ISSN 0378-6978

Official Journal

of the European Communities

L 62

Volume 45

5 March 2002

English edition

Legislation

Contents

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II *Acts whose publication is not obligatory*

Commission

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 407/2002

of 28 February 2002

laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (hereinafter referred to as 'the Eurodac Regulation') [1], and in particular Article 22(1) thereof,

Whereas:

(1) Article 22(1) of the Eurodac Regulation provides for the Council to adopt the implementing provisions necessary for laying down the procedure referred to in Article 4(7), the procedure for the blocking of data referred to in Article 12(1) and for drawing up the statistics referred to in Article 12(2) of the Eurodac Regulation.

(2) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of this Regulation and is therefore neither bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(a) 'Central Unit' shall mean the unit referred to in Article 1(2)(a) of the Eurodac Regulation;

(b) 'database' shall mean the computerised central database referred to in Article 1(2)(b) of the Eurodac Regulation;

(c) 'comparison' shall mean the procedure of checking whether fingerprint data recorded in the database match those transmitted by a Member State.

[1] OJ L 316, 15.12.2000, p. 1.

Article 2

Transmission

1. Fingerprints shall be digitally processed and transmitted in the data format referred to in Annex I. As far as it is necessary for the efficient operation of the Central Unit, the Central Unit shall establish the technical requirements for transmission of the data format by Member States to the Central Unit and vice versa. The Central Unit shall ensure that the fingerprint data transmitted by the Member States can be compared by the computerised fingerprint recognition system.

2. Member States should transmit the data referred to in Article 5(1) of the Eurodac Regulation electronically. As far as it is necessary for the efficient operation of the Central Unit, the Central Unit shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to the Central Unit and vice versa. Transmission of data in paper form using the form set out in Annex II or by other means of data support (diskettes, CD-ROM or other means of data support which may be developed and generally used in future) should be limited to situations in which there are continuous technical problems.

3. The reference number referred to in Article 5(1)(d) of the Eurodac Regulation shall make it possible to relate data unambiguously to one particular person and to the Member State which is transmitting the data. In addition, it shall make it possible to tell whether such data relate to an asylum seeker or a person referred to in Article 8 or Article 11 of the Eurodac Regulation. The reference number shall begin with the identification letter or letters by which, in accordance with the norm referred to in Annex I, the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person. '1' refers to data relating to asylum seekers, '2' to persons referred to in Article 8 of the Eurodac Regulation and '3' to persons referred to in Article 11 of the Eurodac Regulation. The Central Unit shall establish the technical procedures necessary for Member States to ensure receipt of unambiguous data by the Central Unit.

4. The Central Unit shall confirm receipt of the transmitted data as soon as possible. To this end the Central Unit shall establish the necessary technical requirements to ensure that Member States receive the confirmation receipt if requested.

Article 3

Carrying out comparisons and transmitting results

1. Member States shall ensure the transmission of fingerprint data in an appropriate quality for the purpose of comparison by means of the computerised fingerprint recognition system. As far as it is necessary to ensure that the results of the comparison by the Central Unit reach a very high level of accuracy, the Central Unit shall define the appropriate quality of transmitted fingerprint data. The Central Unit shall, as soon as possible, check the quality of the fingerprint data transmitted. If fingerprint data do not lend themselves to comparison using the computerised fingerprint recognition system, the Central Unit shall, as soon as possible, request the Member State to transmit fingerprint data of the appropriate quality.

2. The Central Unit shall carry out comparisons in the order of arrival of requests. Each request must be dealt with within 24 hours. In the case of data which are transmitted electronically, a Member State may for reasons connected with national law require particularly urgent comparisons to be carried out within one hour. Where these times cannot be respected owing to circumstances which are outside the Central Unit's responsibility, the Central Unit shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as it is necessary for the efficient operation of the Central Unit, the Central Unit shall establish criteria to ensure the priority handling of requests.

3. As far as it is necessary for the efficient operation of the Central Unit, the Central Unit shall establish the operational procedures for the processing of the data received and for transmitting the result of the comparison.

Article 4

Communication between Member States and the Central Unit

Data transmitted from the Member States to the Central Unit and vice versa shall use IDA generic services referred to in Decision No 1719/1999/EC of the European Parliament and of the Council of 12 July 1999 on a series of guidelines, including the identification of projects of common interest, for trans-European networks for the electronic interchange of data between administrations (IDA) [1]. As far as it is necessary for the efficient operation of the Central Unit, the Central Unit shall establish the technical procedures necessary for the use of IDA generic services.

Article 5

Other tasks of the Central Unit

1. The Central Unit shall separate the data on asylum applicants and the data on persons referred to in Article 8 of the Eurodac Regulation which are stored in the database, by appropriate technical means.

2. On the basis of a communication from a Member State, the Central Unit shall give an appropriate distinguishing mark to data on persons who have been recognised and admitted as refugees and shall separate them, by appropriate technical means, from other data recorded in the database. If a decision has been taken in accordance with Article 12(2)(a) of the Eurodac Regulation, the first sentence shall no longer apply. The Central Unit shall remove the existing distinguishing marks and cancel separation of the data.

3. Four years and six months after Eurodac begins its activities, the Central Unit shall draw up statistics in order to indicate:

(a) the number of persons who, having been recognised and admitted as refugees in a Member State, have lodged a further application for asylum in another Member State;

(b) the number of persons who have been recognised and admitted as refugees in more than one Member State;

(c) the Member States in which the refugees have lodged a further application for asylum, with:

— per Member State, the number of applicants for asylum who, having the status of refugee in that State, have applied for asylum in another Member State, and the number of such persons for each of the latter Member States,

— per Member State, the number of applicants for asylum who already have the status of refugee in another Member State, and the number of such persons for each of the latter Member States.

4. The Central Unit shall ensure that, pursuant to Article 4(4) of the Eurodac Regulation, comparisons carried out at the request of a Member State can also cover the data transmitted by that particular Member State at an earlier time.

[1] OJ L 203, 3.8.1999, p. 1.

Article 6

Entry into force

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

2. The Council shall review application of this Regulation within four years following the start of Eurodac's activities.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 28 February 2002.

For the Council

The President

A. ACEBES PANIAGUA

ANNEX I

Data format for the exchange of fingerprint data

The following format is prescribed for the exchange of fingerprint data:
ANSI/NIST — CSL 1 1993
and any future further developments of this standard.

Norm for Member State identification letters

The following ISO norm will apply:
ISO 3166 — 2 letters code.

ANNEX II

Eurodac - Fingerprint form

105 mm from top of form

155 mm from top of form

205 mm from top of form

1.	Reference number	
2.	Place of the application for asylum or place where the alien was apprehended	
3.	Date of the application for asylum or date on which the alien was apprehended	
4.	Sex	
5.	Date on which the fingerprints were taken	
6.	Date on which the data were transmitted to the Central Unit	

ROLLED IMPRESSIONS

1. Right thumb	2. Right forefinger	3. Right middle finger	4. Right ring finger	5. Right little finger
50 mm × 40 mm	40 mm	40 mm	40 mm	40 mm
6. Left thumb	**7. Left forefinger**	**8. Left middle finger**	**9. Left ring finger**	**10. Left little finger**
40 mm				

PLAIN IMPRESSIONS

LEFT HAND Four fingers taken simultaneously — 75 mm × 65 mm

TWO THUMBS Impressions taken simultaneously — 30 mm × 55 mm

LEFT	RIGHT
30 mm	30 mm

RIGHT HAND Four fingers taken simultaneously — 75 mm

COUNCIL REGULATION (EC) No 408/2002

of 28 February 2002

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain zinc oxides originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not Members of the European Community [1], and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1827/2001 [2] ('provisional Regulation'), imposed a provisional anti-dumping duty on imports of certain zinc oxides originating in the People's Republic of China ('PRC').

(2) In addition to the verification visits undertaken at the premises of exporting producers in the PRC, as mentioned in recital 7 of the provisional Regulation, it should be noted that verification visits were also carried out at the premises of a number of related export sales companies, namely:

Guangxi Liuzhou Nonferrous Metals Smelting Import & Export Co. Ltd, Liuzhou,

Rickeed Industries Ltd, Hong Kong,

Yinli Import and Export Co. Ltd, Liuzhou,

as well as at a related domestic company:

Gredmann Guangzhou Ltd, Guangzhou.

B. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 20(1) of Regulation (EC) No 384/96 ('basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written arguments submitted by the parties were considered and, where deemed appropriate, the findings have been changed accordingly.

(7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation are hereby confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) Subsequent to the publication of the provisional Regulation, a number of interested parties claimed that the definition of the product concerned was not correct. They argued that different grades of zinc oxide existed on the market, which, according to their purity, had different properties and applications. As a result, these various grades of zinc oxide could not be considered as a homogenous product. In addition, it was argued that there was insufficient interchangeability between the various grades of zinc oxide. Whilst it was accepted that higher purity grades could theoretically be used in all applications, the same could not be said of lower purity grades because of the level of impurities they contain.

(9) The fact that interchangeability may only be one-way due to different levels of purity between certain of the grades is not considered to be sufficient evidence in itself that the same grades constitute different products which should be treated separately for the purposes of the investigation. On the contrary, the fact that high purity grades can be used in all the various applications of zinc oxide demonstrates that all the grades can be considered as one product. If certain users accept a higher content of impurities this is mostly on the basis of price considerations.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 248, 18.9.2001, p. 17.

(10) Therefore, the comments made by the interested parties are not in any way sufficient to lead to a change of earlier findings, as set out in recital 11 of the provisional Regulation, that all grades of the product concerned should be considered as a single product.

(11) The findings, as set out in recitals 9 to 11 of the provisional Regulation, with regard to the product concerned are hereby confirmed.

2. **Like product**

(12) Certain interested parties claimed that producers of zinc oxide in the Community and the PRC used dissimilar production processes that gave zinc oxide produced in the PRC significant cost advantages in terms of raw material and other costs. They suggested that Chinese producers mainly used the 'direct' or American process while Community producers almost exclusively used the 'indirect' or French process. The direct process is so called because it produces zinc oxide directly from oxidised zinc materials. It was claimed that these raw materials were cheaper than the refined zinc metal and other zinc residues that are used in the indirect process.

(13) In the first instance, the question concerning the different production processes is not considered relevant in the current investigation as zinc oxides produced by either process share the same basic chemical characteristics (ZnO) and properties. Furthermore, a significant proportion of the sales made by the Community industry is obtained from the direct process and the costs related to both processes have been taken into account in the investigation.

(14) No new elements were brought to the attention of the Commission to lead it to alter the conclusions reached at the provisional stage, namely that the zinc oxide produced and sold by Community producers and that produced in the PRC and exported to the Community are a like product.

(15) The provisional findings concerning the like product as set out in recitals 12 to 14 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

1. **Market economy treatment**

(16) Some Chinese producers questioned the consistency between granting market economy treatment ('MET') (recital 18 of the provisional Regulation) and the subsequent refusal by the Commission to use prices paid by the company in question for the zinc raw material (recital 47 of the provisional Regulation). According to these companies MET should not have been granted given that the Commission found that the zinc raw material prices, the main cost element, did not reflect market values within the meaning of Article 2(7)(c) of the basic Regulation.

