJ C 47, 18. 2. 1993, p. 14.

through reports, that at least 75 % of GAV's activities relate to the collection of household waste. However, it was not demonstrated that GAV thereby performs a task which, under German law, is normally the responsibility of the municipalities or that no competition is involved here. Rather, since the introduction of the dual system, the collection, sorting and marketing of recyclable waste has been a private-sector activity. The dual system involves a large number of firms which are in competition with one another. It is entirely possible that this may involve cross-border competition, particularly if the assisted firm is located not far from the frontier with other Member States. Consequently, payments to such firms may amount to aid that distorts competition within the meaning of Article 92(1) of the EC Treaty and adversely affects trade between Member States. It must also be noted that the payments to GAV were not granted as an incentive for the separate collection of recyclable waste but to support the employment by GAV of unemployed persons who are difficult to place in employment.

In addition, the fact that GAV is owned by Sozialwerk Aachener Christen eV and, like its owners, is not profit-seeking, is not relevant to assessing the effects of the aid on trade and competition so long as GAV is competing on the waste market with profit-seeking firms. The argument that the aid merely offsets additional costs does not alter the fact that it is aid, though this point should be taken into account in assessing whether the aid is eligible for any of the derogations provided for in Article 92(3) of the EC Treaty.

Neither the investment subsidy of DEM 2,7 million nor the annual subsidies which GAV received from 1992 to 1994 was notified in advance in accordance with Article 93(3) of the EC Treaty, even though they were not based on any approved aid schemes. The aid was thus granted unlawfully.

However, both the investment subsidy and the annual subsidies could be eligible for one of the exemptions provided for in Article 92 of the EC Treaty and Article 61 of the EEA Agreement.

The derogations provided for in Article 92(2) of the EC Treaty are not applicable in this case, given the characteristics of the aid and the fact that it does not meet the conditions that would allow the derogations to be applied.

Furthermore, it should be pointed out that the city of Aachen is not situated in an area eligible for regional aid pursuant to Article 92(3)(a) or (c) of the EC Treaty.

However, in view both of the social aspect of the annual subsidies that were paid in order to enable GAV to recruit and train disadvantaged persons and the importance of

the new sorting-depot (built as part of the implementation of a restructuring plan) to the continuation of GAV's social activities and the fact that the aid was not misused for the purposes of aggressive market behaviour, the Commission concludes that trading conditions are not adversely affected to an extent contrary to the common interest. For these reasons and having regard to the following considerations relating to the Community guidelines on aid to employment⁽¹⁾ and the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾, the Commission concludes that the aid is covered by the derogation provided for in Article 92(3)(c) of the EC Treaty and can be approved as aid to facilitate the development of certain economic activities.

The annual subsidies totalling DEM 0,48 million (payments now suspended)

It must be borne in mind here that although, as a firm operating in the waste recycling sector, GAV is in competition with other firms, its role goes beyond such economic activities. The firm is required to employ handicapped persons and the long-term unemployed for a limited period and to train them. This benefits such persons in two ways. First, they have a job for a certain period at least, and second, the special training provided by GAV may increase their prospects of finding employment on the 'normal' labour market, from which they would perhaps otherwise have been permanently excluded. GAV's activity is thus in line with the recommendations of the European Council at its meeting in Cannes, which called for priority to be given to the strengthening of measures to promote the employment of disadvantaged groups such as the long-term unemployed, young people and older employees.

Nor, moreover, are GAV's activities in conflict with the Community guidelines on aid to employment, point 13 of which expressly states that 'the Commission has traditionally been sympathetic to employment aid, particularly where it is intended to encourage firms to create jobs or to hire individuals who face particular difficulties in finding work'. The annual subsidies which GAV received from 1992 to 1994 were in fact intended to induce it to recruit disadvantaged rather than 'normal' job seekers; however, since it is in any case obliged, under its articles of association, to employ such persons, the abovementioned provision may not be applicable to the annual subsidies. In addition, the annual subsidies do not directly contribute to the creation of long-term jobs for such persons. However, as may be deduced from point 21

⁽¹⁾ OJ C 334, 12. 12. 1995, p. 4.

⁽²⁾ OJ C 368, 23. 12. 1994, p. 12.

of the guidelines, in the case of the employment of disadvantaged persons, the requirement of long-term employment and net job creation is not essential if the temporary recruitment — as in the case of GAV — is voluntarily terminated; the main reason for the provision in point 13 is to ensure that a firm regularly employing disadvantaged persons on the basis of temporary work contracts does not then dismiss them when the temporary work contract has expired, only to recruit further disadvantaged persons, for a limited period once again, with the help of further aid. Such conduct would be a clear abuse of employment aid and, rather than helping to create jobs for disadvantaged persons, would merely provide operating aid for the relevant firm. As already explained, as regards GAV's activities, any such risk is excluded by its objective of helping to overcome the employment problems of disadvantaged persons (440 such persons were in fact recruited and trained between 1987 and 1995). GAV's activities can, therefore, quite readily be regarded as being compatible with the Community guidelines on aid to employment.

Furthermore, there is no evidence whatsoever that GAV might misuse the aid in order to undercut prices. The German authorities have shown unequivocally that such conduct is out of the question thanks to the procedure for monitoring GAV's activities. The agreement between the city of Aachen and GAV provides for use of the aid to be supervised by the Youth Office, an independent adviser and the Audit Office. The documents presented by Germany show that these checks actually take place.

Moreover, the report drawn up in November 1994 by an independent consultant shows that the amount of the annual subsidies was not only limited, but also decreased from year to year to the point where the economic disadvantages incurred by GAV as a result of its special social task were actually DEM 124 000 higher than the public funds which it had received by way of compensation. Furthermore, the two reports drawn up by independent consultants in November 1994 and March 1996 and passed on to the Commission show clearly that GAV's prices were not below the average market prices, but in most cases actually exceeded them.

