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Information and Notices

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⁽¹⁾ Text with EEA relevance

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I

(Information)

COMMISSION

Ecu ⁽¹⁾

2 April 1996

(96/C 101/01)

Currency amount for one unit:

Belgian and Luxembourg franc	38,9575	Finnish markka	5,92522
Danish krone	7,31789	Swedish krona	8,54543
German mark	1,89584	Pound sterling	0,838974
Greek drachma	308,549	United States dollar	1,28002
Spanish peseta	159,363	Canadian dollar	1,73507
French franc	6,46219	Japanese yen	137,308
Irish pound	0,813746	Swiss franc	1,52694
Italian lira	2005,15	Norwegian krone	8,21774
Dutch guilder	2,12061	Icelandic krona	84,8783
Austrian schilling	13,3314	Australian dollar	1,63539
Portuguese escudo	195,511	New Zealand dollar	1,87138
		South African rand	5,12553

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Recapitulation of current tenders, published in the *Supplement to the Official Journal of the European Communities*, financed by the European Community under the European Development Fund (EDF) or the European Communities budget

(week: 26 to 30 March 1996)

(96/C 101/02)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
4117	S 61, 27. 3. 1996	Indonesia	ID-Jakarta: workstations for image-processing and GIS operations (<i>additional information</i>)	15. 4. 1996

Information procedure — technical regulations

(96/C 101/03)

(Text with EEA relevance)

- Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations.
(OJ No L 109, 26. 4. 1983, p. 8).
- Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC.
(OJ No L 81, 26. 3. 1988, p. 75).
- Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189/EEC
(OJ No L 100, 19. 4. 1994, p. 30).

Notifications of draft national technical regulations received by the Commission.

Reference (*)	Title	End of three-month standstill period (*)
96/35/E	Draft decision updating the table of UNE standards and their ISO and Cenelec equivalents, included in the supplementary technical instruction MIE AEM 1 of the regulation on lifting and handling equipment, and recognizing the certification of the right to use the 'N' mark as a guarantee of compliance with the regulations	5. 6. 1996
96/59/NL	Order on the Safety of Theme and Amusement Park Apparatus	24. 5. 1996
96/60/D	Regulation on butter and amendments to legal provisions governing milk and margarine	28. 5. 1996
96/61/D	Eighth Regulation amending the Regulation on Safety of Life at Sea	28. 5. 1996
96/62/NL	Order amending the Order on the organic halogen content of fuels (Law Gazette 1994, 854, Note: still pending)	closed
96/63/NL	Type-approval regulation on wood-burning stoves causing air pollution in the form of carbon monoxide	29. 5. 1996
96/64/I	Approval of the method of calculating the index of systematic use of tolerances and the total production quality index in respect of every single manufacturer of fertilizers	24. 5. 1996

Reference (*)	Title	End of three-month standstill period (2)
96/44/B	Draft Royal Decree concerning marketing of teats and dummies for babies and infants	26. 6. 1996
96/51/P	Infrastructures for telecommunications on the subscriber network (RITA) cable boxes in the private cabling network — Technical and quality specification	28. 6. 1996
96/52/P	Infrastructures for telecommunications on the subscriber network (RITA) type V cable — Technical and quality specifications	28. 6. 1996
96/53/P	Infrastructures for telecommunications on the subscriber network (RITA) telephone socket — Technical and quality specifications	28. 6. 1996
96/54/P	Infrastructures for telecommunications on the subscriber network (RITA) TVD cables — Technical and quality specifications	28. 6. 1996
96/55/P	Infrastructures for telecommunications on the subscriber network (RITA) connection and distribution devices — technical and quality specifications	28. 6. 1996
96/56/P	Infrastructures for telecommunications on the subscriber network (RITA) cable boxes in the common cabling network (C0, C1, C2, C3 and C4) — Technical and quality specifications	28. 6. 1996
96/57/P	Infrastructures for telecommunications on the subscriber network (RITA) TVV and TVHV cables — Technical and quality specifications	28. 6. 1996
96/58/P	Infrastructures for telecommunications on the subscriber network (RITA) private subscriber unit — Technical and quality specification	28. 6. 1996

(*) Year — registration number — Member State of origin.

(2) Deadline for comments from Commission and Member States.

(3) The usual information procedure does not apply to '*Pharmacopoeia*'.

(4) No standstill period as the Commission has accepted the grounds for urgent adoption.

The Commission would point out that, under the terms of its communication of 1 October 1986 (OJ No C 245, 1. 10. 1986, p. 4), it considers that if a Member State adopts a technical regulation which comes under the provisions of Directive 83/189/EEC without communicating the draft to the Commission or respecting the standstill obligation, that regulation cannot be enforced against third parties under the terms of the legal system of the Member State in question. The Commission therefore considers that litigants have a right to expect national courts to refuse to implement national technical regulations that have not been notified as required by Community law.

Information on these notifications can be obtained from the national administrations, a list of which was published in *Official Journal of the European Communities* No C 67 of 17 March 1989.

Non-opposition to a notified concentration**(Case No IV/M.718 — Phoenix/Comifar)**

(96/C 101/04)

(Text with EEA relevance)

- On 20 March 1996, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 (1). Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

European Commission,
 Directorate-General for Competition (DG IV),
 Directorate B — Merger Task Force,
 Avenue de Cortenberg/Kortenberglaan 150,
 B-1049 Brussels;
 Fax number (32 2) 296 43 01.