(17) During the second and more detailed on-site investigation, by which the reply to the exporters' questionnaire was verified and after MET had been granted, the Commission found that certain cost elements, i.e. the prices paid for the zinc raw material, were unreliable. The Commission, therefore, adjusted the costs by basing them on zinc quotations as quoted on the London Metal Exchange ('LME'). It is normal practice to adjust costs if it appears that they are not accurate, reliable or in line with normal market conditions. The claim is therefore rejected and the findings in recitals 15 to 24 of the provisional Regulation are hereby confirmed.

2. **Individual treatment**

(18) In the absence of any comments under this heading, the provisional findings, as set out in recitals 25 to 27 of the provisional Regulation, are hereby confirmed.

3. **Normal value**

Determination of normal value for exporting producers not granted MET

Selection of the analogue country

(19) The Community zinc oxide users contested the choice of the United States of America ('USA') as an appropriate analogue country for the purpose of establishing normal value, arguing that costs in the PRC and the USA are different. This particular issue was already dealt with in detail in recitals 28 to 36 of the provisional Regulation and is hereby confirmed.

(20) In the absence of any new comments under this heading, the provisional findings, as set out in recitals 37 to 39 of the provisional Regulation, are hereby confirmed.

Determination of normal value for exporting producers granted MET

(21) The 'users', as well as some of the Chinese producers, claimed that the Chinese zinc raw material prices were determined by the Chinese market and should, therefore, be considered without making adjustments in accordance with the LME zinc quotations. As explained in recitals 46 and 47 of the provisional Regulation, the prices for supply and demand of zinc or zinc-related products in market economy countries worldwide are based on LME zinc quotations. Furthermore, it should be noted that when selling or purchasing zinc concentrate on the international market, Chinese companies use the LME as reference like any other operator. For reasons of reliability of costs, the Chinese prices for zinc raw materials had to be adjusted as these costs did not fully reflect the impact of LME zinc quotations. The claims have, therefore, to be rejected and the methodology used for the adjustment of zinc raw material prices through LME zinc quotations is hereby confirmed.

(22) After the publication of the provisional Regulation, one of the Chinese producers requested that the abovementioned adjustment to the zinc raw material cost be made to the price of zinc concentrates rather than to the price of zinc calcine on the grounds that its production process began with zinc concentrates. This issue was re-examined and it was found that the producer in question did indeed purchase zinc concentrates but subcontracted the production of the next stage of production, i.e. the production of zinc calcine from zinc concentrates, to a third party. The investigation also revealed that the company produced at least in part from zinc calcine it had purchased on the Chinese market and that had to be adjusted as outlined above. In view of the concern to arrive at a market value for the raw materials and given that the company in question's own production process actually began with zinc calcine, the company's claim could not be accepted and the methodology described in the provisional Regulation had to be confirmed.

(23) Another Chinese producer claimed that in constructing its normal value, the figure for selling, general and administrative expenses ('SG & A') was incorrect and submitted information in support of this claim. It was found that the claim was justified and the figures were corrected accordingly.

(24) One company claimed that the SG & A for domestic sales of all products should be used instead of the specific SG & A for domestic sales of the product concerned. This claim could not be accepted. The purpose of constructing a normal value is to calculate a surrogate for the domestic price of the like product. The SG & A used in this calculation should thus relate to the production and sales of the like product on the domestic market of the country of origin, as provided for in Article 2(6) of the basic Regulation. The company's claim had therefore to be rejected and the initial findings are hereby confirmed.

(25) The Chinese producers which were granted MET claimed that the profit made by sales of by-products generated from the manufacture of zinc calcine and/or zinc oxide should be deducted from the manufacturing costs of zinc oxide. However the investigation revealed that the companies treated by-products separately in their accounts. The profit on these by-products fluctuated substantially in time and was shown separately as extraordinary income in their accounts. The companies never considered any return on the sales of by-products as a credit towards the cost of zinc oxide. This approach was also followed for the purposes of the provisional findings. The claim has consequently been rejected and the provisional findings are hereby confirmed.

(26) Moreover, they also claimed that in order to establish the level of profit in the calculation of the constructed normal value, the Commission should refer to the Community producers' profit instead of referring to the profit made by the producer in the analogue country. Article 2(7)(a) of the basic Regulation provides that the normal value is determined on the basis of the price or constructed value in a market economy third country, in this case the USA. Other methods of establishing normal value are only considered when the relevant analogue country data are not available. The use of the Community producers' profit margin should therefore be rejected.

(27) One Chinese producer claimed that direct selling expenses, relating to exports only, were included in the SG & A expenses relating to domestic sales. This claim was substantiated and found to be justified. The calculations have consequently been corrected.

(28) Concerning the methodology described in recitals 40 to 47 of the provisional Regulation, these findings are hereby confirmed.

4. **Export prices**

(29) One Chinese producer claimed that in the calculation of export prices certain expenses had been deducted twice. The claim was verified and accepted and a correction was made accordingly.

(30) In the absence of any other comments under this heading, the provisional findings, as set out in recital 48 of the provisional Regulation, are hereby confirmed.

5. **Comparison**

(31) In the absence of any comments under this heading, the provisional findings, as set out in recitals 49 and 50 of the provisional Regulation, are hereby confirmed.

6. **Dumping margins**

For the cooperating exporting producers granted MET and individual treatment ('IT')

(32) One Chinese producer claimed that its dumping calculation should be based on sales and/or costs of own produced products, both for normal value and for exports, and that the volume of the zinc oxide purchased from other producers should be excluded from the cost calculations. This claim was verified in more detail and it was possible to isolate the transactions in question. The argument was consequently accepted and a new calculation has been made limited to the sales and/or costs of zinc oxide produced by the company itself.

(33) The definitive weighted average dumping margins expressed as a percentage of the cif (cost, insurance, freight) Community price duty unpaid for the product produced by the following manufacturers are:

Liuzhou Nonferrous Metals Smelting Co. Ltd	6,9 %
Liuzhou Fuxin Chemical Industry Co. Ltd	11,0 %
Gredmann Guigang Chemical Ltd	19,3 %
Liuzhou Longcheng Chemical General Plant	64,5 %

For all other exporting producers

(34) The level of dumping provisionally established at 69,8 % of the cif Community frontier price is hereby confirmed.

E. **COMMUNITY INDUSTRY**

(35) Certain parties claimed that on the basis of recital 57 of the provisional Regulation, it appeared that 15 out of 21 zinc oxide producers in the Community did not cooperate in the investigation. It was therefore suggested that the complaint did not meet the requirements of Article 5(4) of the basic Regulation. It should be recalled that the six producers who did cooperate in the investigation represented a major part of Community zinc oxide production in the investigation period, 1 January to 31 December 2000 ('IP'), in this case, more than 75 % of the production of the 21 known companies, thereby satisfying the requirements of Article 5(4). In the absence of any new information submitted with respect to the definition of the Community industry, the findings as set out in recitals 57 to 59 of the provisional Regulation are hereby confirmed.

F. **INJURY**

1. **Preliminary remarks**

(36) In the absence of any arguments to the contrary, the methodology used for establishing the level of imports of the product concerned into the Community as set out in recital 60 of the provisional Regulation and that used to determine Community consumption of zinc oxide (recitals 62 and 63) is hereby confirmed.

2. **Situation of the Community industry**

(37) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all relevant factors and indices having a bearing on the state of the Community industry.

(38) Certain interested parties questioned the Commission's conclusions on injury. They argued that certain information relating to the operating performance of the Community industry, such as production, production capacity and utilisation levels, contained in the non-confidential version of the complaint and the replies to the Commission's questionnaires showed either increasing or stable trends. One interested party also claimed that the Commission's findings were erroneous, as the data used in recital 82 of the provisional Regulation concerning cash flow were incomplete. The same interested parties also pointed to the fact that some of the parent companies of the entities forming the Community industry recorded substantial profits in the IP and that as such the Community industry did not suffer material injury within the meaning of Article 3 of the basic Regulation.

(39) These arguments could not be accepted. In the first instance, these interested parties based their claims on partial information concerning only certain members of the Community industry. They did not take into account the results of the Commission's investigation as set out in recitals 72 to 89 of the provisional Regulation that represent the overall situation of the Community industry. Secondly, it is to be recalled that the current investigation is limited in scope to the product concerned as defined in recital 9 of the provisional Regulation. Whilst it is true that the parent companies of certain members of the Community industry recorded profits during the IP, the overall level of profitability for their zinc oxide activities in the Community was negative in this period as set out in recital 77 of the provisional Regulation.

(40) As regards the cash flow information detailed in recital 82 of the provisional Regulation, it is acknowledged that some entities forming the Community industry were not able to supply detailed information concerning their zinc oxide activities. However, the entities which were able to do so, and whose verified information was used by the Commission to arrive at their provisional findings, accounted for over 80 % of the production of the Community industry in the IP. The verified data were therefore considered to be representative of the situation of the Community industry as a whole.

3. **Developments occurring before and after the IP**

(41) A number of interested parties, in particular users of the product concerned, asked the Commission to broaden the scope of their analysis and take into account developments occurring both before the beginning of the analysis period (1 January 1996 to 31 December 2000) and after the end of the IP. They argued that the years 1993, 1994 and 1995 should be considered in order to have a better appreciation of the market. They also claimed that Community producers were taking advantage of falling zinc metal prices after the IP to increase their margins and that, as such, the imposition of measures was unwarranted.

(42) It should be recalled that Article 6(1) of the basic Regulation provides that information relating to a period after the IP should, normally, not be taken into account. The information provided by the interested parties concerning events occurring after the IP, consisting principally of references to the fall in the zinc quotation on the LME, did not give any basis on which it could be said that the findings reached in the investigation were no longer valid. Indeed, the investigation established that under normal market conditions, the prices in zinc oxide market followed the evolution of raw material prices and mostly the LME zinc quotation. Fluctuations in prices and costs in the zinc oxide business were therefore linked to the LME quotation and developments which occurred after the IP were simply a manifestation of the normal functioning of the market and it could not be said that there had been any change of a structural nature in the market which made it manifestly unsuitable to base findings on data relating to the IP. The request to take events occurring after the IP into account is therefore rejected.

(43) Similarly, it should be recalled that the findings regarding injury were established on the basis of information relating to the IP. The purpose of presenting data relating to earlier years is to better understand the IP and place it in context by showing the development of trends. It is considered that the presentation of data relating to the four years preceding the IP (1996 to 1999) is sufficient for this purpose. The claim to widen the analysis period to include 1993, 1994 and 1995 is therefore rejected.

4. **Conclusion on injury**

(44) Given that no other arguments were received regarding the injury suffered by the Community industry, the conclusion that it has suffered material injury within the meaning of Article 3 of the basic Regulation, as detailed in recitals 72 to 89 of the provisional Regulation, is hereby confirmed.