In view of the social effects of the aid, which was supposed to enable GAV to perform its special social tasks, and the fact that the aid was not misused for the purposes of pursuing aggressive market behaviour, it can be assumed that trading conditions are not adversely affected to an extent contrary to the common interest and that the derogation provided for in Article 92(3)(c) of the EC Treaty can be applied to the annual subsidies.

The investment subsidy

As regards the investment subsidy of DEM 2,7 million granted in 1992 for the construction of a new sorting-depot, it should be noted at the outset that the subsidy

was not intended directly to offset the additional social costs which GAV incurred as a result of its particular task of employing and training disadvantaged persons.

However, in the course of the Article 93(2) proceedings, it emerged that there are a whole series of grounds for granting the subsidy, including the successful implementation of the decision by the city of Aachen to integrate GAV into the city's new waste removal system in order to reduce GAV's annual deficits, and thus to enable it to continue to carry out its social activities. The investment subsidy could therefore be authorised under the derogation provided for in Article 92(3)(c) of the EC Treaty in conjunction with the Community guidelines on State aid for rescuing and restructuring firms in difficulty, on condition, however, that the conditions laid down in the guidelines are met in the case of GAV.

In 1992, GAV could certainly be regarded as a firm in difficulties within the meaning of the guidelines, since at that time it was overloaded with debt and should in normal circumstances have declared bankruptcy. According to its 1992 balance sheet, its loss carryover was DEM 20 000 higher than its equity capital, and it has no other assets to offer as securities. In such a situation, no private bank would have granted GAV a loan that would have enabled it to finance the construction of the building and thus continue to perform its social activities consisting of the employment and training of disadvantaged persons.

The construction of the new building was urgently necessary in order to integrate GAV into the German dual system, a plan which had been proposed by an independent consultant and approved by the city of Aachen in order to cut back the enormous deficits which the firm had built up when it was still operating exclusively within the ambit of the city of Aachen's municipal waste removal.

The consolidated annual accounts presented to the Commission show that the goal of reducing GAV's deficits and thus improving its viability was achieved. The firm's loss carryover, which in 1992 had amounted to DEM 370 000, was reduced to DEM 42 400 as a result of modest annual profits.

Furthermore, it became clear during the Article 93(2) proceedings that the financial support for building the new sorting-depot provided by the public authorities was an essential precondition for implementing the new policy of integrating the firm into the waste disposal system of the city of Aachen and hence for consulting its social activities.

The old sorting-depot had only been leased, and the owner had given notice to terminate the lease. Consequently, GAV would have had to cease business if the new depot had not been built.

The German authorities have also pointed out that the building of the new sorting-depot was necessary in order to bring GAV's activities into line with German environmental protection provisions, particularly those on air and water pollution and the prevention of noise. Since production in the old building did not meet the requirements of these provisions, the administrative decisions authorising GAV to perform its activities in the old building were only provisional and temporary. The standards incorporated into the new building actually go beyond those laid down in the provisions.

Moreover, it is clear from the administrative decision of the Cologne government that there was a close connection between the granting of the investment subsidy and GAV's social activities; the granting of the investment subsidy was made subject to the proviso that GAV continue to employ disadvantaged persons for at least 25 years. Otherwise it will have to repay the subsidy.

Furthermore, as regards its balance sheet, turnover and its workforce ranging between 40 and 60 persons, GAV is very similar to a small enterprise within the meaning of the Community guidelines on State aid for small and medium-sized enterprises. In addition, GAV's share of the German market for recyclable waste in 1993 amounted to only 0,004 % and consequently to a much smaller share of the total Community market.

Nor should it be forgotten that GAV itself contributed substantially to the construction of the sorting-depot and hence to the restructuring of its activities by providing DEM 1,3 million from its own resources for the investment amounting in total to DEM 4 million.

Lastly, it must be borne in mind that the German authorities have demonstrated that GAV has not behaved aggressively on the market and has therefore not misused for such purposes the aid which it has received.

In view of these arguments and in particular the importance of the new building for the continuation of GAV's social tasks, it can be concluded that trading conditions are not adversely affected to an extent contrary to the common interest and that the derogation provided for in Article 92(3)(c) of the EC Treaty in conjunction with the Community guidelines on State aid for rescuing and restructuring firms in difficulty can be applied to the investment subsidy provided by the Cologne government administrative division.

VI

Since GAV has only a limited market share and has demonstrably not engaged in any aggressive market behaviour, and since the abovementioned arguments in favour of the aid outweigh any disadvantages for the common market, the aid for GAV can be approved. In addition, if the Commission were to reject the aid, this would contradict its own policy of promoting employment possibilities for disadvantaged persons. However, approval of the aid must be made subject to the condition that Germany continue to carry out appropriate measures to monitor GAV's market behaviour and in particular its pricing policy,

HAS ADOPTED THIS DECISION:

Article 1

The annual subsidies totalling DEM 0,48 million in the period from 1992 to 1994 and the investment subsidy of DEM 2,7 million which were granted to Gemeinnützige Abfallverwertung GmbH (GAV) by the city of Aachen and by the Cologne government administrative district are unlawful aid pursuant to Article 93(3) of the EC Treaty, since they were not notified to the Commission in advance.

The aid referred to in the first paragraph is compatible with the common market on condition that Germany continues to carry out the appropriate measures to monitor GAV's market behaviour and in particular its pricing policy, and that the aid is intended to facilitate the development of certain economic activities and does not adversely affect trading conditions to an extent contrary to the common interest.

Article 2

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

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 September 1997.

For the Commission

Karel VAN MIERT

Member of the Commission