

Official Journal

of the European Communities

ISSN 0378-6986

C 144

Volume 39

16 May 1996

English edition

Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	<i>I Information</i>	
	Commission	
96/C 144/01	Ecu.....	1
96/C 144/02	Average prices and representative prices for table wines at the various marketing centres.....	2
96/C 144/03	Non-opposition to a notified concentration (Case No IV/M.740 — Krupp (II)) (¹)	3
96/C 144/04	State aid — C 53/95 (ex NN 143/95) — Spain (¹).....	3
96/C 144/05	State aid — C 57/95 (ex NN 67/95) — Germany (¹).....	6
96/C 144/06	State aid — C 58/95 (ex NN 72/95) — Germany (Northrhine Westphalia) (¹).....	9
96/C 144/07	State aid — C 11/96 (ex N 1/96) — Germany (¹).....	12
	<i>II Preparatory Acts</i>	
	Commission	
96/C 144/08	Amended proposal for a Council Regulation (Euratom, ECSC, EC) amending the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities in respect of equal treatment of men and women.....	14

EN

1

(¹) Text with EEA relevance

I

(Information)

COMMISSION

Ecu ⁽¹⁾

15 May 1996

(96/C 144/01)

Currency amount for one unit:

Belgian and Luxembourg franc	39,2966	Finnish markka	5,90476
Danish krone	7,37908	Swedish krona	8,41802
German mark	1,91182	Pound sterling	0,822753
Greek drachma	303,273	United States dollar	1,24573
Spanish peseta	159,578	Canadian dollar	1,70428
French franc	6,47219	Japanese yen	132,882
Irish pound	0,798238	Swiss franc	1,55990
Italian lira	1937,97	Norwegian krone	8,20189
Dutch guilder	2,13767	Icelandic krona	83,7504
Austrian schilling	13,4526	Australian dollar	1,55367
Portuguese escudo	196,452	New Zealand dollar	1,81118
		South African rand	5,37221

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).

Average prices and representative prices for table wines at the various marketing centres

(96/C 144/02)

(Established on 14 May 1996 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °	Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °
<i>R I Guide price*</i>	3,828		<i>A I Guide price*</i>	3,828	
Heraklion	No quotation		Athens	No quotation	
Patras	No quotation		Heraklion	No quotation	
Requena	No quotation		Patras	No quotation	
Reus	No quotation		Alcázar de San Juan	2,724	71 %
Villafranca del Bierzo	No quotation		Almendralejo	No quotation	
Bastia	4,104	107 %	Medina del Campo	No quotation	
Béziers	4,298	112 %	Ribadavia	No quotation	
Montpellier	4,266	111 %	Villafranca del Penedés	No quotation	
Narbonne	No quotation		Villar del Arzobispo	No quotation (†)	
Nîmes	4,221	110 %	Villarrobledo	No quotation (†)	
Perpignan	4,041	105 %	Bordeaux	No quotation	
Asti	No quotation		Nantes	No quotation	
Florence	No quotation (†)		Bari	No quotation	
Lecce	No quotation		Cagliari	No quotation	
Pescara	No quotation		Chieti	3,103	81 %
Reggio Emilia	6,033	158 %	Ravenna (Lugo, Faenze)	3,694	96 %
Treviso	5,048	132 %	Trapani (Alcamo)	2,807	73 %
Verona (for local wines)	5,910	154 %	Treviso	No quotation (†)	
Representative price	4,453	116 %	Representative price	3,231	84 %
<i>R II Guide price*</i>	3,828				
Heraklion	No quotation				
Patras	No quotation				
Calatayud	No quotation				
Falset	No quotation				
Jumilla	No quotation (†)				
Navalcarnero	No quotation (†)				
Requena	No quotation				
Toro	No quotation				
Villena	No quotation (†)				
Bastia	No quotation		<i>A II Guide price*</i>	82,810	
Brignoles	No quotation		Rheinpfalz (Oberhaardt)	68,135	82 %
Bari	No quotation		Rheinhessen (Hügelland)	No quotation	
Barletta	No quotation		The wine-growing region of the Luxembourg Moselle	No quotation	
Cagliari	No quotation		Representative price	68,135	82 %
Lecce	No quotation				
Taranto	No quotation				
Representative price	No quotation				
	ECU/hl		<i>A III Guide price*</i>	94,57	
			Mosel-Rheingau	No quotation	
<i>R III Guide price*</i>	62,15		The wine-growing region of the Luxembourg Moselle	No quotation	
Rheinpfalz-Rheinhessen (Hügelland)	115,303	186 %	Representative price	No quotation	

(†) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

* Applicable from 1. 2. 1995.

° GP = Guide price.

Non-opposition to a notified concentration**(Case No IV/M.740 — Krupp (II))**

(96/C 144/03)

(Text with EEA relevance)

On 2 May 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. The full text of the decision is available only in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CDE' version of the Celex database, under document No 396M0740. Celex is the computerized documentation system of European Community law; for more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations (OP/4B),
2, rue Mercier
L-2925 Luxembourg
tel. (352) 29 29 4 24 55, fax: (352) 29 29 4 27 63.