(1) OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

STATE AID**C 54/95 (ex N 777/95, N 780/95, N 790/95, N 791/95, N 793/95, N 794/95)****Italy**

(96/C 101/05)

(Text with EEA relevance)

(Article 6 (4) of Commission Decision No 3855/91/ECSC of 27 November 1991)

Commission notice pursuant to Article 6 (4) of Decision No 3855/91/ECSC of 27 November 1991 to other Member States and other interested parties concerning aid granted by Italy to Ferriera Acciaieria Casilina SpA, Acciaierie del Sud SpA, Officine Laminatoi Sebino SpA, Montifer SRL, Moccia Irme SpA and Mini Acciaieria Odolese SpA

By the letter reproduced below the Commission informed the Italian Government of its decision to initiate the procedure provided for in Article 6 (4):

'On 8 September 1995 the Italian authorities notified the Commission of 22 cases in which Law No 481 of 3 August 1994 on plant closures in the private steel industry in Italy had been applied. This decision concerns only the six cases listed below:

- (a) Aid N 777/95 amounting to Lit 2 908 million for Ferriera Acciaieria Casilina SpA, having its principal place of business in Montecompatri, Rome, which became a legal entity on 18 July 1963; the reduction in capacity will amount to 80 000 tonnes of hot-rolled products;
- (b) Aid N 780/95 amounting to Lit 21 647 million for Acciaierie del Sud SpA, having its principal place of business in Naples, which became a legal entity on 2 November 1970; the reduction in capacity will amount to 250 000 tonnes of hot-rolled products and 300 000 tonnes of steel;
- (c) Aid N 790/95 amounting to Lit 20 280 million for Officine Laminatoi Sebino SpA, having its principal place of business in Pisogne, Brescia, which became a legal entity on 31 July 1979; the reduction in capacity will amount to 270 000 tonnes of hot-rolled products and 280 000 tonnes of steel;
- (d) Aid N 791/95 amounting to Lit 3 474 million for Montifer SRL, having its principal place of business in Montichiari, Brescia, which became a legal entity

on 23 June 1983; the reduction in capacity will amount to 270 000 tonnes of hot-rolled products;

(e) Aid N 793/95 amounting to Lit 13 509 million for Moccia Irme SpA, having its principal place of business in Naples, which became a legal entity on 1 July 1983; the reduction in capacity will amount to 288 000 tonnes of steel and 165 000 tonnes of hot-rolled products;

(f) Aid N 794/95 amounting to Lit 5 437 million for Mini Acciaieria Odolese SpA, having its principal place of business in Odolo, Brescia, which became a legal entity on 4 May 1972; the reduction in capacity will amount to 40 000 tonnes of steel and 185 000 tonnes of hot-rolled products.

By letter of 13 October 1995 (D/23297) the Commission, acting under Article 6 (3) of Decision No 3855/91/ECSC, sought the views of the Member States on the six plans for closure aid.

When the Commission authorized Law No 481 of 3 August 1994 on plant closures in the private steel industry in Italy, it first of all verified compliance with Decision No 3855/91/ECSC establishing Community rules for aid to the steel industry (the Steel Aid Code), in particular with Article 4, and required the Italian authorities to give it prior notification of individual cases of the application of the Law.

In the Decision authorizing Law No 481 the Commission made it a condition for authorization that the following criteria be complied with:

- the aid was to be granted only to steel undertakings which became legal entities before 1 January 1991 and had not reorganized their production plant structure since 1 January 1991,
- with regard to regularity of production, the undertaking had to have been in production for on average at least one shift per day, i.e. at least eight hours per day, for five days per week for the whole of 1993 and up to February 1994, when Decree Law No 103 was notified to the Commission,
- the part of the undertaking closed was to be placed in voluntary liquidation and all plant owned by it dismantled,
- the beneficiary undertakings were not to be directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority, by, and were not themselves directly or indirectly to control,

an undertaking that was itself a steel undertaking or controlled other steel undertakings. The Commission thus decided that the site to be closed and the site to remain operative had to belong to separate legal entities which were independently operated; it was also provided that undertakings receiving closure aid which were placed in liquidation had to be managed in accordance with Italian law only by the liquidators and only for purposes strictly relating to the winding-up.

According to the Commission's information, which is chiefly based on the notifications from the Italian authorities or on documents transmitted to it:

- (a) the six undertakings became legal entities before 1 January 1991;
- (b) the six undertakings have not reorganized their production or plant structure since 1 January 1991, as is established by the independent consultants' reports transmitted to the Commission.

The abovementioned decision of the Commission authorizing Law No 481 of 3 August 1994 (the authorizing decision) laid down that closure aid could be considered compatible with the common market only where the undertakings permanently ceased production of ECSC products. The purpose of this was to prevent aid assisting directly or indirectly other ECSC activities where the group remained operative. This requirement has also been met in that, in the six cases, where an undertaking is controlled directly or indirectly by another steel undertaking:

- the part of the undertaking closing will be placed in voluntary liquidation and all its plant dismantled,
- the site closing and the site remaining operative will be owned by separate legal entities, operated independently, and the undertaking closing will be managed only by the liquidators and only for purposes strictly relating to the winding-up.

On the basis of the foregoing information the Commission has good grounds for believing that the links between the parts of the steel groups remaining in business and those closing will cease irrevocably and consequently that the risk of the transfer of aid from one undertaking to another will be ruled out.

The last part of Article 4 of the Steel Aid Code lays down that the amount of aid may not exceed the higher of the following two values:

- the discounted value of the contribution to fixed costs obtainable from the plants over a three-year period, less any advantages the aided firm derives from their closure,
- the residual book value of the plants (ignoring that portion of any revaluations since 1 January 1990 which exceeds the national inflation rate).