G. **CAUSATION**

1. **General comments on the Commission's conclusions regarding causality**

(45) One interested party argued that the alleged injury suffered by the Community industry was the result of factors other than the imports concerned although these other factors were not specified. It was claimed that the Community industry had managed to maintain its production levels and raise its prices during the analysis period in spite of the dumped imports. Another interested party argued that the provisional Regulation failed to take proper account of the depreciation of the euro against the US dollar in the second half of the analysis period and that this factor, rather than the imports from the PRC, was responsible for the injury suffered by the Community industry.

(46) In view of the fact that the first interested party gave no other factors which it considered could be responsible for the injury suffered by the Community industry, this claim adds nothing new to the investigation and should therefore be rejected.

(47) With regard to the issue of the depreciation of the euro against the dollar raised by the other interested party, it was accepted in recital 61 of the provisional Regulation that this may have magnified the increase in the cost of zinc as a raw material. This could have had an adverse effect on the financial performance of certain Community producers as the LME quotation is made in dollars whereas the majority of their sales are made in euro. However, it is to be recalled that, at this same time, the Community industry was, to a certain degree, able to increase its selling prices to reflect the increase in its cost of production. The fact that this increase did not fully reflect the increase in the cost of zinc as quoted on the LME shows the price suppressing effect of the dumped imports on the selling prices of the Community industry during the IP. Indeed, in the IP, the volume of imports from the PRC reached record levels and obtained a market share of 18,4 % as their prices significantly undercut those of the Community industry. It is also noted that imports from other third countries decreased during the analysis period and had a market share of 7,3 % in the IP. It is not unreasonable to conclude that without the dumped imports, the Community industry could have fully, or almost fully, passed on the increased costs. The claim that the dumped imports were not responsible for the injury suffered by the Community industry is therefore rejected.

(48) In view of the above considerations and given that no other valid arguments were received regarding the possible cause of the injury suffered by the Community industry, it is hereby confirmed that the dumped imports of zinc oxide originating in the PRC caused injury to the Community industry.

H. COMMUNITY INTEREST

(49) Following the publication of the provisional Regulation, the Commission received a large number of letters with identical texts from users of zinc oxide in the Spanish ceramic tile industry, principally the manufactures of frits, enamels and glazes and the producers of ceramic tiles. Many of these companies had not previously made themselves known to the Commission or cooperated in the investigation although it is to be recalled that their respective trade associations had made representations.

(50) These users raised a number of points concerning the definition of the product concerned, the choice of the analogue country and the financial performance of the Community industry, which have already been addressed above.

(51) Their comments on the Community interest aspects of the investigation can be summarised into two main areas. The first area concerns the loss of competitiveness that an increase in the cost of zinc oxide would have on their financial performance and the consequences for continued investment in manufacturing frits and ceramic tiles in the Community. The second area concerns the manner in which the Commission took account of the balance of interests of the various interested parties when making its assessment of the overall Community interest. They argued that the Commission had unfairly focussed on the relatively small number of job losses in the Community industry during the analysis period and had failed to reflect the thousands of jobs that had been created in the ceramic industry during the same period. However, no evidence was submitted in support of the aforementioned allegations.

(52) The representations received from these interested parties, both after the publication of the provisional Regulation and following disclosure of the essential facts and considerations on which it was proposed to impose definitive anti-dumping duties, did not add any new elements or evidence that had not already been taken into account. Consequently, the conclusion that there are no compelling reasons not to impose measures, as set out in recital 151 of the provisional Regulation, is hereby confirmed.

I. ANTI-DUMPING MEASURES

1. Injury elimination level

(53) A number of interested parties claimed that the Commission did not make a fair price comparison between the zinc oxide originating in the PRC and that produced by the Community industry since most of the Chinese oxide was produced with the American process and was of a low quality.

(54) This argument is not correct. Indeed, a comparison of sales prices on the Community market during the IP was made between prices of the Community industry and those of the cooperating exporting producers on the basis of comparable grades and level of trade (prices to independent dealers/importers). Such a fair comparison was made both for the purposes of establishing the injury margin and for the undercutting calculation.

(55) These comparisons, between the zinc oxide produced by the Community industry and that exported to the Community by the Chinese exporting producers, were made on the basis of the same range of zinc oxide (i.e. a zinc oxide produced by the direct process with a zinc oxide content between 95 % and 99,8 %).

(56) In the absence of any other claim, the methodology for calculating the injury margins as set out in recitals 154 and 155 of the provisional Regulation is hereby confirmed.

(57) As regards the determination of the non-injurious price, it was found that certain products of one Community producer were wrongly classified, in the cost-of-production table, in a high quality grade and these were appropriately reclassified. This had the effect of slightly lowering the non-injurious price and margins previously found.

2. Form and level of the duties

(58) Three of the four cooperating exporting producers in China exported their manufactured products either directly or via their respective related trading companies. However, the investigation revealed that the related trading companies also exported zinc oxide which they had purchased from producers which did not cooperate in the investigation. Only the zinc oxide products manufactured by the producing companies can benefit from the specific dumping margin calculated for each producer concerned. The fourth producer sold part of its production to another producer involved in the proceeding. Furthermore given the substantial level of non-cooperation (35 %) and the fact that the non-cooperating producers also exported via the same related traders, it is exceptionally considered that special provisions are needed in this case to ensure the proper application of the anti-dumping duty.

(59) These special provisions include the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to the Regulation. Only

imports accompanied by such an invoice shall be declared under the applicable Taric additional codes of the producer in question. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters. The companies concerned have also been invited to submit regular reports to the Commission in order to ensure a proper follow up of their sales of zinc oxide to the Community. In cases where reports are not submitted, or where the reports disclose that the measures are not adequate to eliminate the effects of injurious dumping, it may be necessary to initiate an interim review in accordance with Article 11(3) of the basic Regulation.

(60) The corrections made to the dumping and injury margins had no effect on the application of the lesser duty rule and therefore the methodology used for establishing the anti-dumping duty rates as described in recitals 156 to 159 of the provisional Regulation is hereby confirmed.

3. **Definitive collection of provisional duties and other provisions**

(61) In view of the magnitude of the dumping found for the exporting producers, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties shall be collected at the rate of the duty definitively imposed. As the definitive duties are lower than the provisional duties, the amounts secured in excess of that level should be released.

(62) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of zinc oxide (chemical formula: ZnO) with a purity of not less than 93 % zinc oxide, falling within CN code ex 2817 00 00 (TARIC code 2817 00 00 11) and originating in the People's Republic of China.

2. The rate of definitive anti-dumping duty applicable, before duty, to the net, free-at-Community frontier price of the products manufactured by the following companies, shall be as follows, provided that they are imported in conformity with paragraph 3:

Company	Definitive duty (%)	TARIC additional code
Liuzhou Nonferrous Metals Smelting Co. Ltd 17 Baiyun Road, Liuzhou City, 545006 Guangxi Province, China	6,9	A277
Liuzhou Fuxin Chemical Industry Co. Ltd 16-90 Xihuan Road, Liuzhou, 545007 Guangxi Province, China	11,0	A278
Gredmann Guigang Chemical Ltd Development Zone for Enterprises with Foreign Investment (Batang Maijiupo) Guigang City, 537100 Guangxi Province, China	19,3	A279
Liuzhou Longcheng Chemical General Plant Luowei Horticultural Farm, Liuzhou Guangxi Province, China	26,3	A280
All other companies	28,0	A999

3. The application of the individual duty rates specified for the four companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 1827/2001 shall be definitively collected at the rate of the duties definitively imposed. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

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.

Done at Brussels, 28 February 2002.

For the Council

The President

A. ACEBES PANIAGUA

ANNEX

The valid commercial invoice must include a signed declaration in the following format:

the name of the official of the company which has issued the commercial invoice and the following signed declaration:

'I, the undersigned, certify that the goods sold for export to the European Community and covered by this invoice:

1. were manufactured by [company name and address];
2. have a zinc oxide content of (precise %);
3. have a volume of (tonnes).

I declare that the information provided in this invoice is complete and correct.'

COMMISSION REGULATION (EC) No 409/2002

of 4 March 2002

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 March 2002.

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

Done at Brussels, 4 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 4 March 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	170,0
	204	153,6
	212	156,5
	624	203,0
	999	170,8
0707 00 05	052	175,4
	068	107,1
	204	88,4
	624	135,7
	999	126,7
0709 90 70	052	139,4
	204	65,8
	999	102,6
0805 10 10, 0805 10 30, 0805 10 50	052	53,3
	204	47,5
	212	49,3
	220	52,2
	421	29,6
	600	48,8
	624	70,0
	999	50,1
0805 50 10	052	43,7
	600	50,5
	999	47,1
0808 10 20, 0808 10 50, 0808 10 90	060	41,6
	388	111,3
	400	111,6
	404	103,5
	508	90,8
	512	102,6
	524	83,8
	528	86,0
	720	117,7
	728	125,5
	999	97,4
0808 20 50	388	93,3
	400	107,7
	512	79,8
	528	79,6
	720	116,7
	999	95,4

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 410/2002

of 27 February 2002

amending Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community [1], as last amended by European Parliament and Council Regulation (EC) No 1386/2001 [2], and in particular Article 122 thereof,

Whereas:

(1) Certain Member States or their competent authorities have requested modifications of the Annexes to Regulation (EEC) No 574/72.

(2) These amendments derive from decisions taken by the Member State or Member States concerned or their competent authorities which are responsible for the implementation of social security legislation according to Community law.

(3) The unanimous opinion of the Administrative Commission on Social Security for Migrant Workers has been obtained,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes 1 to 6 and Annexes 9 to 10 to Regulation (EEC) No 574/72 are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th 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.

Done at Brussels, 27 February 2002.

For the Commission

Anna DIAMANTOPOULOU

Member of the Commission

[1] OJ L 74, 27.3.1972, p. 1.
[2] OJ L 187, 10.7.2001, p. 1.