STATE AID**C 53/95 (ex NN 143/95)****Spain**

(96/C 144/04)

(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 other Member States and interested parties concerning aid which Spain has granted to Grupo de Empresas Álvarez (GEA)**

By means of the letter reproduced below, the Commission informed the Spanish Government of its decision to initiate proceedings under Article 93 (2) of the Treaty.

'In December 1994 and March 1995, the Commission received complaints concerning aid awarded to Grupo de Empresas Álvarez (GEA). GEA, one of the largest producers in the sector in Spain, manufactures and markets china, earthenware and glass tableware; it also produces bottles.

Until June 1991, GEA was wholly owned by the Spanish public holding group INI (Instituto Nacional de

Industria). INI then decided to privatize the enterprise. In order to leave GEA free of debts INI granted it aid amounting to ECU 24 million. That aid, although not notified, was approved by the Commission in 1992⁽¹⁾. Approval was justified by a substantial reduction in GEA's production capacity, the severance of its ties with INI and its location in Vigo, Galicia, an area where the standard of living is abnormally low and there is serious underemployment and which is therefore eligible for aid under Article 92 (3) (a) of the EC Treaty.

⁽¹⁾ Aid NN 15/92; document SEC(92) 1655.

The complainants allege that, after 1992 and in addition to the above aid, GEA received large amounts of extra aid which were not notified to the Commission. They also submitted press reports stating that the regional government of Galicia was to grant GEA guarantees amounting to PTA 2 500 million. The press reports also indicate that GEA is still in the grips of a financial crisis.

In response to the Commission's requests for information, dispatched by letters of 22 December 1994 and 21 June 1995, your Government confirmed by letters dated 10 March 1995 and 31 July 1995 that INI had granted a guarantee to GEA. The replies did not specify the amount of the guarantee but stated that in 1994 INI had paid a lump sum of PTA 983 million in order to release itself from the guarantee which, at that time, entailed a potential risk of PTA 1 670 million. No reference was made, however, to the question of whether a new guarantee of PTA 2 500 million had been or was to be granted and, if so, by whom. Your Government merely pointed out that INI was already the owner of GEA at the time of Spain's accession to the Community and that it still had obligations dating from that time.

According to your Government, neither the guarantee awarded in 1992 nor the payment of the lump sum in 1994 constitute aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement; in both cases INI acted in the same way as any private investor would have done under market conditions. It claims that in 1992, the risk of GEA going into liquidation was very low and the guarantee served only to support the restructuring of the enterprise by enabling investment to be financed. As far as the 1994 payment is concerned, your Government admits that GEA was in serious economic difficulties but also emphasizes that the payment served only to sever INI's ties with GEA.

It is the Commission's view that both the guarantee afforded in 1992 and the payment of PTA 983 million in 1994 do constitute aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement. There are, to say the least, serious doubts as to whether a private investor would have provided a guarantee in the form that INI did. There appears to be no link between the sale of the enterprise and the guarantee which was granted after INI had divested itself of GEA. Nor could it be proven that INI gained anything in return for providing the guarantee. Such a guarantee would, under those circumstances, never have been granted by the private sector. The same applies to the payment of PTA 983 million which, on the basis of the information provided by your authorities, has to be considered as additional aid since your Government in no way indicated whether at least the original claims covered by that guarantee devolved upon the Spanish

Government. If a private enterprise would never have awarded such a guarantee it would, consequently, never have been obliged to make any payment in order to release itself from those obligations. Lastly, it is open to doubt whether a private investor who had already suffered all those losses would grant further guarantees to the same loss-making enterprise in the way described in the press reports.

All the aid which has been or may have been awarded is liable to distort competition and affect trade between Member States. There is extensive trade in the tableware industry between Spain and other Member States. In 1993 Spain exported 7 272 tonnes of tableware products to other Member States worth ECU 27,5 million. Its share of total intra-Community trade in tableware goods stands at around 3 %. GEA is, in spite of the deep cut it made in its capacity in 1992, still one of the biggest producers of tableware. Roughly 30 % of its output is exported. Consequently, any grant can improve GEA's position in the common market in comparison with other competitors which do not receive any State support.

The Commission regrets that your Government failed to respect the suspensive effect of Article 93 (3) of the EC Treaty. The aid was granted illegally to GEA.

The Commission has serious doubts as to whether any of the derogations provided for in Article 92 of the Treaty can apply to the aid.

GEA is located in an area where there is serious under-employment and the standard of living is abnormally low. In accordance with Article 92 (3) (a) of the Treaty, aid to promote the economic development of such areas may be deemed compatible with the common market. In this case, however, there are serious doubts as to whether the aid actually contributes to the economic development of the region since it is used to rescue a loss-making company rather than for investment and job creation. The aid does not appear to be linked to a restructuring plan which could be expected to restore the firm's viability. On the contrary, according to the press reports, GEA is not viable since new loans are necessary to maintain its production.