In all six cases the aid has been granted in compliance with the criteria referred to in the last indents of Article 4 (2) of the Steel Aid Code since it amounts to the average of the two criteria fixed in that Article and is thus below the maximum limit authorized under those provisions.

With regard to regularity of production, the Steel Aid Code does not contain any definition of these terms. For that reason the Commission decided in the authorizing decision that the criteria would be respected if the undertaking receiving the aid had been in regular production for an average of at least one shift per day, i.e. at least eight hours per day, for five days per week throughout the whole of 1993 and up to 28 February 1994 when the Italian authorities notified to the Commission Decree Law No 103, whose provisions were subsequently enacted as Law No 481/94 by the Italian Parliament. It also decided that the Italian authorities had been able to establish on the basis of objective criteria that one undertaking, while not in fact meeting the abovementioned criterion, had regularly produced ECSC iron and steel products. In that particular case it will appraise the aid on the basis of the particular circumstances of the case in order to ensure that the requirement of regular production has been met.

From the information available to the Commission, which is proceeding on the basis of the independent consultants' reports submitted by the Italian authorities, it is clear that, although the six undertakings in question (with the exception of Moccia, Case N 793/95) had indeed produced ECSC iron and steel products up to the date when the framework legislation on plant closures was notified to the Commission, they had not been in production for an average of at least one shift per day, i.e. at least eight hours per day, for five days per week throughout the whole of 1993 and up to 28 February 1994.

Ferriera Acciaieria Casilina SpA (Case N 777/95) produced only 11 356 tonnes of hot-rolled products, equivalent to 14,2 % of its capacity; Acciaierie del Sud SpA (Case N 780/95) produced only 13 934 tonnes of steel, equivalent to 4,6 % of its capacity, and 14 459 tonnes of hot-rolled products, equivalent to 5,8 % of its

capacity; Officine Laminatoi Sebino SpA (Case N 790/95) produced only 57 000 tonnes of hot-rolled products, equivalent to 21,1 % of its capacity, and 64 000 tonnes of steel, also equivalent to 21 % of its capacity; Montifer SRL (Case N 791/95) produced only 32 000 tonnes of hot-rolled products, equivalent to 11,8 % of its capacity; Moccia Irme SpA (Case N 793/95) was not in production; Mini Acciaieria Odolese SpA (Case N 794/95) produced only 30 973 tonnes of hot-rolled products, equivalent to 16,7 % of its capacity.

However, the Italian authorities maintain that the undertakings in question must be considered entitled to closure aid since compliance with the requirement of regularity of production is established by the following data:

(a) regarding the workforce:

- the company has retained at least 25 % of its workforce on the payroll,
- the company has organized training courses which have been attended by at least 25 % of the members of its workforce,
- the company has applied a public programme of early retirement as part of internal restructuring of the undertaking;

(b) regarding plant:

- between 1989 and 1992 large-scale investments were made to improve productivity in the plants,
- significant maintenance work was carried out in 1992 and 1993,
- the plants would be able to resume production with an investment of not more than 10 % of their total value;

(c) other details:

- the company has not terminated its contract for electricity, keeping up the monthly payments,
- although the company's production was not regular, it has maintained its activities on the ECSC market through the marketing of steel products,
- the company has sent the Commission the ECSC returns (forms 260-261, etc.).

However, the Commission considers that in this case the abovementioned data are not of such a nature as to establish compliance with the criterion of regular production for the purposes of the Steel Aid Code and the authorizing decision. Consequently, it has grounds to consider at this stage of its examination of the six cases in question that the undertakings cannot be considered entitled to the closure aid within the meaning of Article 4 of the Steel Aid Code since they were not regularly producing ECSC iron and steel products up to the date of the notification of Law No 481 on plant closures in the private steel industry in Italy.

On the basis of the foregoing information, it is very difficult at this point for the Commission to determine whether the aid in question is compatible with the common market. It is therefore both necessary and appropriate to initiate the procedure provided for in Article 6 (4) of the Steel Aid Code in respect of the aid in question.

As part of that procedure, the Commission hereby requests the Italian Government to present its comments, in particular as regards its failure to comply with procedural requirements (i.e. the obligation to notify aid measures before they are applied) and to provide any information relevant to the public measures referred to above within one month of receipt of this letter.

Lastly, the Commission would remind the Italian Government that it may order recovery of any aid granted illegally, i.e. aid granted without awaiting a final decision of the Commission. Recovery of any aid granted illegally is to include payment of interest calculated, at the rate set for assessing regional aid, from the date the aid is paid to the recipient firm in order to eliminate any improper financial advantage enjoyed by the recipient firm from that date.

The Commission hereby informs the Italian Government that it will publish a notice in the *Official Journal of the European Communities* inviting other Member States and other interested parties concerned to submit their comments.'

The Commission accordingly requests the other Member States and other interested parties to submit their comments on the measures in question within one month of the publication of this notice to the following address:

Commission of the European Communities,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the Italian Government.

STATE AID

C 61/95 (ex NN 69/94)

Germany

(96/C 101/06)

(Text with EEA relevance)

(Articles 92 to 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93 (2) of the EC Treaty to the other Member States and other parties concerned regarding aid which has been granted to Gildemeister AG, Bielefeld

By means of the letter reproduced below, the Commission informed the German Government of its decision to initiate the Article 93 (2) procedure.

'In February 1994, a complaint was addressed to the Commission, asking whether the following actions in respect to the firm Gildemeister AG were compatible with EC law:

— in 1985 the Westdeutschen Landesbank had waived outstanding claims of DM 47 million against Gildemeister,

— the WestLB had acquired a 23,31 % stake in the capital of Gildemeister,

— in 1993, the *Land* of North Rhine-Westphalia granted Gildemeister:

— a credit guarantee of DM 20 million,

— a guarantee for the placing on the market of a capital increase of DM 40 million.