ANNEX

1. Annex 1 is amended as follows:

(a) Section 'K. AUSTRIA' is replaced by the following:

'1. Bundesminister für soziale Sicherheit und Generationen (Federal Minister for Social Security and Generations), Vienna

2. Bundesminister für Wirtschaft und Arbeit (Federal Minister for Economic Affairs and Labour), Vienna

3. Special schemes for civil servants: Bundesminister für öffentliche Leistung und Sport (Federal Minister for Public Administration and Sport), Vienna, or the provincial government concerned'

(b) Section 'L. PORTUGAL' is amended as follows:

(i) Point 1 is replaced by the following:

'1. Ministro do Trabalho e da Solidariedade (Minister for Labour and Solidarity), Lisbon'

(ii) Point 3 is replaced by the following:

'3. Secretário Regional dos Assuntos Sociais da Região Autónoma da Madeira (Regional Secretary for Social Affairs of the Autonomous Region of Madeira), Funchal'

(iii) Point 4 is replaced by the following:

'4. Secretário Regional dos Assuntos Sociais da Região Autónoma dos Açores (Regional Secretary for Social Affairs of the Autonomous Region of the Azores), Angra do Heroísmo'

(iv) Point 6 is replaced by the following:

'6. Ministro da Reforma do Estado e da Administração Pública (Minister for Reform of Government and Public Administration), Lisbon'

2. Annex 2 is amended as follows:

(a) Section 'K. AUSTRIA' is amended as follows:

Point 2(b) is replaced by the following:

'(b) For application of Article 45(6) of the Regulation, if no contribution period has been completed in Austria, and for taking into account periods of military and civilian service and periods of child-raising not preceded or succeeded by a period of insurance in Austria	Pensionsversicherungsanstalt der Angestellten (Employed Persons Pension Insurance Institution), Vienna'

(b) Section 'L. PORTUGAL' is amended as follows:

Heading 'A. IN GENERAL' is amended as follows:

(i) Point I(1) is replaced by the following:

'1. Sickness, maternity and family benefits:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) to which the person concerned is affiliated'

(ii) Point I(2) is replaced by the following:

'2. Invalidity, old age and death:	Instituto de Solidariedade e Segurança Social: Centro Nacional de Pensões, Lisboa, e Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: National Pensions Centre, Lisbon, and District Centre of Solidarity and Social Security) to which the person concerned is affiliated'

(iii) Point I(4)(b) is replaced by the following:

'(b) grant and payment of unemployment benefits (e.g. verification of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) to which the person concerned is affiliated'

(iv) Point I(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) where the person concerned resides'

(v) Point II(1) is replaced by the following:

'1. Sickness, maternity and family benefits:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(vi) Point II(2) is replaced by the following:

'2. (a) Invalidity, old age and death:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal
(b) invalidity, old age and death under the special social security scheme for agricultural workers:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(vii) Point II(4) is replaced by the following:

'(a) reception of the application and verification of the employment situation (e.g. confirmation of the periods of employment, classification of unemployment, checks on the situation):	Instituto Regional de Emprego: Centro Regional de Emprego (Regional Institute of Employment: Regional Employment Centre), Funchal
(b) grant and payment of unemployment benefits (e.g. verification of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Centro de Segurança Social da Madeira (Social Centre of Madeira), Funchal'

(viii) Point II(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(ix) Point III(1) is replaced by the following:

'1. Sicknes, maternity and family benefits:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) to which the person concerned is affiliated'

(x) Point III(2) is replaced by the following:

'2. (a) Invalidity, old age and death:	Instituto de Gestão de Regimes de Segurança Social: Centro Coordenador de Prestações Diferidas (Institute for the Management of Social Security Schemes: Coordinating Centre for Deferred Benefits), Angra do Heroísmo
(b) invalidity, old age and death under the special social security scheme for agricultural workers:	Instituto de Gestão de Regimes de Segurança Social: Centro Coordenador de Prestações Diferidas (Institute for the Management of Social Security Schemes: Coordinating Centre for Deferred Benefits), Angra do Heroísmo'

(xi) Point III(4) is replaced by the following:

'(a) reception of the application and verification of the employment situation (e.g. confirmation of the periods of employment, classification of unemployment, checks on the situation):	Agência para a Qualificação e Emprego (Agency for Qualification and Employment) where the person concerned resides
(b) grant and payment of unemployment benefits (e.g. verifcation of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Centro de Prestações Pecuniárias (Centre for Cash Benefits) to which the person concerned is affiliated'

(xii) Point III(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) where the person concerned resides'.

3. Annex 3 is amended as follows:

(a) Section 'K. AUSTRIA' is amended as follows:

(i) Point 1(b) is replaced by the following:

'(b) In all other cases:	(i) the Gebietskrankenkasse (Regional Fund for Sickness Insurance) competent for the place of residence or place of stay of the person concerned, unless otherwise stated in the following subparagraphs (ii) in the case of tratment in a hospital for which a regional fund is responsible, the regional fund (Landesfonds) competent for the place of residence or place of stay of the person concerned (iii) in the case of treatment in another hospital covered by the agreement between the Hauptverband der österreichischen Sozialversicherungsträger (Main Association of Austrian Social Insurance Institutions) and the Wirtschaftskammer Österreich (Austrian Chamber of Commerce) applying on 31 December 2000, the fund established for these hospitals (iv) in the case of in vitro fertilisation, the Fonds zur Mitfinanzierung der In-vitro-Fertilisation (In Vitro Fertilisation Cofinancing Fund), Vienna'

(ii) Point 3(a) is replaced by the following:

'(a) Benefits in kind:	(i) the Gebietskrankenkasse (Regional Fund for Sickness Insurance) competent for the place of residence or place of stay of the person concerned, unless otherwise stated in the following subparagraphs (ii) in the case of treatment in a hospital for which a Landesfonds (regional fund) is responsible, the Landesfonds competent for the place of residence or place of stay of the person concerned (iii) in the case of treatment in another hospital covered by the agreement between the Hauptverband der österreichischen Sozialversicherungsträger (Main Association of Austrian Social Insurance ;Institutions) and the Wirtschaftskammer Österreich (Austrian Chamber of Commerce) applying on 31 December 2000, the fund established for these hospitals

(iv) the Allgemeine Unfallversicherungsanstalt (General Accident Insurance Institution), Vienna, which may grant benefits in all cases'	

(b) Section 'L. PORTUGAL' is amended as follows:

(i) Point I(1) is replaced by the following:

'1. Sickness, maternity and family benefis (for sickness and maternity benefits in kind see also Annex 10):	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) of the place of residence or place of stay of the person concerned'

(ii) Point I(2) is replaced by the following:

'2. Invalidity, old age and death:	Instituto de Solidariedade e Segurança Social: Centro Nacional de Pensões, Lisboa, e Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: National Pensions Centre, Lisbon, and District Centre of Solidarity and Social Security) of the place of residence or place of stay of the person concerned'

(iii) Point I(4)(b) is replaced by the following:

'(b) grant and payment of unemployment benefits (e.g. verification of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) at the place of residence of the person concerned'

(iv) Point I(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) at the place of residence of the person concerned'

(v) Point II(1) is replaced by the following:

'1. Sickness, maternity and family benefits (for sickness and maternity benefits in kind see also Annex 10):	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(vi) Point II(2) is replaced by the following:

'2. (a) Invalidity, old age and death:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal
(b) invalidity, old age and death under the special social security scheme for agricultural workers:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(vii) Point II(4) is replaced by the following:

'(a) reception of the application and verification of the employment situation (e.g. confirmation of the periods of employment, classification of unemployment, checks on the situation):	Instituto Regional de Emprego: Centro Regional de Emprego (Regional Institute of Employment: Regional Employment Centre), Funchal
(b) grant and payment of unemployment benefits (e.g. verification of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(viii) Point II(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(ix) Point III(1) is replaced by the following:

'1. Sickness, maternity and family benefits (for sickness and maternity benefits in kind see also Annex 10):	Instituto de Gestão dos Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) of the place of residence or place of stay of the person concerned'

(x) Point III(2) is replaced by the following:

'2. (a) Invalidity, old age and death:	Instituto de Gestão de Regimes de Segurança Social: Centro Coordenador de Prestações Diferidas (Institute for the Management of Social Security Schemes: Coordinating Centre for Deferred Benefits), Angra do Heroísmo
(b) invalidity, old age and death under the special social security scheme for agricultural workers:	Instituto de Gestão de Regimes de Segurança Social: Centro Coordenador de Prestações Diferidas (Institute for the Management of Social Security Schemes: Coordinating Centre for Deferred Benefits), Angra do Heroísmo'

(xi) Point III(4) is replaced by the following:

'(a) reception of the application and verification of the employment situation (e.g. confirmation of the periods of employment classification of unemployment, checks on the situation):	Agência para a Qualificação e Emprego (Agency for Qualification and Employment) where the person concerned resides
(b) grant and payment of unemployment benefits (e.g. verification of the conditions for eligibility to benefits, fixing the amount and duration, checks on the situation for maintaining, suspending or terminating payment):	Centro de Prestações Pecuniárias (Centre for Cash Benefits) of the place of residence of the person concerned'

(xii) Point III(5) is replaced by the following:

'5. Benefits from a non-contributory social security scheme:	Instituto de Gestão dos Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) of the place of residence of the person concerned'.

4. Annex 4 is amended as follows:

(a) Section 'J. NETHERLANDS' is amended as follows:

Point 1(a) is replaced by the following:

'(a) benefits in kind:	College voor zorgverzekeringen (Care Insurance Board), Amstelveen'

(b) Section 'K. AUSTRIA' is amended as follows:

Point 3 is replaced by the following:

'(a) Family benefits with the exception of Karenzgeld (parental leave allowance):	Bundesministerium für soziale Sicherheit und Generationen (Federal Ministry of Social Security and Generations), Vienna
(b) Karenzgeld (parental leave allowance):	Bundesministerium für Wirtschaft und Arbeit (Federal Ministry of Economic Affairs and Labour), Vienna'.

5. Annex 5 is amended as follows:

(a) Heading '28. GERMANY-SPAIN' is replaced by the following:

'Does not apply'

(b) Under heading '32. GERMANY-ITALY' the following part (d) is added:

'(d) Agreement of 3 April 2000 on the collection and recovery of social security contributions'

(c) Heading '35. GERMANY-AUSTRIA' is replaced by the following:

'(a) Section II, Number 1, and Section III of the Agreement of 2 August 1979 on the implementation of the Convention on unemployment insurance of 19 July 1978

(b) Agreement of 21 April 1999 on the refund of costs in the field of social security'

(d) Heading '36. GERMANY-PORTUGAL' is replaced by the following:

'Convention of 10 February 1998 on the refund of costs for sickness benefits in kind'

(e) Heading '71. IRELAND-AUSTRIA' is replaced by the following:

'Agreement of 25 April 2000 on the refund of costs in the field of social security'

(f) Heading '74. IRELAND-SWEDEN' is replaced by the following:

'Agreement of 8 November 2000 on the waiving of reimbursement of the costs of benefits in kind of sickness, maternity, accidents at work and occupational diseases, and the costs of administrative and medical controls'

(g) Heading '92. NETHERLANDS-SWEDEN' is replaced by the following:

'Agreement of 28 June 2000 on the reimbursement of costs of benefits in kind provided under Title III, Chapter 1, of the Regulation.'

(h) Heading '94. AUSTRIA-PORTUGAL' is replaced by the following:

'Agreement of 16 December 1998 on the refund of costs for benefits in kind'

6. Annex 6 is amended as follows:

Section 'C. GERMANY' is amended as follows:

(i) Point 4(a) is replaced by the following:

'(a) dealings with Greece, Italy, the Netherlands and Portugal: payment through the liaison bodies of the competent State and the State of residence (joint application of Articles 53 to 58 of the implementing Regulation and of the provisions set out in Annex 5)'

(ii) Point 4(b) is replaced by the following:

'(b) dealings with Belgium, Spain, France and Austria: payment through the liaison body of the competent State'

7. Annex 9 is amended as follows:

Section 'K. AUSTRIA' is amended as follows:

'The average annual cost of benefits in kind shall be calculated by taking into consideration:

1. the benefits provided by the Gebietskrankenkassen (Regional Funds for Sickness Insurance);

2. the benefits provided by hospitals for which a Landesfonds (regional fund) is responsible;

3. the benefits provided by other hospitals covered by the agreement between the Hauptverband der österreichischen Sozialversicherungsträger (Main Association of Austrian Social Insurance Institutions) and the Wirtschaftskammer Österreich (Austrian Chamber of Commerce) applying on 31 December 2000, and

4. the benefits provided by the Fonds zur Mitfinanzierung der In-vitro-Fertilisation (In Vitro Fertilisation Cofinancing Fund), Vienna'.