Neither do the aid measures appear to comply with the requirements of the different Community frameworks for State aid to enterprises, and in particular the Community guidelines on State aid for rescuing and restructuring firms in difficulty. GEA undoubtedly is a firm in difficulty and unable to recover through its own resources. According to the guidelines, however, the rescue should be a one-off operation. In this case, there appear to have been a series of rescue operations (guarantee, payment of aid and possible new loans) that

merely maintain the status quo and postpone the inevitable, in the meantime shifting the attendant industrial and social problems to other, more efficient producers and other Member States. Neither is there any evidence whatsoever that the past and future aid payments are linked to restructuring operations which might justify the payment of rescue aid to the firm. It should be stressed here that GEA already received aid in 1992 for restructuring and restoring its viability.

The aid may also unduly distort competition. The European tableware industry has to cope with a great deal of overcapacity which has led to the closure of several plants in the last few years and forced the industry to reduce its workforce by more than 10 % in 1994. In view of this surplus capacity, the aid may seriously harm GEA's competitors. These should therefore be given an opportunity of expressing their views to the Commission.

Lastly, the aid cannot be justified by the fact that INI was already the sole owner of GEA at the time of Spain's accession to the Community and had entered into obligations at the time which still exist. In its approval decision of 1992, the Commission already informed your Government that completely open-ended guarantees cannot be regarded as existing aid. Furthermore, the guarantee was granted in 1992, after the financial ties between GEA and INI had been severed. This divestment was one of the reasons why the Commission was able to accept the previous aid.

Accordingly, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of the aid granted to GEA in the form of guarantees and direct payment.

As part of the procedure, the Commission hereby gives your Government the opportunity to present, within one month of being notified of this letter, its comments and any information relevant to the aid.

The Commission should remind you of the suspensory effect of Article 93 (3) of the EC Treaty and would draw your attention to the communication published in *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, which stipulates that any

aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EC Treaty, may have to be recovered from the beneficiary, with interest running from the day the aid was paid and calculated at a rate equal to the reference rate, used to determine the net grant equivalent of aid schemes, which was applicable at that date.

The Commission requests the Spanish authorities to inform the recipient firm forthwith of the initiation of the procedure and the fact that it may have to repay any aid improperly received.

The Commission also informs your Government that it will publish the present letter in the *Official Journal of the European Communities*, giving the other Member States and other interested parties notice to submit their comments. Please note that third parties demonstrating sufficient interest can obtain a copy of this letter. You are therefore invited to inform the Commission, within seven days following notification of this letter, whether you consider that it contains any significantly market-sensitive information which you would wish to see deleted before publication. You should state clearly the specific reasons in each case. If the Commission does not receive a reasoned request within the stipulated period, it will consider that you agree to publication of the full text of this letter. Your request should be sent by registered letter or fax to:

European Commission,
Directorate-General for Competition (DG IV),
State Aid Directorate,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels
Fax No (32-2) 296 98 16.'

The Commission hereby gives the other Member States and interested parties 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 Spanish Government.

STATE AID

C 57/95 (ex NN 67/95)

Germany

(96/C 144/05)

(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 other Member States and interested parties concerning aid provided by Germany for Bestwood E. F. Kynder GmbH**

By the letter reproduced below, the Commission informed the German Government of its decision to initiate the procedure under Article 93 (2) of the EC Treaty:

In January and February 1995 the Commission received complaints concerning state aid granted to Bestwood E. F. Kynder GmbH (Bestwood). This enterprise is located in Mecklenburg-Western Pomerania, one of the new German *Länder*, and, with around 500 employees, is one of the largest producers of chipboard and fibreboard products in Germany. It currently exports about 35 % of its production, in particular to Denmark and Sweden. It was previously State-owned and in 1991 was privatized by the Treuhandanstalt. According to the complainants, Bestwood, after its privatization, received very significant amounts of aid which are not compatible with Article 92 of the EC Treaty.

In response to the Commission's request for information dated 7 February 1995, the German Government listed in a letter of 3 March 1995 all the aid granted to Bestwood since 1991, which amounted to DM 77 million in guarantees and to DM 52 million in grants. The Commission's verifications established that most of the aid had been granted under schemes which had been approved by the Commission. Nevertheless, Bestwood had also received a loan of DM 5 million at an interest rate of 4 % per annum under the Mecklenburg-Western Pomerania consolidation programme, an aid scheme approved by the Commission in 1994 (State aid No 398/94; letter SG(94) 11028 of 1 August 1994). However, it was a condition of approval that loans to enterprises which exceeded the ceiling for small and medium-sized enterprises must be individually notified to the Commission. The loan in question had not been notified.

At the request of the German Government, a bilateral meeting was held on 19 September 1995 to discuss all the problems.

At the meeting the German Government's representatives emphasized that the 1991 attempt to privatize the enterprise had failed; a series of irregularities had occurred in the privatization process and the purchaser was suspected of misusing the aid granted in connection with the privatization; investigations had been started by the public prosecutor.

According to the German Government's representatives, those irregularities had led to continuing financial difficulties for the business since its production process, which relied on obsolete plant, remained inefficient; the purpose of the DM 5 million loan had been to avoid an immediate closure of the enterprise, which was of major economic importance for the whole region, where the rate of unemployment was exceptionally high.

The information provided by the German Government's representatives also indicates that, in December 1994, 75,1 % of the shares in Bestwood were transferred against payment of DM 2 to a company in which NordLB, a wholly State-owned bank, is a shareholder; the transfer of ownership was designed to find a new purchaser for Bestwood as quickly as possible; the former owners would retain a total holding of 24,9 %, which they would, however, be prepared to sell.