The Commission also received other complaints in the same terms as the original one. It requested information from the German authorities by letters dated 23 February 1994 and 2 August 1994. The German authorities provided information by letters dated 7 May 1994 and 11 November 1994. A meeting between representatives from the Commission and the German authorities took place on 18 January 1995.

The Gildemeister group is one of the largest machine-tool producers in Europe. According to the German authorities, since 1991 the company has been suffering the deep crisis experienced by the machine-tool industry. In 1991, Gildemeister recorded losses of DM 29 million. In 1992 with a turnover of DM 378 million, it recorded losses over DM 70 million. In 1993, the company stood on the verge of insolvency proceedings; it recorded losses of DM 59,1 million with a turnover of DM 254 million.

According to an interim report, in 1994 the company reduced its losses to half the amount of 1993; it expects to break even in 1995.

According to the German authorities, the relation between the WestLB and Gildemeister is of long standing. The bank became a shareholder in the firm in 1969.

The Commission has identified the following actions of the WestLB regarding Gildemeister:

- in 1984, according to the information submitted to the Commission, Gildemeister had a pretax net worth (before bringing losses forward) of DM 68,4 million. Estimated losses in 1984 amounted to DM 71,4 million; they included restructuring expenses of DM 45,1 million. To make up for the possible excessive debts and give the firm a sufficient net worth, it was considered necessary to waive outstanding claims for DM 59,9 million.

The WestLB waived a credit of DM 47,3 million held against Gildemeister, while the *Land* of North Rhine-Westphalia waived a claim of DM 12,6 million against the company, which originated in a guarantee given to Gildemeister in 1983 to cover 70 % of a credit of DM 20 million given to the firm by the WestLB. This waiver was granted in exchange for a participation of DM 8 million in future profits by Gildemeister.

According to the German authorities, the WestLB made its waiver to protect the significant investment that the bank had in the company. On the basis of existing engagements, the losses that it would suffer, were the company to fail, would be substantial (anything between DM 30 and 100 million). It was considered a hindrance to the future of the company to claim too high a share in future profits, since such

claims would prejudice future capital increases and, therefore, the existence of the company. For this reason the *Land* of North Rhine-Westphalia negotiated a profit share amounting to approximately 50 % of the waived sum, and for the same reason the WestLB, at the time the main shareholder with its, 17,9 %, did not take a similar participation for its DM 47 million.

As the company stayed in business, the WestLB eventually obtained benefits as a shareholder⁽¹⁾, although the DM 47 million was not recovered. On the other hand, the *Land* of North Rhine-Westphalia profit share was made effective in 1987 for DM 7,1 million, after taking into account market discount;

- in 1992, a pool of banks gave Gildemeister a loan of DM 20 million under market conditions. WestLB participated with 19,5 %; 59,5 % of the credit was furnished by private banks:

- WestLB: 19,5 %

- Deutsche Bank AG: 17 %

- Dresdner Bank AG: 14,5 %

- Sparkasse: 11,5 %

- Berliner Handels- und Frankfurter Bank: 9,5 %

- Commerzbank AG: 9,5 %

- Hamburgische Landesbank Girozentrale: 9,5 %

- IKB Deutsche Industriebank: 9 %;

in connection with this credit, the *Land* of North Rhine-Westphalia granted a credit guarantee covering 80 % of the credit amount. The guarantee was given in the framework of guidelines for the concession of guarantees by the *Land* of North Rhine-Westphalia approved by the Commission in 1988;

- at the beginning of 1993, on the basis of the perspective of an amelioration in the market, a pool of banks scaled down debts by DM 15 million against the return in future profits in Gildemeister. The WestLB participated with 16,7 %; 65,7 % of the scaling-down was done by private banks:

⁽¹⁾ According to the German authorities, with these actions Gildemeister ended with a net worth of DM 58,9 million. The company could break even in 1985, and obtained benefits of DM 5,2 million in 1986 and DM 14,1 million in 1987.

- WestLB: 16,7 %
 - Deutsche Bank AG: 16,4 %
 - Dresdner Bank AG: 15 %
 - Commerzbank AG: 8 %
 - Bayerische Landesbank: 10,7 %
 - Hamburgische Landesbank Girozentrale: 7,3 %
 - National Westminster Bank: 9,3 %
 - Royal Bank of Canada: 9,3 %
 - Berliner Handels- und Frankfurter Bank: 7,3 %;
- in the second half of the year, it was clear that the expectations would not be fulfilled. A pool of banks waived claims against Gildemeister for DM 16 million. The WestLB participated with 18,9 %; more than 50 % of the waiving was done by private banks:
- WestLB: 18,9 %
 - Deutsche Bank AG: 19,6 %
 - Dresdner Bank AG: 10,1 %
 - Commerzbank AG: 8,5 %
 - Royal Bank of Canada: 8,5 %
 - Hamburgische Landesbank Girozentrale: 6,8 %
 - Berliner Handels- und Frankfurter Bank: 6,8 %
 - National Westminster Bank: 5 %
 - Bayerische Landesbank: 12,7 %
 - Sparkasse Bielefeld: 2,9 %
 - IKB Deutsche Industriebank: 2,1 %.