8. Annex 10 is amended as follows:

(a) Section 'J. NETHERLANDS' is amended as follows:

Point 4(a) is replaced by the following:

'(a) refunds provided for in Articles 36 and 63 of the Regulation:	College voor zorgverzekeringen (Care Insurance Board), Amstelveen'

(b) Section 'K. AUSTRIA' is amended as follows:

Point 1 is replaced by the following:

'1. For the purpose of applying Article 14(1)(b), Article 14a(1)(b) and Article 17 of the Regulation:	Bundesminister für soziale Sicherheit und Generationen (Federal Minister for Social Security and Generations), in agreement with the respective public administration with regard to special schemes for civil servants'

(c) Section 'L. PORTUGAL' is amended as follows:

Heading 'A. IN GENERAL' is amended as follows:

(i) Point I(2) is replaced by the following:

'2. For the purposes of applying Article 11(1) and Article 11a of the implementing Regulation:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) where the posted worker concerned is registered'

(ii) Point I(3) is replaced by the following:

'3. For the purposes of applying Article 12a of the implementing Regulation:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) of the place of residence of the worker or where the worker is registered, depending on the case'

(iii) Point I(6) is replaced by the following:

'6. For the purposes of applying Article 14(3) of the implementing Regulation:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security), Lisbon'

(iv) Point I(7) is replaced by the following:

'7. For the purposes of applying Article 28(1), Article 29(2) and (5), Article 30(1) and (3) and Article 31(1) (second sentence) of the implementing Regulation (with regard to the issuing of certificates):	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) of the place of residence of the person concerned'

(v) Point I(10) is replaced by the following:

'10. For the purposes of applying Article 80(2), Article 81 and Article 85(2) of the implementing Regulation:	Instituto de Solidariedade e Segurança Social: Centro Distrital de Solidariedade e Segurança Social (Institute of Solidarity and Social Security: District Centre of Solidarity and Social Security) where the person concerned was last registered'

(vi) Point II(2) is replaced by the following:

'2. For the purposes of applying Article 11(1) and Article 11a of the implementing Regulation:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(vii) Point II(3) is replaced by the following:

'3. For the purposes of applying Article 12a of implementing Regulation:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(viii) Point II(6) is replaced by the following:

'6. For the purposes of applying Article 14(3) of the implementing Regulation:	Centro de Segurança Social da Madeira (Social Security Centre of Madeira), Funchal'

(ix) Point II(7) is replaced by the following:

'7. For the purposes of applying Article 28(1), Article 29(2) and (5), Article 30(1) and (3) and Article 31(1) (second sentence) of the implementing Regulation (with regard to the issuing of certificates):	Centro de Segurança Social da Madeira (Centre of Madeira), Funchal'

(x) Point II(9) is replaced by the following:

'9. For the purposes of applying Article 17(6) and (7), Article 18(3), (4) and (6), Article 20, Article 21(1), Article 22, Article 31(1) (first sentence) and Article 34(1) and (2) (first subparagraph) of the implementing Regulation (concerning the institution of the place of residence or the institution of the place of stay, whichever applies):	Centro Regional de Saúde (Regional Health Centre), Funchal'

(xi) Point II(10) is replaced by the following:

'10. For the purposes of applying Article 80(2), Article 81 and Article 85(2) of the implementing Regulation:	Centro de Segurança Social da Madeira (Social Centre of Madeira), Funchal'

(xii) Point III(1) is replaced by the following:

'1. For the purposes of applying Article 17 of the Regulation:	Direcção Regional da Solidariedade e da Segurança Social (Regional Directorate of Solidarity and Social Security), Angra do Heroísmo'

(xiii) Point III(2) is replaced by the following:

'2. For the purposes of applying Article 11(1) and Article 11a of the implementing Regulation:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) where the posted worker concerned is registered'

(xiv) Point III(3) is replaced by the following:

'3. For the purposes of applying Article 12a of the implementing Regulation:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) of the place of residence or place of stay of the worker of residence or place of stay of the worker, depending on the case'

(xv) Point III(6) is replaced by the following:

'6. For the purposes of applying Article 14(3) of the implementing Regulation:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits), Angra do Heroísmo'

(xvi) Point III(7) is replaced by the following:

'7. For the purposes of applying Article 28(1), Article 29(2) and (5), Article 30(1) and (3) and Article 31(1) (second sentence) of the implementing Regulation (with regard to the issuing of certificates):	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Cash Benefits) where the person concerned resides'

(xvii) Point III(9) is replaced by the following:

'9. For the purposes of applying Article 17(6) and (7), Article 18(3), (4) and (6), Article 20, Article 21(1), Article 22, Article 31(1) (first sentence) and Article 34(1) and (2) (first subparagraph) of the implementing Regulation (concerning the institution of the place of residence or the institution of the place of stay, whichever applies):	Centro de Saúde (Health Centre) of the place of residence or place of stay of the person concerned'

(xviii) Point III(10) is replaced by the following:

'10. For the purposes of applying Article 80(2), Article 81 and Article 85(2) of the implementing Regulation:	Instituto de Gestão de Regimes de Segurança Social: Centro de Prestações Pecuniárias (Institute for the Management of Social Security Schemes: Centre for Financial Benefits) where the person concerned was last registered'

COMMISSION REGULATION (EC) No 411/2002

of 4 March 2002

adapting Council Regulation (EC) No 3072/95 as regards the Combined Nomenclature codes for certain products derived from rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Article 2(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] amends the Combined Nomenclature particularly as regards groats, meal and pellets of rice.

(2) The table in Article 1(1) of Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [4], as last amended by Regulation (EC) No 1987/2001 [5], must accordingly be adapted.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The following text in the table in Article 1(1) of Regulation (EC) No 3072/95:

'1103 14 00	Groats and meal of rice
1103 29 50	Pellets of rice'

is replaced by the following:

'1103 19 50	Groats and meal of rice
1103 20 50	Pellets of rice'

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.

Done at Brussels, 4 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 34, 9.2.1979, p. 2.
[2] OJ L 349, 31.12.1994, p. 105.
[3] OJ L 279, 23.10.2001, p. 1.
[4] OJ L 329, 30.12.1995, p. 18.
[5] OJ L 271, 12.10.2001, p. 5.

COMMISSION REGULATION (EC) No 412/2002

of 4 March 2002

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [1], as last amended by Regulation (EC) No 1300/97 [2], and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [3], as last amended by Regulation (EC) No 2062/97 [4], those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 5 March 2002.

It shall apply from 6 to 19 March 2002.

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

Done at Brussels, 4 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 182, 31.12.1987, p. 22.
[2] OJ L 177, 5.7.1997, p. 1.
[3] OJ L 72, 18.3.1988, p. 16.
[4] OJ L 289, 22.10.1997, p. 1.

ANNEX

to the Commission Regulation of 4 March 2002 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 6 to 19 March 2002

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	13,65	11,61	48,44	19,51
Community import prices	**Uniflorous (bloom) carnations**	**Multiflorous (spray) carnations**	**Large-flowered roses**	**Small-flowered roses**
Israel	11,82	—	20,83	18,09
Morocco	22,34	18,51	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	18,25	—	—	—

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 12 June 2001
on State aid implemented by Germany for Technische Glaswerke Ilmenau GmbH, Germany

(notified under document number C(2001) 1549)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/185/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2) thereof,

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

Having called on interested parties to submit their comments [1] pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 1 December 1998, registered on 4 December 1998, Germany notified restructuring measures in favour of Technische Glaswerke Ilmenau GmbH ('TGI') to the Commission in accordance with Article 88(3) of the EC Treaty. As aid had already been paid out, the measures were registered under aid NN 147/98. The Commission requested additional information from Germany by letters dated 23 December 1998 and 29 March 1999, which were answered by letters dated 18 February 1999, registered on 19 February 1999, and 31 May 1999, registered on 1 June 1999. By letters dated 15 September 1999, registered on 20 September 1999, 4 October 1999, registered on 5 October 1999, and 29 October 1999, registered on 3 November 1999, Germany submitted further information.

(2) By letter dated 4 April 2000, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. It also issued an information order.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid measure.

[1] OJ C 217, 29.7.2000, p. 10.
[2] OJ L 83, 27.3.1999, p. 1.
[3] See footnote 1.

(4) By letter dated 3 July 2000, registered on 7 July 2000, Germany responded to the initiation of the procedure and the information order. A meeting with representatives of the German authorities was held on 7 November 2000. By letter dated 27 February 2001, registered on 1 March 2001, Germany submitted further information.

(5) The Commission received comments from two interested parties. It forwarded them to Germany, which was given the opportunity to react; its observations were received by letter dated 13 December 2000, registered on 15 December 2000.

II. **DETAILED DESCRIPTION**

2.1. **The aid recipient**

(6) TGI is located in Ilmenau, Thuringia, an assisted area under Article 87(3)(a) of the EC Treaty. It was set up in 1994 by two private individuals, Mr and Mrs Geiß, with the aim of taking over four of the 12 production lines of the former Ilmenauer Glaswerke GmbH ('IGW'), a company whose sole owner, the Treuhandanstalt ('THA'), had decided to liquidate in 1994. The eight remaining production lines were shut down and dismantled.

(7) The company is active in the field of technical glassware, laboratory glass, glass for domestic use, sight glass, tubes and rods. In 1997, TGI had 226 employees and a turnover of DEM 28 048 000.

(8) The main shareholder (99 % of the shares) and managing director of the company, Mr Geiß, was also the sole shareholder and managing director of two other companies active in the same relevant market as TGI:

— Laborbedarf Stralsund GmbH ('LS'), located in Güstrow, Mecklenburg-Western Pomerania, and

— Paul F. Schröder & Co. Technische Glaswaren GmbH & Co KG ('PFS'), located in Ellerau, near Hamburg.

(9) Although LS had only two employees, PFS had 74 employees and a turnover of DEM 9 711 000 in 1997. LS ceased trading in 1999. PFS filed for bankruptcy in January 2000.

2.2. **Financial measures in the past**

(10) The sale of the four production lines ('tanks') of IGW to TGI was done by means of two asset deals.

2.2.1. *Asset deal 1 (contract of 26 September 1994)*

(11) In September 1994 the first three production lines were sold to TGI, after negotiations with other potential investors had failed. The sale was finally approved by the THA, the sole shareholder in IGW, in December 1994.

(12) The purchase price amounted to a total of DEM 5 800 000 and was to be paid in three instalments by the end of 1999. Payment was secured by a mortgage of DEM 4 000 000 and a bank guarantee of DEM 1 800 000. The latter was covered, in turn, by counterguarantees and time deposits.