The German Government's representatives also emphasized that a restructuring plan was being drawn up on the basis of a study of the enterprise's future profitability and development potential. The study concluded that the enterprise could be profitable provided that it was released from its existing financial obligations, which amounted to some DM 100 million; changes in the product range or an increase in capacity would not be necessary. The Mecklenburg-Western Pomerania Government was already negotiating with interested private parties in Bavaria, Saxony and Denmark, and

would take a final decision by the end of 1995; in addition, it was prepared to assume liability for the DM 100 million of existing debt in the case of a further privatization.

At the meeting it was also stated that NordLB, in return for taking over Bestwood, had been assured of cover of up to DM 25 million by the *Land* of Mecklenburg-Western Pomerania against any contingencies arising as a result of the take-over. That cover has not been called on to date. In response to the doubts raised by the Commission representatives as to the compatibility of this aid with the Community rules on State aid, the German Government's representatives undertook to provide more detailed information, including on the outcome of any subsequent privatization.

By letter of 26 October 1995, the German Government provided this information as regards the DM 25 million contingency cover and confirmed that this had not yet been called on but was necessary to ensure Bestwood's solvency should the Commission decide to initiate the Article 93 (2) procedure in respect of the loan of DM 5 million; it also requested the Commission's approval for the grant of this aid.

The German Government has not disputed that the loan of DM 5 million constitutes aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement since the rate of interest payable, 4 %, is well below that for a similar loan in the private sector.

This aid is capable of distorting competition and affecting trade between Member States. There is appreciable trade in chipboard and fibreboard between Germany and the other Member States of the EU. In 1993 Germany exported 495 851 tonnes of chipboard products valued at ECU 205 million and 89 504 tonnes of fibreboard products worth ECU 42,7 million to the other Member States, while importing 452 433 tonnes of chipboard products worth ECU 102 million and 96 264 tonnes of fibreboard products worth ECU 32,6 million.

Germany's market share of total EU trade is about 25 % for chipboard and about 12 % for fibreboard. Bestwood, with 500 employees, is one of the major chipboard and fibreboard producers in the EU, where the average

number of employees is 40. It is engaged in intra-Community trade, exporting about 35 % of its production, in particular to Denmark and Sweden. It follows that any aid is capable of strengthening Bestwood's position in the common market, to the detriment of competitors not receiving any State aid.

The Commission regrets that your Government has failed to comply with the suspensory effect of Article 93 (3) of the EC Treaty. The aid granted to Bestwood is therefore illegal from a formal standpoint. The Commission also has serious doubts whether any of the exemptions laid down in Article 92 of the EC Treaty are applicable.

Bestwood is located in an area where the standard of living is abnormally low and where there is serious underemployment. Under Article 92 (3) (a) of the EC Treaty, aid to promote the economic development of such areas may be considered to be compatible with the common market. However, in this case there is serious doubt whether the aid actually promotes the economic development of the area since it is intended, if anything, to rescue a firm which is constantly operating on a loss-making basis, instead of promoting investment and creating jobs.

Nor does the aid seem to relate in any way to restructuring measures that might have some chance of securing Bestwood's future viability.

In addition, it appears that the aid does not meet any of the various horizontal Community guidelines on State aid for enterprises.

In particular, it is doubtful whether the Community guidelines on State aid for rescuing and restructuring firms in difficulty are applicable.

Bestwood is indeed a firm in difficulty that is unable to recover on its own. According to the guidelines, however, rescue aid must consist of liquidity aid in the form of loan guarantees or loans bearing normal commercial interest rates. Bestwood's loan of DM 5 million does not satisfy that requirement. An interest rate of 4 % is below the usual market rate, which was 6,62 % in Germany when the loan was granted. Since the German Government has, moreover, failed to provide evidence of a link between the loan and any restructuring which might be undertaken, it appears that the aid is intended primarily to maintain the status quo,

postpone the inevitable and in the meantime transfer Bestwood's attendant industrial and social problems to other, more efficient producers and other Member States.

Likewise, the Community guidelines on state aid for small and medium-sized enterprises (SMEs) do not apply since Bestwood, with its 500 employees, far exceeds the ceiling for SMEs.

There is also reason to suspect that the aid distorts competition. There is overcapacity in the chipboard and fibreboard industries. Production capacity and demand have diverged in the past and it is estimated that the gap will tend to widen since, up to 1997, the annual rate of growth of production is estimated at 2,2 %, compared with growth of only 1,8 % in annual consumption. Competitive pressures in the sector cannot be offset by increased exports since exports from the EU have remained steady in the past and will not rise in the future. On the contrary, they will probably become keener since the existing overcapacity in the Community is likely to be accompanied by mounting imports from eastern European countries benefiting from their trade agreements with the EU. In view of the foregoing considerations, the loan to Bestwood is liable to cause serious harm to its competitors.

The contingency cover of DM 25 million enjoyed by NordLB, which, in the final analysis, is a guarantee from which Bestwood benefits, can also be regarded as aid within the meaning of Article 92 (3) of the EC Treaty and Article 61 (1) of the EEA Agreement. Like the loan of DM 5 million, it is also liable, for the same reasons, to distort competition and trade between Member States.