The *Land* of North Rhine-Westphalia also waived its claim of DM 16 million originated in the guarantee granted earlier in the year in relation to the loan of DM 20 million from 1992. All parts involved obtained a participation in future profits against the waivings;

- new credits of DM 28 million were given in 1993. The WestLB participated with 25,4 %; 50,6 % of the credit was given by private banks:
 - WestLB: 25,4 %
 - Deutsche Bank AG: 20,2 %

- Dresdner Bank AG: 14,1 %
- Commerzbank AG: 8,2 %
- Royal Bank of Canada: —
- Hamburgische Landesbank Girozentrale: 8,5 %
- Berliner Handels- und Frankfurter Bank: 7,5 %
- National Westminster Bank: 4,6 %
- Bayerische Landesbank: 5,4 %
- Sparkasse Bielefeld: 2,6 %
- IKB Deutsche Industriebank: 3,5 %.

The WestLB's part in this was so important (25,4 %) because it acquired the part from the Royal Bank of Canada as well as the rights on future profits that went with it;

- in October 1993 the WestLB guaranteed the placing on the market of a capital increase of DM 40 million. Between 2 March 1994 and 8 March 1994, the portion subscribed by the WestLB (196 394 shares) amounted to 49,7 % of the total issued and 23,2 % of the total increased capital. The rest of the shares were sold to a wide spectrum of shareholders.

The WestLB then reduced it to 101 592 shares (12 % of Gildemeister's capital). Up to 6 000 shares were sold daily; the price fluctuated between DM 144,6 and DM 240,2. WestLB obtained a benefit with this operation. At present, the stake that the bank has in the company is still 12 %.

By letter dated 24 September 1993, the German authorities notified the Commission of the Bavarian authorities' intention to grant aid to the firms Deckel AG and Maho AG in the framework of their merger, to finance restructuring measures. The aid consisted of an interest subsidy amounting to DM 2,15 million for a DM 30 million bank credit (a four year credit with 5 % nominal interest rate and a period of grace for reimbursement of two years). The Commission approved this aid on 26 November 1993.

The merger was subsequently delayed through court action undertaken by the smaller shareholders appealing against the decision. This meant that the approved credit could not be used and that there was no cooperation for some time between the management of both firms which in time meant that the expected synergetic effects of the merger did not materialize. On 29 April 1994 the firm asked for the composition arrangements to be initiated and on 30 June 1994 it filed for bankruptcy. The aid approved by the Commission was therefore never given.

On 30 July 1994, the bankruptcy administrator agreed to the takeover by Gildemeister of certain parts of Deckel/Maho.

The new Deckel Maho GmbH, based in Pfronten, is owned 100 % by Gildemeister with a share capital of DM 40 million. Its main production is metal-working machines (hand-operated and computer operated universal milling and boring machines and highly automated machining centres for companies with a flexible serial finishing).

From the original Deckel/Maho plants, only the following have been retained:

- Pfronten: milling and boring machines. (Personnel reduced from 630 to 500),
- Geretsried: machining centres. Envisaged to produce 210 units per year with about 270 employees,
- Seebach (Thuringia): retained in the Gildemeister group as a 100 % owned subsidiary, producing small universal milling and boring machines with 200 employees.

In the framework of the financing of the takeover, the following actions took place:

- Deckel Maho GmbH received a long-term credit of DM 21,2 million (the WestLB was not involved in this credit concession). The participating banks were the following:
 - Bayerische Landesbank Girozentrale: DM 8 million,
 - IKB Deutsche Industriebank: DM 6,2 million,
 - Bayerische Landesanstalt für Aufbaufinanzierung (LfA): DM 5 million,
 - Sparkasse Ostallgäu: DM 2 million;
- the LfA also gave a subordinated five year credit of DM 15 million at an interest rate of 9,25 %. The interest rate was reduced to 8,25 % through the financing of 1 % by the Bavarian authorities in the framework of the fourth part of the Bayernfonds scheme from the State of Bavaria;
- the Thüringer Aufbaubank, Erfurt gave Deckel Maho Seebach GmbH a DM 23,5 million credit at an interest rate of 8 % per annum and a transaction processing fee of 0,1 %. The credits were guaranteed by the firm's terrains and production machinery. The date for reimbursement was 31 March 1995;
- the endowment of capital in Deckel Maho GmbH and Deckel Maho Seebach GmbH was financed

through a nominal capital increase by Gildemeister of DM 34 million in October 1994. The WestLB guaranteed the placing on the market. The LfA and the Thüringische Industrie-Beteiligungsgesellschaft (TIB) took a subordinate guarantee against this placing on the market for DM 10 million in favour of the WestLB. The placing was subscribed to the full and the guarantees were never mobilized.

Regarding the behaviour of the WestLB towards Gildemeister, it is necessary to assess whether its operations could constitute aid in the sense of Article 92 (1) of the EC Treaty or not, given its public ownership⁽¹⁾. A distinction should be made between the waiver of DM 47 million made by the bank in 1984 and the other actions.

According to the German authorities, the waiver of DM 47 million was necessary for the bank to protect its substantial investment in the company at the time. It remains therefore unclear whether it could be identified as aid in the sense of Article 92 (1), since it could be argued that the bank acted as any private investor would have. Nevertheless, the fact that the bank did not obtain participation in future profits for the waiver of DM 47 million (or not even a percentage of it, as did the *Land* of North Rhine-Westphalia) give the Commission sufficient ground for wanting to review the action in more depth in the framework of the procedure, thus clarifying the existence or not of aid.

As for the other actions taken by the WestLB in relation to Gildemeister, it is the Commission's view that no aid in the sense of Article 92 (1) of the EC Treaty was given. Other private banks acted in a similar way, and when it acted alone, the bank acted on the basis of good prospects for the future; these prospects were later confirmed through its obtaining of a benefit. It has to be concluded that the bank behaved as a private investor in a market economy, intending to draw a reasonable economic return.