(13) In the context of this asset deal, Germany granted the following measures worth a total of DEM 58 500 000:

(in DEM)

Financial measure	Amount
Investment loans from the Kreditanstalt für Wiederaufbau	17 000 000
Investment grants (resources from the joint Federal/*Länder* programme)	6 750 000
Investment allowances	1 150 000
BvS grants	16 500 000
THA/BvS grants for loss compensation	17 000 000
Total	58 500 000

(14) Apart from investment loans from the Kreditanstalt für Wiederaufbau ('KfW') amounting to DEM 17 100 000, and investment grants and investment allowances amounting to DEM 7 900 000, TGI received grants from the Bundesanstalt für vereinigungsbedingte Sonderaufgaben ('BvS') for the restructuring of a pilot plant amounting to DEM 16 500 000 and THA/BvS grants for loss compensation for the years 1994 to 1997 amounting to DEM 17 000 000.

2.2.2. *Asset deal 2 (contract of 11 December 1995)*

(15) In December 1995 the fourth production line was sold to TGI as no other investor could be found. The purchase price amounted to DEM 50 000.

(16) In the context of asset deal 2 Germany granted the following measures worth a total of DEM 8 925 000:

(in DEM)

Financial measure	Amount
Investment allowances	425 000
TAB loan under the Consolidation Fund	2 000 000
BvS grants for restructuring the fourth production line	4 000 000
BvS investment grants	1 000 000
THA/BvS grants for loss compensation	1 500 000
Total	8 925 000

(17) Apart from investment allowances amounting to DEM 425 000 and a loan from the Thüringer Aufbaubank ('TAB') amounting to DEM 2 000 000, TGI received BvS grants for restructuring the fourth production line amounting to DEM 4 000 000, BvS investment grants amounting to DEM 1 000 000 and THA/BvS grants for loss compensation for the years 1996 to 1998 amounting to DEM 1 500 000.

(18) The effectiveness of asset deal 2 was dependent on the provision of a bank guarantee by TGI. As this was not forthcoming, asset deal 2 was provisionally ineffective until February 1998.

2.3. **The restructuring plan and financial measures**

(19) According to Germany, TGI ran into difficulties because the start-up of the investment project had to be postponed for half a year due to the fact that the THA only approved the terms of asset deal 1 in December 1994.

(20) TGI could therefore only start the investment project in April 1995, whereas it had planned to start in the last quarter of 1994. As a consequence, the rest of the investment project had to be postponed.

(21) Moreover, TGI could not provide in time evidence of the guarantee, which was a requirement for the effectiveness of asset deal 2. Accordingly, the BvS did not make available grants amounting to DEM 4 000 000 for the purpose of restructuring the fourth production line, so that necessary investments could not be carried out. As TGI had also suffered since its inception from a continuous lack of liquidity, the whole project was in the balance and by 1997 the company's liquid resources were almost exhausted.

(22) In order to restore viability, TGI was obliged to solve the abovementioned liquidity problem and to build up capital and reserves. A concerted action plan was adopted by the BvS, the *Land* of Thuringia and the private investor in February 1998.

(23) Germany submitted the following restructuring plan with the notification. The time frame envisaged was 1998 to 2000:

(in DEM)

Financial requirements	Amount
Purchase price	5 800 000
Restructuring of the fourth production line	4 000 000
Investments (fourth production line)	6 000 000
Projects to improve productivity	1 500 000
Plants overhaul	3 000 000
Liabilities to suppliers from 1997	1 750 000
Rent in 1997	175 000
Total	22 225 000

(24) The purchase price for the first three production lines was still outstanding. In addition, DEM 4 000 000 was needed to restructure the fourth production line and DEM 6 000 000 for related investments. DEM 4 500 000 was earmarked for projects to improve productivity and for a general overhaul of the production lines. Remaining liabilities to suppliers from 1997 and rent payments originally due in 1997 required an amount of DEM 1 925 000.

(25) The restructuring costs listed above were to be financed as follows:

(in DEM)

Financial measures	Amount
BvS waiver of purchase price	4 000 000
Conversion of bank guarantee for remainder of purchase price into mortgage debt	1 800 000
BvS grants for restructuring the fourth production line	4 000 000
THA/BvS grants for loss compensation	1 325 000
Investment allowances	475 000
TAB loan under the Consolidation Fund	2 000 000
Own resources (cash flow)	4 175 000
Private investor	3 850 000
Waiver of staff's Christmas bonus	650 000
Release of guarantee concerning job obligations	250 000
Total	22 525 000

(26) The BvS agreed to waive DEM 4 000 000 of the initial purchase price. In addition, the bank guarantee amounting to DEM 1 800 000 under asset deal 1 was converted into a mortgage debt in order to improve the company's liquidity.

(27) The BvS finally approved asset deal 2 without insisting on the provision of a bank guarantee, a precondition that had made the contract provisionally ineffective until February 1998. The grants for restructuring the fourth production line amounting to DEM 4 000 000 could therefore finally be paid out. Moreover, the company received THA/BvS grants for loss compensation amounting to DEM 1 325 000.

(28) Investment allowances amounting to DEM 475 000 were granted to the company in the context of the restructuring.

(29) The company received a loan of DEM 2 000 000 from the TAB under the Thuringia Consolidation Fund as had been agreed in asset deal 2.

(30) The restructuring plan provided that DEM 4 175 000 of the costs had to be financed out of the company's own resources in the form of cash flow. No details were given on whether this cash flow had already been generated or when it was to be generated. A private investor, who still had to be found, should contribute DEM 3 850 000 to the restructuring.

(31) Moreover, a waiver of the staff's Christmas bonus amounting to DEM 650 000 had been agreed.

(32) The release of a guarantee concerning job obligations was supposed to make DEM 250 000 available for the restructuring. No further information was given on this guarantee.

(33) According to the provisional profit-and-loss account, TGI was expected to achieve a positive result in 1999. These expectations did not materialise. The planned and the actual evolution are shown in the following table:

(in DEM)

	1997 (Actual)	1998 (Planned)	1998 (Actual)	1999 (Planned)	1999 (Actual)	2000 (Planned)
Turnover	28 048 000	34 800 000	31 429 000	38 700 000	27 371 000	41 000 000
Operating result	– 5 224 000	– 200 000	– 1 006 000	1 275 000	– 1 900 000	2 900 000

(34) According to the latest information submitted by Germany, no new outside investor contributing DEM 3 850 000 could be found as provided for in the restructuring plan. No adjusted restructuring plan has been submitted to the Commission.

2.4. **Market analysis**

(35) The products produced by TGI fall within the category of special glass. Special glass accounted for some 6 % of total EU glass output in 1997 and is a broad sector covering a wide range of different products, with a limited number of operators. TGI is one of the 10 companies in the EU producing lighting glass.

(36) According to the information available to the Commission ([4]), there was good overall growth in the special glass sector in 1997, with an output over 5 % up on 1996. The market for lighting glass grew by around 4 % in 1997. This positive trend did not continue as expected in 1998 as a consequence of the Asian crisis. Since the middle of 1999 the market has been recovering and sales of special glass have grown by 3,4 % in Germany. The general outlook remains favourable.

2.5. **Initiation of the formal investigation procedure**

(37) The Commission initiated the formal investigation procedure in respect of the waiver of DEM 4 000 000 of the original purchase price set in asset deal 1 as it doubted whether the waiver was, as Germany claimed, consistent with the behaviour of a private creditor. This measure was therefore regarded as State aid to TGI.

([4]) See Panorama of EU Industry 1997, Volume 1, Chapter 9, and Report of the Standing Committee of the EC Glass Industries (CPIdV) 1998, and Annual Report 1999 of Bundesverband Glasindustrie und Mineralfaserindustrie.

(38) Moreover, the Commission raised serious doubts as to whether the aid was compatible with the common market in accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the guidelines') ([5]). It doubted whether the company was in difficulties at the time the waiver was granted. The company incurred losses but seemed to receive extensive loss compensation. However, even if the company was in difficulties, the Commission doubted whether the restructuring plan could have restored its viability. The condition as to the proportionality of the aid was not fulfilled as there was no private investor contribution. Since part of the financing of the restructuring measures was not secured, it also had to be doubted whether the restructuring plan could be implemented.

(39) In addition, Germany maintained that a number of measures had been granted under approved aid schemes. On the basis of the information available, the Commission was unable to assess whether three investment loans totalling DEM 17 100 000 granted by the KfW were effectively covered by the schemes under which they had purportedly been granted as no information was given either on the terms of the loans or on the identity of the aid schemes.

(40) Moreover, the Commission had serious doubts whether the TAB loan of DEM 2 000 000 complied with the terms of the Commission-approved aid scheme under which it had purportedly been granted. As stated above, the Commission doubted whether the company was in difficulties at the time the aid was granted.

(41) The Commission issued an information order to determine whether the KfW loans and the TAB loan effectively complied with the terms of the aid schemes under which they had purportedly been granted.

(42) So as not to delay any further the taking of a decision on the waiver of DEM 4 000 000 of the purchase price, the Commission will conclude the formal investigation procedure with a final decision on this measure. It will, if necessary, initiate a separate procedure in respect of those aid measures which did not form the subject matter of the initiation of procedure and which, in the light of the information obtained in response to the information order, are to be considered new aid.

III. **COMMENTS FROM INTERESTED PARTIES**

(43) The Commission received comments from a competitor of the company and from TGI itself. The comments of the competitor and of TGI were forwarded to Germany by letters dated 20 October 2000 and 6 November 2000 respectively to give Germany the opportunity to react. An answer to the comments of the competitor was received on 15 December 2000. Germany did not submit any reaction to the comments of TGI.

(44) In its comments on the initiation of the procedure, the competitor maintained that the aid recipient was systematically selling its products below market price and even below production cost and claimed that this was only possible because of the State aid granted to TGI. It also claimed that there were structural overcapacities in some of the product markets in which TGI was active, i.e. glass for domestic use, sight glass and glass tubes. It expressed doubts, moreover, about the identity of the aid recipient, pointing to the close relationship between TGI and the other companies owned by TGI's main shareholder and managing director.

(45) TGI stated in its comments on the initiation of the procedure that the waiver of part of the purchase price and the TAB loan did not constitute State aid within the meaning of Article 87(1) of the EC Treaty. It claimed that, in the context of the privatisation of the first three production lines, the Free State of Thuringia had agreed to provide direct investment grants amounting to DEM 10 750 000. In the end, however, only DEM 6 750 000 had been paid out. In view of this, the original price of DEM 4 800 000 had to be regarded as being too high. TGI therefore claimed that the waiver constituted an adaptation of the original privatisation contract, which it was legally entitled to carry out. Concerning the TAB loan, TGI submitted that it was compensation for some buildings being pulled down because of a project by the Free State of Thuringia to create a technology park. It further submitted that, if the Commission still considered the two measures to be State aid, they could both be exempted under the guidelines.

([5]) OJ C 368, 23.12.1994, p. 12.

IV. **COMMENTS FROM GERMANY**

(46) In its reply to the initiation of the procedure, Germany stated once more that, in its opinion, the waiver of part of the purchase price did not constitute State aid but could be regarded as being consistent with the behaviour of a private creditor. If the waiver was considered by the Commission to be State aid, it could be approved as restructuring aid.

(47) Germany submitted information intended to prove that the three loans granted by the KfW either were not State aid or were covered by an aid scheme authorised by the Commission.

(48) Moreover, Germany submitted information to prove that the aid recipient qualified as a small or medium-sized enterprise ('SME'). It argued that TGI and the other companies owned by the same shareholder did not form an economic group. The business between the companies was conducted on an arm's length basis and accounted for only a small part of the companies' turnover.