Nevertheless, the Commission is aware that, unless Bestwood receives bridging aid from the State, it will probably be placed in liquidation before the Commission takes a final decision. In principle, it could therefore approve the contingency cover, provided that it is compatible with the Community guidelines on State aid for rescuing and restructuring firms in difficulty. Under the guidelines, the contingency cover must:

- be in the form of loan guarantees or loans bearing normal commercial interest rates,
 - be restricted to the amount needed to keep Bestwood in business (for example, covering wage and salary costs and routine supplies),
 - be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan.
- Moreover, the rescue aid should be paid in several instalments over the six-month period. The Commission must be informed of the individual payments so that it can verify that only current costs are covered.
- The German Government has not yet shown that the contingency cover satisfies all those requirements; this point must be further looked into and verified as part of the Article 93 (2) procedure.
- The assumption of liability for some DM 100 million by the *Land* of Mecklenburg-Western Pomerania may also constitute aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement if Bestwood is privatized again and transferred to the purchaser released from all financial obligations.
- Commission approval of this aid is conditional on compliance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty. In particular, the aid must:
- be linked to a viable restructuring programme submitted in all relevant detail to the Commission,
 - avoid distortion of competition through increases in capacity, and
 - be limited to the strict minimum necessary for restructuring.
- This case involves a plan which has not been submitted to the Commission and provides for the assumption of liability without any link to restructuring. The plan should have been made available to the Commission so that it could appraise whether the plan guaranteed Bestwood's development potential and whether the aid was kept to a minimum, so that after restructuring Bestwood required no further aid and would be able to be competitive in the market place on its own merits.
- In the light of the foregoing considerations, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of the aid granted to Bestwood in the form of a loan, contingency cover and the possible assumption of liability.
- It hereby gives notice to the German Government to submit within one month of receipt of this letter its comments and all the information which is relevant to appraisal of the forms of aid in question.

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 *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, in which it was stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EC Treaty, may have to be recovered, with interest starting to run on the date of payment of the aid and at a rate identical to that taken at the time as the basis for the reference rate used in calculating the net grant equivalent.

The Commission requests the German authorities to inform the recipient firm without delay of the initiation of the procedure and of the fact that it may have to repay any aid improperly received.

The Commission also informs your Government that it will publish this letter in the *Official Journal of the European Communities*, giving the other Member States, the EFTA Surveillance Authority and other parties concerned notice to submit their comments. You should

also note that interested parties who are able to establish a sufficient interest can receive a copy of this letter. You are therefore requested to notify the Commission within seven days of receipt of this letter whether you consider that it contains sensitive information which you do not wish to be published. In doing so, you should indicate the specific grounds why this is so. If the Commission does not receive a statement to that effect within the above-mentioned period, it will assume that you agree to the publication of this letter in its entirety. Your views should be sent by registered post or fax to:

[...].'

The Commission hereby gives the other Member States and interested parties 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.

These comments will be communicated to the German Government.

STATE AID

C 58/95 (ex NN 72/95)

Germany (Northrhine Westphalia)

(96/C 144/06)

(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 other Member States and interested parties concerning aid which Germany has granted to Gemeinnützige Altstoffverwertung GmbH, a waste management firm

In the letter reproduced below, the Commission informed the German Government of its decision to open the procedure:

'By letters dated 23 March and 6 July 1995 your Government submitted information, at the Commission's request, concerning financial interventions in favour of the company Gemeinnützige Altstoffverwertung GmbH (GAV). The Commission had requested the information further to complaints it had received from competitors of GAV and a federation in the waste management sector. The complainants alleged that aid had been awarded to GAV and that this company had thereby been enabled to establish itself on the market of reusable company waste

and to take away clients from the complainants through aggressive acquisition and pricing.

According to the information which your Government submitted to the Commission, the following funds had been provided to GAV:

— In 1992 GAV received a grant of DM 2,7 million for building a new sorting-hall for recyclable waste which it would collect from companies and offices, in order to sell this as secondary raw material. The grant was awarded by the *Bezirksregierung Köln* on an *ad hoc* basis.

— GAV receives annual grants from the city of Aachen to promote the motivation of its workers (*Zuschuß zu arbeitsmotivierenden Maßnahmen*):

1991: DM 348 000

1992: DM 244 968

1993: DM 179 243

1994: DM 59 621

The Commission has taken note of the opinion of the authorities who awarded these funds, that these do not constitute aid in the meaning of Article 92 (1). They base their opinion on two factors: Firstly, that GAV is not a profit-oriented company but that it serves the general interest. Secondly, that the money provided to GAV only serves to offset additional cost due to its employing, training and supporting young and disadvantaged unemployed. They do on the other hand acknowledge that GAV competes with other companies. They also claim that they monitor GAV and that no aggressive behaviour on the market has taken place.

The Commission also requested and received information on other funds that had allegedly been awarded to GAV. These were awarded as part of general measures in the meaning of Article 101 of the Treaty and hence do not constitute aid.