Regarding the credit of DM 21,2 million received by Deckel Maho GmbH, it was given 30 % by a private bank, a significant amount. This credit, as well as the credits given by the Thüringer Aufbaubank to Deckel Maho Seebach, were given at an interest rate (8,95 % and 8 %)⁽²⁾ in line with the market rate. As in the case of the WestLB, it has to be concluded that the public banks involved behaved as private investors in a market economy intending to draw a reasonable economic return.

⁽¹⁾ The shareholders of the WestLB are the *Land* of North Rhine-Westphalia (43,2 %), the Landschaftsverband Rheinland (11,7 %), the Landschaftsverband Westfalen-Lippe (11,7 %) the Rheinischer Sparkassen- und Giroverband (16,7 %) and the Westfälisch-Lippischer Sparkassen- und Giroverband (16,7 %).

⁽²⁾ The reference rates for Germany for the year 1994 are 6,62 % and 7,62 %.

The Commission has nevertheless identified some elements of aid in the sense of Article 92 (1):

- the guarantee granted by the *Land* of North Rhine-Westphalia in 1993 in relation to the DM 20 million credit given to Gildemeister in 1992. The guarantee was given in the framework of guidelines for the concession of guarantees by the *Land* of North Rhine-Westphalia approved by the Commission in 1988. The Commission approved the scheme on the condition that guarantees intended to cover credits of more than ECU 0,5 million given to companies with over 300 employees active in "sensitive" sectors and for reconstruction purposes ("Sanierung") should be notified to the Commission. According to the German authorities, the guarantees granted to Gildemeister did not have to be notified.

The German authorities argue that reconstruction refers to those financial measures taken to restore intact capital funds and a reasonable capital structure on the basis of past problems in the company. The guaranteed credit on the other hand served to finance measures in the framework of the restructuring of the company; the problems caused by the past problems in the company were financed through the actions undertaken by the shareholders and the banks. They therefore conclude that they did not have to be notified to the Commission.

From the information available at this moment, it cannot be inferred that the guarantee was not given to cover a reconstruction credit ("Sanierungskredit"). On the contrary, the subsequent financial problems that Gildemeister had suggest that this was indeed the case;

- the financing of 1 % of the 9,25 % interest rate of the subordinated five year credit of DM 15 million by the LfA, granted by the Bavarian authorities in the framework of the Bayernfonds. The aid was given under the fourth part of the Bayernfonds scheme which has not been notified to the Commission. Every application thereunder has to be notified individually;
- the subordinate guarantee taken by the LfA and the TIB in favour of the WestLB for its guarantee for this placing on the market of Gildemeister's capital increase of DM 34 million in October 1994; even if it was never mobilized can be identified as aid, since it allowed the WestLB to proceed with the increase. The conditions under which this guarantee was given are not yet known.

None of these measures were notified pursuant to Article 93 (3), although in the case of the financing of 1 % of the 9,25 % interest rate of the credit given by the LfA, the German authorities, in the framework of their

contacts with the Commission regarding the case⁽¹⁾, have asked for its subsequent approval by the Commission.

The aid proposed should be considered capable of distorting or threatening to distort competition in the sense of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Treaty. On the one hand, machine tools are substantially traded between Member States; on the other hand, if we consider the different actions as part of the effort to return Gildemeister to viability, it should be remembered that, as it is stated in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, restructuring aid will, by its very nature, tend to distort competition and affect trade between the Member States, as it retards the process of structural adjustment through subsidies to firms which in the new market situation ought to disappear or restructure.

Restructuring is part of a feasible, coherent and far-reaching plan to restore a firm's long-term viability. For the Commission to approve aid a restructuring plan will need to satisfy all the general conditions stated in the guidelines.

At this stage it is doubtful whether the actions undertaken in relation to Gildemeister do meet all the necessary conditions. No restructuring plan has been presented to the Commission. Given the situation of the machine-tool sector, it is still unclear whether the acquisition of Deckel/Maho by Gildemeister did increase the capacity of the firm thus not providing enough contribution to the restructuring of the industry.

Neither Bielefeld nor Pfronten are eligible for regional aid.

Accordingly, the Commission hereby informs the German Government that it has decided to initiate the Article 93 (2) procedure in relation to the following actions in relation to Gildemeister AG:

- waiver in 1984 of outstanding claims of DM 47 million (about ECU 20,8 million) by the Westdeutsche Landesbank Girozentrale,
- guarantee given in 1993 by the *Land* of North Rhine-Westphalia covering 80 % of a bank credit amounting to DM 20 million (about ECU 9,8 million),
- financing in 1994 of 1 % of the 9,25 % interest rate of DM 15 million credit by the LfA (about ECU 7,7 million), granted by the Bavarian authorities in the framework of the Bayernfonds,

⁽¹⁾ Letter from the German authorities of 11 November 1994.

— in 1994, subordinate guarantee for DM 10 million (about ECU 5,1 million) given by the Bayerische Landesanstalt für Aufbaufinanzierung (LfA) and the Thüringische Industrie-Beteiligungsgesellschaft (TIB).

As part of the procedure, your authorities are hereby invited to present, within one month of being notified of this letter, their comments as well as any other information they might consider relevant for the assessment of the aid proposed.

The Commission would remind you of the suspensory effect of Article 93 (3) of the EC Treaty and would draw your attention to the communication published in the *Official Journal of the European Communities* No C 318 of 24 November 1983 and to the letters sent to all Member States on 4 March 1991 and 22 February 1995, in which it was stipulated that any aid granted unlawfully may have to be recovered from the recipient firm in accordance with the procedures laid down by the national law, including interest calculated at the reference rate used for regional aid and with effect from the date on which aid was granted.