(49) In response to the comments of the competitor of TGI, Germany rejected the allegation of dumping. The fact that in some cases TGI's prices were below those of the competitor did not prove that TGI was practising dumping but was a sign of normal competition in a market economy. Germany stated, moreover, that the comparison made by the competitor between TGI's and its own prices was flawed. The competitor had maintained that TGI was granting large reductions on the prices quoted in its wholesale price list. Germany claimed, however, that these prices were those intended for the end-user. TGI hardly ever sold its products directly to the end-user. If products were sold to an intermediary, reductions of up to 80 % were common in the relevant market. Therefore, net prices had to be used as a basis when comparing prices.

(50) Concerning potential overcapacities in some of TGIs product markets as mentioned by the competitor, Germany argued that the market definition as applied by the competitor was too narrow. In its analysis, the competitor concentrated on the market in a few individual products, ignoring any substitutability of supply. In Germany's view, there was no overcapacity in the relevant market.

V. **ASSESSMENT**

(51) TGI has received financial support from public resources and has thus been placed at an advantage compared with its competitors. As there are competitors from the Community in the relevant product market and as trade takes place, this threatens to distort competition in the common market.

(52) The Commission has first to determine whether these measures deriving from public resources constitute aid. If they do constitute aid, the Commission has to analyse their compatibility with the common market.

5.1. **The aided undertaking**

(53) Germany considers TGI to be the aid recipient. It further states that this undertaking is an SME within the meaning of the Community guidelines on State aid for small and medium-sized enterprises [6] ('SME guidelines').

(54) When it initiated the formal investigation procedure, the Commission raised the question whether the relevant undertaking might not be larger than just TGI. The main shareholder and managing director of TGI was also the sole shareholder and managing director of two other companies, PFS and LS. Together, TGI, PFS and LS exceeded the threshold of 250 employees established by the SME guidelines.

(55) Since the question whether TGI is an SME or not does not affect the outcome of the assessment of the compatibility of the purchase price waiver, this matter is not dealt with any further in the course of these proceedings.

[6] OJ C 213, 23.7.1996, p. 4.

5.2. **Existence of aid within the meaning of Article 87(1) of the EC Treaty and compliance with approved aid schemes**

5.2.1. *Contributions of the THA/BvS in the context of asset deal 1*

(56) Measures granted in the context of asset deal 1 fell within the scope of THA scheme E 15/92 [7]. Since closure of the company would have been the less costly option and yet the State decided to privatise it with the help of State aid, this decision implied a burden for the State of DEM 33 500 000. Thus, the price of DEM 5 800 000 to be paid for the company must be considered to be a negative price. Since the undertaking had fewer than 1 000 workers, this financial assistance from the THA/BvS to TGI was covered by THA scheme E 15/92.

5.2.2. *Contributions of the THA/BvS in the context of asset deal 2*

(57) Measures granted in the context of asset deal 2 fell within the scope of THA scheme N 768/94 [8]. Since closure of the company would have been the less costly option and yet the State decided to privatise it with the help of State aid, this decision implied a burden for the State of DEM 6 500 000. Thus, the price of DEM 50 000 to be paid for the company must be considered to be a negative price. Since the undertaking had fewer than 250 workers, this financial assistance from the THA/BvS to TGI was covered by THA scheme N 768/94.

5.2.3. *Investment loans from the KfW in the context of asset deal 1*

(58) Three loans totalling DEM 17 100 000 were purportedly granted by the KfW under aid schemes previously authorised by the Commission. As the Commission did not have enough information to assess whether these loans were effectively covered by such an aid scheme, it issued an information order.

(59) A first loan of DEM 10 000 000 was granted under a KfW small-firm assistance programme. A second loan of DEM 5 100 000 was granted under a KfW EU small-firm job-support programme. According to the information submitted by Germany, both loans had been provided under market conditions with an interest rate above the reference interest rate. As the company was not in difficulties at the time these measures were granted, the Commission concludes that they do not constitute State aid.

(60) A third loan of DEM 2 000 000 was granted under the ERP development programme, a regional aid scheme previously authorised by the Commission [9]. The loan complies with the conditions set out in the aid scheme under which it was purportedly granted and is thus effectively covered by the scheme. It therefore constitutes existing aid which does not need to be reassessed in the course of these proceedings.

5.2.4. *Investment grants and investment allowances*

(61) In the context of asset deal 1, TGI received investment grants amounting to DEM 9 750 000 under the 23rd framework plan of the joint Federal Government/*Länder* programme for improving regional economic structures, a regional aid scheme authorised by the Commission [10].

[7] THA scheme E 15/92 SG(92) D/17613 of 8 December 1992.
[8] THA scheme N 768/94 SG(95) D/1062 of 1 February 1995.
[9] N 562/c/94, SG(94) D/17293 of 1 December 1994.
[10] N 157/94, SG(94) D/11038 of 1 August 1994. Measures under this provision qualify as regional investment aid under Article 87(1) of the EC Treaty and have been approved by the Commission on the basis of the exception in Article 87(3)(a) of the EC Treaty.

(62) In the context of the two asset deals, investment allowances amounting to DEM 1 575 000 were granted to TGI. Moreover, TGI received investment allowances amounting to DEM 876 000 in 1996 and DEM 748 000 in 1997 outside the asset deals. All payments were made under the Investment Allowance Act, a regional aid scheme authorised by the Commission ([11]).

(63) The question of the compatibility of the investment grants and investment allowances with the aid rules on the basis of which they were purportedly granted is not assessed in these proceedings but will, if necessary, be assessed in subsequent proceedings.

5.2.5. *Conversion of securities for DEM 1 800 000 of the purchase price and deferral of repayment*

(64) In the context of the concerted action, the BvS agreed to convert the bank guarantee worth DEM 1 800 000 under the first contract into a junior-ranking mortgage debt. This security is of lower value than the bank guarantee. According to the information submitted by Germany, repayment of the remaining purchase price has also been deferred and is now scheduled for 2003 onwards. As these measures confer advantages on TGI that a private creditor probably would not have granted to a company in difficulties, they also seem to be State aid.

(65) The conversion of securities and the deferral of payment will not be assessed in the course of these proceedings. If necessary, they will form the subject of separate proceedings.

5.2.6. *Waiver of DEM 4 000 000 of the purchase price (February 1998)*

(66) Germany has argued that, from the BvS's point of view, the waiver was economically more advantageous than insisting on payment of the full purchase price. The waiver is therefore claimed not to constitute State aid.

(67) According to established case-law of the Court of Justice of the European Communities, in order to determine whether a measure by a public body constitutes State aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions ([12]). Germany therefore submitted an analysis in order to prove that the purchase price waiver by the BvS was intended to maximise the payment of the price agreed in asset deal 1 and to reduce the related costs.

(68) Germany stated that in 1997 TGI was on the verge of bankruptcy. The company's equity capital had shrunk dramatically and the company had serious liquidity problems. The total purchase price of DEM 5 800 000 was still outstanding. Germany maintained that, if the BvS had insisted on payment of the full purchase price, the company would probably have gone bankrupt.

(69) Germany claimed that, in the event of bankruptcy, the BvS would most likely have recovered from the assets only part of the purchase price, namely DEM 1 800 000, which was secured by a bank guarantee. The remaining DEM 4 000 000 was secured by a junior-ranking mortgage. According to Germany, this amount would not have been recoverable as other creditors' claims had priority.

(70) Germany stated, moreover, that asset deal 2 would not have entered into force if the BvS had insisted on payment of the full purchase price. Implementation of asset deal 2 had been temporarily suspended until February 1998, as TGI had not provided a bank guarantee, a precondition for the BvS's approval of the contract. TGI was released from this obligation in February 1998. If asset deal 2 had not become effective, the BvS would have incurred additional costs in connection with the closure of the fourth production line, the reclamation of the site of the fourth production line and administration pending sale of the site, as no other investor could be found.

([11]) N 494/A/95, SG(95) D/17154 of 27 December 1995. Measures under the Act qualify as regional investment aid under Article 87(1) of the EC Treaty and have been approved by the Commission on the basis of the exception in Article 87(3)(a) of the EC Treaty.

([12]) Case C-342/96 *Spain* v *Commission* [1999] ECR I-2459, paragraph 41.

(71) Hence, according to Germany, the BvS was faced with a choice between waiving part of the purchase price or insisting on payment of the price in full, which would have bankrupted the company.

(72) Germany tried to prove to the Commission, by comparing the two alternatives, that the purchase price waiver was the economically more advantageous solution.

(73) In the event of a waiver and hence of the implementation of asset deal 2, the BvS would have been faced, according to the information submitted by Germany, with final costs of DEM 1 811 000. This was the difference between receipts of DEM 2 847 000 (DEM 1 800 000 of the purchase price under asset deal 1 plus DEM 1 047 000 from the sale to TGI of the site where the fourth production line was located) and costs of DEM 4 658 000 (restructuring grants of DEM 4 000 000 plus loss compensation of DEM 658 000, as agreed in asset deal 2).

(74) In the event of bankruptcy and of the non-implementation of asset deal 2, the BvS would have been faced with final costs of DEM 2 590 000. The BvS would have had receipts of DEM 2 270 000 (DEM 1 800 000 of the purchase price under asset deal 1 plus an estimated DEM 470 000 from the sale of the site where the fourth production line was located). It would have incurred costs of DEM 4 860 000 in connection with the closure of the fourth production line, the reclamation of the site of the fourth production line and administration pending sale of the site.

(75) Since, according to Germany, in the case of a waiver the BvS would have been faced with final costs of DEM 1 811 000, whereas in the case of bankruptcy it would have incurred final costs of DEM 2 590 000, a waiver was the economically more advantageous solution.

(76) The Commission cannot agree with this line of argument. Its reasons are threefold. First, there is no evidence to suggest that asset deal 2 would not have become effective if the BvS had not waived part of its claim. Asset deal 2 was originally agreed in December 1995. It was provisionally suspended until February 1998 as TGI did not provide a bank guarantee, which was a precondition for the implementation of the contract. In the absence of this guarantee, both parties, TGI and the BvS, had, until 31 March 1996, the right to withdraw from the contract. Neither of them exercised this right. As the BvS made proof of a bank guarantee a precondition for the implementation of asset deal 2, the effectiveness of the contract depended on the BvS. The BvS could have made the contract effective at any time by waiving the bank guarantee requirement. The implementation of asset deal 2 was therefore clearly independent of the purchase price waiver. Asset deal 2 finally became effective in February 1998 when the BvS no longer insisted on the provision of the bank guarantee.

(77) There is nothing to indicate that TGI was entitled, at the time of the waiver of payment of the full purchase price (February 1998), to withdraw from the contract or that it would have been in the company's interest to do so. As Germany has stated, the effectiveness of asset deal 2 even helped to partly stabilise TGI, which was in a difficult financial situation, as grants amounting to DEM 4 000 000 for the restructuring of the fourth production line could finally be paid out. There is no evidence that the waiver was either necessary or a precondition for asset deal 2 to become effective, or of the extent to which there was any link between the two.