As set out above, GAV received funds specifically allocated to it from public authorities totalling DM 3 531 832 since 1991. On the basis of the information presently available, the Commission takes the opinion that these funds constitute aid, because they enabled GAV to construct a new sorting-hall and to establish itself on the market for company waste, without having to bear all the cost thereof.

In order to decide whether the aid is likely to distort competition and affect trade within the meaning of Article 92 (1) of the EC Treaty, a distinction should be made between the market for household waste, in which GAV has played its part since 1990 and the market for company waste, in which GAV gradually deployed activities after 1992.

The collection of household waste, including separate collections of recyclable waste, is traditionally the task of municipal authorities. The Commission has previously held⁽¹⁾ that incentives to such collections do not constitute aid, as long as the secondary raw material is made available at market prices.

Collecting, sorting and marketing company waste, which includes packaging waste due to the "dual system", is not part of the usual task of the authorities. Many commercial companies are active in this field and they compete with each other. This can well be cross-border

competition, notably when the beneficiary company is located near the borders to other Member States. Consequently an aid to such a company can well distort competition and affect trade between Member States in the meaning of Article 92 (1) of the EC Treaty.

It should be recalled in this context that the introduction of the "dual system" in Germany led to many complaints from other Member States concerning the effects on their domestic markets for recyclable waste. The Commission investigated the compatibility of this system with the common market, notably with Articles 30, 85, 86, 90 and 92. Because the system is based on an agreement between companies with no financing by the State, the Commission found that no State aid was involved.

GAV is owned by Sozialwerk Aachener Christen e.V. and neither the company nor its owner is profit-oriented. This is of no importance for the assessment of the effects of the aid on trade and on competition, however, if GAV competes with profit-oriented companies on the waste market. The claim that the aid only serves to offset additional cost cannot take away the character of aid either, but this argument should be examined in the context of the eligibility of the aid to one of the derogations set out in Article 92 (3) of the EC Treaty.

The German authorities acknowledge that GAV competes with other companies and do not dispute that these companies have lost orders to GAV. Consequently the aid affects competition. While GAV only collects locally, it tries to sell its products in Belgium as well. The fact that companies across the Dutch and Belgian borders are complaining too, confirms that the management of company waste — notably waste paper and packaging waste — is not restricted to a local market and that aid to this activity affects trade between Member States.

On the basis of the available information, the Commission concludes that the grant of DM 2,7 million and DM 483 832 in annual grants from 1992 on, altogether totalling DM 3 183 832, distort competition and affect trade in the sense of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement. Only the grant of DM 348 000, which was awarded in 1991 when GAV was only involved in household waste, does not fulfil the tests of Article 92 (1).

The Commission regrets that neither the grant of DM 2,7 million, nor the annual grants were notified in advance pursuant to Article 93 (3) of the Treaty and that your Government thus failed to respect its obligations pursuant to the Treaty. The aid has therefore been granted illegally.

⁽¹⁾ Reply to written question 2057/92, OJ No C 47, 18. 2. 1993, p. 14.

Concerning the eligibility of the DM 3 183 832 aid for one of the derogations to the general incompatibility with the common market, the Commission notes that Aachen is not situated in an area eligible to regional aid pursuant to Article 92 (3) (a) or (c).

The only derogation that might apply is the one provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In order to verify whether the aid to GAV is eligible for this derogation, the Commission is of the opinion that one should distinguish between the annual grants and the investment grant of DM 2,7 million.

For the annual grants, the German authorities claim that these only serve to offset the additional cost GAV assumes for taking on, training and supporting young and disadvantaged unemployed. That this task entails additional cost is certainly true and this is also recognized by the complainants: GAV has specialized staff (welfare, education) for dealing with youngsters and those who have difficulties finding a job; the disadvantaged workers. GAV takes on also decreases its overall productivity. GAV is, however, certainly not a company that exclusively employs workers with an objective handicap. Of its 58 workers, 14 have an objective handicap and an additional 29 belong to the group of long-term unemployed.

Differences of opinion exist between the German authorities and the complainants on the question whether the aid in the form of annual grants only serves to offset additional cost, or whether it allows GAV to compete unfairly. The German authorities set out that the contract between Aachen and GAV provides for monitoring of the use of the aid by the *Jugendamt*, by an independent consultant and by the *Rechnungsprüfungsamt*. The competitors allege that GAV is undercutting prices.

The three-tier mechanism of control applied by the German authorities must ensure that the annual grants are not misused.

The German authorities are required to verify and to demonstrate that the annual grants remain limited to what is necessary to compensate such additional social cost, also taking into account any benefits on the basis of general measures. Only then could the Commission conclude that the aid serves to achieve the fifth recommendation of the Council in Essen, namely to concentrate efforts on giving work to those who have the greatest difficulties finding a job, and to achieve this without adversely affecting trading conditions to an extent contrary to the common interest; the derogation in Article 92 (3) (c) could then be considered applicable to the annual grants.

Concerning the investment grant of DM 2,7 million awarded in 1992 for the construction of a new sorting centre, no link at all with additional social cost has been demonstrated by the German authorities. Nor has any other justification been presented to the Commission. The compatibility of this part of the aid with the common market is therefore open to question and the Commission is of the opinion that it must open Article 93 (2) proceedings against this part of the aid as well.