The Commission hereby requests the German authorities to inform Gildemeister AG without delay of the initiation of the procedure and of the fact that they might have to repay any aid improperly received.

The Commission also hereby informs the German Government that it will inform:

- other Member States and other interested parties within the European Union by means of the publication in the *Official Journal of the European Communities* of a copy of the present letter,
- other interested parties in the EFTA countries that are signatories to the EEA Agreement by publishing a notice in the EEA section of the *Official Journal of the European Communities*, and
- the EFTA Surveillance Authority by sending the English version of this letter.

The Commission hereby gives the Member States and other parties concerned notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be communicated to the German Government.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on marine equipment ⁽¹⁾

(96/C 101/07)

(Text with EEA relevance)

COM(96) 47 final — 95/0163(SYN)

(Submitted by the Commission pursuant to Article 189 a (2) of the EC Treaty on 13 February 1996)⁽¹⁾ OJ No C 218, 23. 8. 1995, p. 9.

ORIGINAL TEXT

AMENDED TEXT

Article 2

'New ship':

means a ship, the keel of which is laid or which is at a similar stage of construction on or after the date of adoption of this Directive. For the purpose of this definition, a similar stage of construction means the stage at which:

- (i) construction identifiable with a specific ship begins; and
- (ii) assembly of that ship has commenced comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is less.

'New ship':

means a ship, the keel of which is laid or which is at a similar stage of construction on or after the date of entry into force of this Directive. For the purpose of this definition, a similar stage of construction means the stage at which:

- (i) construction identifiable with a specific ship begins; and
- (ii) assembly of that ship has commenced comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is less.

Article 9, paragraph 1a (new)

Member States shall carry out, at least every two years, an audit by the competent administration or by an impartial external organization appointed by the competent administration into the duties the notified bodies are undertaking on their behalf. The audit shall ensure that the notified body continues to satisfy the criteria listed in Annex C.

Article 14, paragraph 2

Such trial procedures shall in no way discriminate between equipment produced in the flag State and equipment produced in other Member States.

Such trial procedures shall in no way discriminate between equipment produced in the flag State and equipment produced in other States.

Annex C, paragraph 1a (new)

The notified body shall be independent and shall not be controlled by manufacturers or suppliers of the equipment.

Proposal for a Council Regulation amending Regulation (EEC) No 3813/92 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy

(96/C 101/08)

COM(96) 40 final — 96/0037(CNS)

(Submitted by the Commission on 14 February 1996)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas different conversion rates apply to amounts established in ecus and applicable in national currency relating to imports of agricultural products, depending on the legal instruments fixing such amounts; whereas, except where explicit derogations apply, the relevant amounts fixed by a legal instrument relating to be common agricultural policy within the meaning of Article 1 (a) of Council Regulation (EEC) No 3813/92⁽¹⁾, as last amended by Regulation (EC) No 150/95⁽²⁾, are to be expressed in national currency using the agricultural conversion rates; whereas the other amounts in question are to be converted using the rate applicable under Article 18 (1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, as amended by the Act of Accession of Austria, Finland and Sweden;

Whereas the existence of two systems for converting amounts relating to imports of agricultural products leads to economic inconsistencies and considerable red tape; whereas, save in exceptional or very special cases, the same conversion rate as that applicable to amounts collected on imports of agricultural or non-agricultural products must be used where they are fixed by a legal instrument not relating to the common agricultural policy;

Whereas the measures required must necessarily be taken level; whereas they fall within an area of exclusive Community competence and seek to achieve

the uniform application of the common agricultural policy,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3813/92 is hereby amended as follows:

1. In Article 3 (1), the words 'Subject to the derogations referred to in paragraphs 2 and 3' are replaced by: 'Without prejudice to the derogations provided for in paragraphs 2, 3 and 4'.
2. The following paragraph is added to Article 3:
'4. Without prejudice to paragraph 2 and Article 5, in the case of amounts relating to imports fixed in ecus by a legal instrument relating to the common agricultural policy and applicable by the Member States in their national currencies, the agricultural conversion rate shall be equal, in the case in question, to the rate applicable to the products concerned pursuant to Article 18 (1) of Regulation (EEC) No 2913/92.'
3. The first subparagraph of Article 6 (2a) is replaced by the following:
'2a. As regards amounts fixed in advance in ecus and amounts established in ecus under an invitation to tender with the exception of those referred to in Article 3 (4), the agricultural conversion rate may be fixed in advance.'

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽³⁾ OJ No L 302, 19. 10. 1992, p. 1.

III

(Notices)

COMMISSION

Notice of invitation to tender for the refund or tax for the export of durum wheat to all third countries

(96/C 101/09)

I. Subject

1. Tenders are invited for the refund or tax for the export to all third countries of durum wheat falling within CN code 1001 10 00.
2. The total quantity in respect of which there may be fixed a maximum export refund or minimum export tax as provided in Article 4 (1) of Commission Regulation (EC) No 1501/95⁽¹⁾, as last amended by Regulation (EC) No 95/96⁽²⁾, is approximately 100 000 tonnes.
3. The invitation to tender will be conducted in accordance with the provisions of:
 - Council Regulation (EEC) No 1766/92⁽³⁾,
 - Regulation (EC) No 1501/95,
 - Commission Regulation (EC) No 591/96⁽⁴⁾.