Accordingly, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of the DM 3 183 832 aid awarded illegally to GAV since 1992.

As part of the procedure, the Commission hereby gives your Government the opportunity to present, within one month of being notified of this letter, its comments and any information relevant to the aid.

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, page 3, in which it was stipulated that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EC Treaty, may have to be recovered from the beneficiary, with interest running from the day the aid was paid to it and with an interest rate equal to the reference rate, that is used to calculate the net grant equivalent of aid schemes, which was applicable at that date.

The Commission requests the German authorities to inform the recipient firm without delay of the initiation of the procedure and the fact that it may have to repay any aid improperly received.

The Commission also informs your Government that it will publish the present letter in the *Official Journal of the European Communities* giving the other Member States and other interested parties notice to submit their comments.'

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

European Commission,
DG IV.G.5.
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

These comments will be submitted to the German Government.

STATE AID

C 11/96 (ex N 1/96)

Germany

(96/C 144/07)

(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 other Member States and interested parties concerning the construction of two cruise vessels for the Malaysian company Genting International — Star Cruise**

In the letter reproduced below, the Commission informed the German Government of its decision to initiate the procedure provided for in Article 93 (2):

Pursuant to Article 4 (5) of the Seventh Directive the Commission on 3 January 1996 requested by telex the German authorities to notify any possible aid for the construction of the two vessels referred to above. The Commission at the same time requested information from the Finnish and French authorities.

Subsequently the German authorities by letter of 19 January 1996, EB2 — 875850/4 from *Bundesministerium für Wirtschaft*, which was registered in the Commission on 19 January 1996 notified the Commission of an aid for the construction of two cruise vessels; "Superstar Leo" and "Superstar Virgo".

It appears from the notification that the contract has been concluded in the expectation of benefiting from contract-related production aid. In this respect the German Government has notified the Commission that it plans to support the contract in question in the form of a grant to the German shipyard Meyer representing 6,5 % of the contract value before aid.

A French shipyard offered a bid per vessel at a price below the price of the German yard after aid and a Finnish shipyard offered a price per vessel higher than the price of the German yard after aid. The Finnish bid would have been lower than the German bid if no aid were granted to the German yard. According to the information received from the French and Finnish authorities neither of the bids benefit from any aid.

Firstly, the Commission calls to your attention that Article 4 (5) of the Seventh Directive states that on the basis of a request from any Member State the Commission requires prior notification of the relevant aid proposal and that such proposal may not be implemented before the Commission has given its authorization. By its decision the Commission shall ensure that the planned aid does not affect trading conditions to an extent contrary to the common interest.

As it can be established from the above, two of the competing European Union yards have presented their bids without any aid. The Commission cannot at this stage establish that the aid would not affect trading conditions to an extent contrary to the common interest because without the aid the Finnish bid would have been cheaper (the French bid is cheaper in any circumstance) and it could therefore not be excluded that neither the yard in Finland nor the yard in France would have got the order if the German yard was not benefiting from any aid.

The Commission at this stage therefore cannot exclude with certainty that the aid did reduce the price-difference between the German yard and its competitors to such an extent that the German bid became acceptable for the buyer.

Moreover the German Government informs the Commission that the German yard also has competitors for the contract from outside the European Union.

As regards the competitor from outside the European Union, the German Government states that a Japanese yard (Mitsubishi Heavy Industries) took great effort to penetrate the cruise vessels market. Further the German authorities state that the price offered by the Japanese yard was close to the prices offered from yards within the European Union and the German authorities therefore find that the promotion is necessary in order not to lose the contract to a competitor outside the European Union.

Although the German authorities inform the Commission that there have been attempts from a third party to win the contract, and taken into consideration that it is well known that the European shipbuilding industry is competing with South Korea and Japan who are interested in penetrating the market for cruise vessels and therefore often bid for such contracts at prices competitive to prices offered by European Union yards, the German Government has not provided any specific information on the alleged bid of the Japanese yard e. g., information of the price. On the basis of the present information the Commission can therefore not conclude that the aid was necessary to keep the contract within the Community.

In the Minutes of the Council of Ministers meeting of 22 December 1986 the Commission declared that "in exercising its powers under Article 4 (5) for notification of aid proposals for yards in different Member States competing for the same order, it will, in applying the procedure of Article 93 of the EC Treaty, only permit the lowest aid level unless a higher aid level within the ceiling appears necessary to ensure that the contract remains within the Community and at the same time it will not allow this particular contract to be included in the base for calculating other operating aid under Article 5 (1)".

Thirdly, a letter from the shipowner (Star Cruise), addressed to the German Government, has been transmitted by the German Government to the Commission. In the letter various elements concerning the contract for the construction of the two cruise vessels are reflected.

The letter states that Kvaerner-Masa was ruled out in August 1995 because their pricing was too high — and it is emphasized in the letter from the shipowner that the price of the Finnish yards was — "so high that we would not have placed our order with them even if they would have offered to make a substantial reduction in their price".

Concerning the reasons for choosing to conclude the contract with Meyer-Werft the shipowner states that they were more inclined to accept an offer from Meyer-Werft "if their price was roughly the same as competing offers received from other yards because of their good workmanship and because of the professional way they presented themselves during the early discussions and negotiations for the order". On a visit of the premises of Meyer-Werft the shipowner was particularly impressed by the standards of efficiency and quality demonstrated by Meyer-Werft. The shipowner was also comforted by Meyer-Werft's substantial experience in building ships for the Indonesian Government and felt that Meyer-Werft demonstrated an understanding of Asian culture and a willingness to negotiate in good faith both before the contract was concluded and subsequently in relation to possible later requests to changes in the design and construction of the company's vessels.

[...]

As regards the competition from outside the European Union the shipowner informs that a Japanese yard (Mitsubishi) was kept as fallback position, because it was the shipowner's understanding that the Japanese yard had been offering very competitive bids for the construction of other cruise vessels and that they have expertise in cruise shipbuilding. It is however the judgement of the shipowner that the appreciation of the Japanese Yen had an adverse effect on their pricing in US-Dollars, but that a depreciation of the Yen will make

them very competitive. The shipowner states that they "did not tell the European yards about our decision to keep Mitsubishi as fallback because we had no wish to detract from the competitive nature of the continuing bidding process".

Finally the shipowner informs that if Meyer-Werft is denied the subsidy, Star Cruise will be forced to choose between postponing its order until prices in Europe fall to an appropriate level, or building their first generation ships in the Far East.

Taking into consideration the various elements of the case and having regard to Article 4 (5) of the Seventh Directive, the Commission, at this stage, cannot conclude that the aid notified by the German Government for the contract concerned is compatible with the common market. It has accordingly decided to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of this aid.

Initiation of the procedure provided for in Article 93 (2) of the EC Treaty has suspensory effect and the proposed aid may not be implemented unless and until the Commission approves it. Any recipient of an aid granted illegally, i.e. without the Commission having reached a final decision, may have to refund the aid in accordance with the procedures and provision of the law of the Member State concerned, in particular those relating to arrears of State liabilities, with interest charged on the amount of aid paid to the company concerned from the date of payment at the percentage value of that date of the reference rate used for the calculation of the net grant equivalent of the various types of aid in that Member State.

The Commission hereby gives notice to the German Government to submit its comments within one month of the date of this letter.

Please notice that a copy of the present letter will be sent to the other Member States involved in this case i.e. Finland and France, and that a copy of the letter will be published in the *Official Journal of the European Communities*. Further a copy of the letter will be transmitted to the EFTA Surveillance Authority. [...]

The Commission accordingly requests the other Member States and interested parties 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 Regulation (Euratom, ECSC, EC) amending the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities in respect of equal treatment of men and women⁽¹⁾

(96/C 144/08)

COM(96) 77 final

(Submitted by the Commission pursuant to Article 189a (2) of the EC Treaty on 6 March 1996)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 24 thereof,

Having regard to the proposal from the Commission, made after consulting the Staff Regulations Committee,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Justice,

Having regard to the opinion of the Court of Auditors,

Whereas the principle of equal treatment of men and women should be included among the basic tenets set out in the Staff Regulations and Conditions of Employment applying to the Community's public service, and not only in the matter of recruitment;

Whereas the institutions should be asked to determine, by agreement, positive actions to promote equal opportunities for female and male officials in the areas covered by the Staff Regulations and the Conditions of Employment of Other Servants,

HAS ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of Officials of the European Communities are amended as follows:

1. The following Article 1a is inserted after Article 1:

'Article 1a

1. Officials shall be entitled to equal treatment under these Staff Regulations without reference, direct or indirect, to race, political, philosophical or religious beliefs, sex or sexual orientation without prejudice to the relevant provisions requiring a specific marital status.

2. The institutions shall determine, by agreement, after consulting the Staff Regulations Committee, measures and actions to promote equal opportunities for female and male officials in the areas covered by these Staff Regulations, and shall adopt the appropriate provisions, notably to redress such *de facto* inequalities as hamper opportunities for women in these areas.'

2. The second paragraph of Article 27 is replaced by the following:

'Officials shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.'

Article 2

The Conditions of Employment of Other Servants of the European Communities are amended as follows:

1. The first paragraph of Article 10 is replaced by the following:

'Article 1a, Article 5 (1), (2) and (4) and Article 7 of the Staff Regulations, concerning the classification of posts in categories, services and grades, equal treatment for officials and the assignment of officials to posts, shall apply by analogy.'

⁽¹⁾ OJ No C 104, 15. 4. 1993, p. 13.

2. The second subparagraph of Article 12 (1) is replaced by the following:

‘Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.’

3. The following is added to Article 53:

‘Article 1a of the Staff Regulations, concerning equality of treatment for officials, shall apply by analogy.’

4. Article 83 is replaced by the following:

‘Article 1a, Article 11, the first paragraph of Article 12, Article 14, the first paragraph of Article 16,

Articles 17, 19 and 22, the first and second paragraphs of Article 23 and the second paragraph of Article 25 of the Staff Regulations, concerning the rights and obligations of officials, and Articles 90 and 91 of the Staff Regulations, concerning appeals, shall apply by analogy.’

Article 3

This Regulation shall enter into force on the 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.