II. Time limits

1. The period for the receipt of tenders for the first of the weekly awards will begin on 5 April 1996 and will expire at 10 a.m. on 11 April 1996.
2. For the subsequent weekly awards, the period for the receipt of tenders will expire at 10 a.m. on the Thursday of each week.

For the second and subsequent weekly awards, the period for the receipt of tenders will begin on the first working day following the expiry of the preceding period.

However, for the periods 6 to 9 May and 13 to 16 May 1996, the invitation to tender is suspended.

3. This notice is published only for the purposes of the present invitation to tender. Until such time as it is amended or replaced, its terms will apply to each weekly award held during the period of validity of this invitation.

III. Tenders

1. Tenders must be submitted in writing and may be delivered personally against a receipt or sent by registered post or by telex, fax or telegram, but must in any event arrive not later than the time and date indicated in heading II above at one of the following addresses:
 - Bundesanstalt für Landwirtschaft und Ernährung (BLE), D-60322 Frankfurt am Main, Adickesallee 40 (telex: 699 76 24, 699 76 33; fax: 1564-793, 1564-794),
 - Office national interprofessionnel des céréales, 21, avenue Bosquet, F-75326 Paris Cedex 07 (telex: OFILE 200490 F/OFIDM 203662 F; fax: 47 05 61 32),
 - Ministero per il commercio con l'estero, direzione generale import-export, divisione IV, viale Shakespeare, I-00100 Roma (telex: MINCOMES 623437, 610083, 610471; fax: 5926217),
 - Hoofdproduktschap voor Akkerbouwprodukten, Stadhoudersplantsoen 12, NL-2517 JL Den Haag (telex: HOVAKKER 32579, fax: 461400),
 - Bureau d'Intervention et de Restitution Belge (BIRB)/Belgisch Interventie- en Restitutiebureau (BIRB), rue de Trèves 82/Trierstraat 82, B-1040 Bruxelles/Brussel (tél: BIRB 24076, 65567; télécopieur: 230 35 33, 280 03 07),
 - Intervention Board for Agricultural Produce, External Trade Division, Lancaster House, Hampshire Court, Newcastle upon Tyne ME4 7YE (telex: 84 83 02; fax: 58 36 26 (0191) 226 18 39),
 - Department of Agriculture, Food and Forestry, Cereals Division, Agriculture House, Kildare Street, IRL-Dublin 2 (telex: AGRI EI 936 07; fax: 661 62 63),
 - EU-Direktoratet, Kampmannsgade 3, DK-1780 København (telex: 15137 DK; fax: 33926948),
 - Ministério do Comércio e Turismo, Direcção-Geral do Comércio, Av. da República, 79, P-1000 Lisboa (telex: 13418, fax: 7932210),
 - Service d'économie rurale, office du blé, 113-115 route de Hollerich, L-1741 Luxembourg (telex: AGRIM L 2537, fax: 450178),

⁽¹⁾ OJ No L 147, 30. 6. 1995, p. 7.

⁽²⁾ OJ No L 18, 24. 1. 1996, p. 10.

⁽³⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽⁴⁾ OJ No L 84, 3. 4. 1996, p. 28.

- YDAGEP, 241, Street Acharnon, GR-10446 Athens (telex: 221736 ITAG GR, fax: 8629373),
- Servicio Nacional de Productos Agrarios (SENPA), C/Beneficencia 8, Madrid 28004 (telex: 41818, 23427 SENPA E; fax: 5219832, 5224387),
- Statens Jordbruksverk, Vallgatan 8, S-55182 Jönköping (telex: 70991 SJV-S, fax: 36190546),
- Maa- ja metsätalousministeriö, interventiokeskus, PL 232 00171 Helsinki (fax: 90-1609760, 90-1609790),
- AMA (Agrarmarkt Austria), Dresdnerstraße 70, A-1200 Wien (fax: 0043-1-33151399, 0043-1-33151298).

Tenders not submitted by telex or telegram must be enclosed in a sealed envelope marked: 'Tender under invitation to tender for the refund or tax for the export of durum wheat to all third countries — Regulation (EC) No 591/96 — Confidential', itself enclosed in a further sealed envelope addressed as above.

Once submitted, no tender may be withdrawn before the Member State concerned has informed the tenderer of the result of the tender.

2. Every tender and the accompanying proof and undertaking mentioned in Article 5 (3) of Regulation (EC) No 1501/95 must be in the official language, or in one of the official languages, of the Member State of the competent authority to which it is submitted.

IV. Security for tender

The security for tender must be made out in favour of the competent authority concerned.

V. Award of contracts

The award will:

- (a) give the party concerned the right to be issued, in the Member State in which the tender was submitted, with an export licence for the quantity in question indicating the export refund or tax specified in the tender;
- (b) oblige the party concerned to apply in the Member State mentioned in (a), for an export licence for that quantity.

EUROPEAN ECONOMIC INTEREST GROUPING

Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 (*) —
Formation

(96/C 101/10)

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| <ol style="list-style-type: none"> 1. Name of grouping: The Shuttleworth Precision Farming Alliance EEIG 2. Date of registration of grouping: 14. 3. 1996 3. Place of registration of grouping: <ol style="list-style-type: none"> (a) Member State: UK (b) Place: UK-Cardiff CF4 3UZ | <ol style="list-style-type: none"> 4. Registration number of grouping: GE 96 5. Publication(s): <ol style="list-style-type: none"> (a) Full title of publication: The London Gazette (b) Name and address of publisher: HMSO Publications, HMSO Publications Centre, 59 Nine Elms Lane, UK-London SW8 5DR (c) Date of publication: 20. 3. 1996 |
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(*) OJ No L 199, 31. 7. 1985, p. 1.