(78) No private creditor would therefore have agreed to make the effectiveness of asset deal 2 dependent on a waiver of payment of part of the purchase price. If asset deal 2 would have become effective even if the BvS had insisted on payment of the full purchase price, it must not be included in the comparison of the two alternatives, as in both scenarios (purchase price waiver and bankruptcy) the BvS would have had to bear the same costs in connection with asset deal 2. Consequently, only the payment of the purchase price must be compared. In the event of a waiver, the BvS would have received DEM 1 800 000 of the purchase price. In the event of bankruptcy, the payment of DEM 1 800 000 was guaranteed, and furthermore there was a possibility that the BvS would have received part of the remaining DEM 4 000 000 of the purchase price. The purchase price waiver does not therefore prove to be the more advantageous solution and is thus inconsistent with the behaviour of a private creditor.

(79) Secondly, even if asset deal 2 would not have become effective if the BvS had insisted on payment of the full purchase price, whereas it would have done so in the event of a purchase price waiver, there is no evidence to suggest that the BvS behaved like a private creditor in deciding to waive part of the purchase price. Germany maintains that, in the event of bankruptcy and of the ineffectiveness of asset deal 2, the BvS would have been faced with costs of DEM 4 860 000 arising from the closure of the fourth production line, the reclamation of the site and administration pending sale of the site. The Commission considers these high costs to be out of proportion to the obligations which a private creditor would be under in the same situation. Germany cites costs of DEM 2 200 000 for the reclamation of the site on which the fourth production line stands, such reclamation being necessary as part of a scheme by the Free State of Thuringia to create a technology park. The Commission assumes that a private creditor would be under no such obligation. No explanation has been given as to why the fourth production line would be worthless in the event of bankruptcy. Moreover, Germany mentions proceeds of DEM 1 047 000 from the sale of the site of the fourth production line. In the event of bankruptcy, it puts the potential proceeds from the sale of the site at only DEM 470 000. The discrepancy between the two amounts has not been further elucidated.

(80) Thirdly, in the context of asset deal 2 the BvS agreed to provide an investment grant of DEM 1 000 000. This amount is not included in the comparison of the two alternatives. This obligation would have resulted in additional costs to the BvS when asset deal 2 became effective. In the event of a waiver and of the effectiveness of asset deal 2, the final cost to the BvS would therefore be DEM 2 811 000 instead of DEM 1 811 000 as maintained by Germany, being thus higher than the cost in the event of bankruptcy of DEM 2 590 000.

(81) Even if the implementation of asset deal 2 were dependent on the purchase price waiver, the Commission cannot accept Germany's analysis. As stated above, there is no evidence to suggest that, in the event of a purchase price waiver and of the implementation of asset deal 2, the BvS would have to bear lower costs than if it were to insist on payment of the full purchase price, which would allegedly have resulted in the non-effectiveness of asset deal 2.

(82) TGI submits that the BvS's waiver does not constitute State aid but is an adjustment of the privatisation contract inasmuch as the Free State of Thuringia has disbursed less in the way of investment grants than was agreed in connection with the privatisation of the first three production lines. The BvS and the Free State of Thuringia are, however, different legal entities, so the Commission cannot accept this argument. Any claims which TGI may have against the Free State of Thuringia and the BvS must be treated separately.

(83) Consequently, the BvS's decision to waive DEM 4 000 000 of the purchase price was motivated by the desire to safeguard the existence of the company and did not seek to minimise the financial burden. The BvS did not therefore act like a private creditor and the waiver constitutes State aid, which falls to be assessed as ad hoc aid.

5.2.7. *DEM 2 000 000 TAB loan under the Thuringia Consolidation Fund (February 1998)*

(84) According to Germany, this loan was granted under the Thuringia Consolidation Fund for Undertakings in Difficulty, an aid scheme authorised by the Commission ([13]). The Commission had serious doubts as to whether the loan was covered by the aid scheme and issued an information order.

(85) The TAB loan will not be dealt with in the course of these proceedings. If necessary, it will form the subject of separate proceedings.

5.3. **Article 87(3)(c) of the EC Treaty**

(86) The waiver falls to be assessed by the Commission as ad hoc aid. Article 87(2) and (3) of the EC Treaty provides for exceptions to the general incompatibility of State aid pursuant to Article 87(1).

([13]) NN 74/95, SG(96) D/1946 of 6 February 1996.

(87) The exceptions provided for in Article 87(2) of the EC Treaty do not apply in this case because the aid measures do not have a social character, granted to individual consumers, nor do they make good the damage caused by natural disasters or exceptional occurrences; nor is the aid granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

(88) Further exceptions are provided for in Article 87(3)(a) and (c) of the EC Treaty. As the primary objective of the aid is not regional but concerns the restoration of the long-term viability of an undertaking in difficulties, only the exceptions provided for in Article 87(3)(c) of the Treaty apply. Pursuant to that provision, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market. For its assessment of rescue and restructuring aid the Commission has issued special guidelines. After its preliminary examination the Commission considers that none of the other Community guidelines, such as those for research and development, the environment, small and medium-sized enterprises, or employment and training, could apply in this case.

(89) Since, according to the information available, the aid was granted before 30 April 2000, the 1994 guidelines are applicable ([14]).

(90) According to point 2.1 of the guidelines, the financial weakness of firms that receive help for restructuring is generally due to poor past performance and dim future prospects. The typical symptoms are deteriorating profitability or increasing size of losses, diminishing turnover, growing inventories, excess capacity, declining cash flow, increasing debt, rising interest charges and low net asset value.

(91) When it initiated the procedure, the Commission expressed doubts whether TGI was a company in difficulties at the time the aid was granted. On the basis of the information submitted by Germany, the Commission concludes that the company was in difficulties at the material time. The company was making continuous losses, and from the cash flow generated it was unable to carry out the necessary investment. Moreover, the company's equity capital had been reduced significantly.

Restoration of viability

(92) The award of restructuring aid requires a feasible, coherent and far-reaching restructuring plan capable of restoring the long-term viability of the firm within a reasonable time span and on the basis of realistic assumptions.

(93) Germany has submitted a restructuring plan covering the period 1998 to 2000. It has also submitted a forecast of the company's turnover and results for the period 1998 to 2000. The company's viability was to have been restored by 1999.

(94) The restructuring plan relies on the assumption that there will be a new outside investor contributing an amount of DEM 3 850 000. This amount would cover a substantial part of the investment costs foreseen in the restructuring plan.

(95) In the latest information submitted, Germany confirms that this new outside private investor could not be found. The financing of the restructuring measures is therefore not assured. No adjusted restructuring plan taking account of this fact has been submitted to the Commission.

([14]) Point 7.5 of the 1999 Community guidelines on State aid for rescuing and restructuring firms in difficulty (notice to Member States including proposals for appropriate measures) states that 'the Commission will examine the compatibility with the common market of any rescuing and restructuring aid granted without its authorisation … on the basis of the guidelines in force at the time the aid is granted …' (OJ C 288, 9.10.1999, p. 2).

(96) Moreover, viability was supposed to have been restored by 1999. In 1999 the company was, however, still making losses.

(97) The Commission therefore concludes that the restructuring plan has not led to restoration of the viability of the company.

No undue distortions of competition

(98) The restructuring plan must contain measures to offset as far as possible adverse effects on competitors, otherwise the aid involved would be contrary to the common interest and ineligible for exemption under Article 87(3)(c) of the EC Treaty.

(99) That implies that, where an objective assessment of supply and demand shows that there is a structural excess of production capacity in the relevant Community market in which the aid recipient is active, the restructuring plan must make a contribution, proportionate to the aid received, to the restructuring of the industry concerned by irreversibly reducing or closing capacity.

(100) Germany states that TGI is not expected to increase or decrease its production capacity in the future.

(101) In its comments on the initiation of the procedure, a competitor of TGI stated that there was structural overcapacity in some of the product markets in which TGI was active. However, as indicated in recitals 35 and 36, according to the information available to the Commission the overall market does not seem to be suffering from overcapacity.

Proportionality to restructuring costs and benefits

(102) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's viewpoint. Therefore, the investor must make a substantial contribution to the restructuring plan from his own resources. Moreover, the way in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.

(103) In its comments on the initiation of the procedure, a competitor of TGI claimed that TGI was systematically selling its products below market price and below production cost. Continuous loss compensation had been provided to TGI. As no feasible restructuring plan has been submitted, the Commission cannot rule out the possibility that these resources might be used for market-distorting activities not linked to the restructuring process.

(104) Germany considers the waiving of the staffs Christmas bonus in 1997 to be an investor contribution. Although this can be seen as a significant contribution by the staff to the company's restructuring, it cannot be taken into account as an investor contribution as the investor bears no risk in this respect.

(105) Germany also considers the salary reduction for the managing director (who is the company's main shareholder) to be an investor contribution. This measure is, however, not included in the financial restructuring plan and cannot therefore be considered a private investor contribution.

(106) Germany also considers cash flow amounting to DEM 4 175 000 to be an investor contribution. The Commission cannot accept that this internal financial measure forms part of the investor contribution because it has been to a large extent directly and indirectly generated through aid measures. Although the cash flow might reduce the need for financing the restructuring of the company, the Commission cannot take it into account as an element of the investor contribution. Moreover, Germany has not intimated when this cash flow was generated or whether it still has to be generated in future.

(107) The Commission therefore concludes that there is no private investor contribution within the meaning of the guidelines. The condition as to the proportionality of the aid is therefore not fulfilled.

Full implementation of the restructuring plan

(108) The company must fully implement the restructuring plan. The only restructuring plan submitted to the Commission so far shows a gap in the financing as no new outside investor could be found. Since this contribution is essential for the implementation of the restructuring plan, in particular for carrying out the indispensable investments, it is doubtful whether the restructuring plan will be implemented.

VI. **CONCLUSION**

(109) The Commission finds that the purchase price waiver amounting to DEM 4 000 000 awarded to TGI in 1998 constitutes State aid. It finds, moreover, that Germany has unlawfully implemented the aid in breach of Article 88(3) of the EC Treaty. The measure does not fulfil the criteria set forth in the guidelines and is therefore not compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty. The restructuring plan submitted is not based on realistic assumptions regarding the restoration of the company's viability. The Commission therefore asks Germany to recover the aid from the recipient.

(110) The Commission points out that the conversion of securities and the deferral of the repayment of DEM 1 800 000 of the purchase price under asset deal 1 as well as the TAB loan of DEM 2 000 000 awarded to TGI will be the subject of a separate procedure,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Technische Glaswerke Ilmenau GmbH in the form of a waiver of DEM 4 000 000 of the purchase price agreed in the context of asset deal 1 concluded on 26 September 1994 is incompatible with the common market.

Article 2

1. Germany shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 June 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 10 October 2001

on the State aid implemented by Germany for Zeitzer Maschinen, Anlagen, Geräte ZEMAG GmbH

(notified under document number C(2001) 2957)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/186/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) In reference to a press article in the Frankfurter Allgemeine Zeitung of 30 September 1997 on the second privatisation of Zeitzer Maschinen, Anlagen, Geräte ZEMAG GmbH (hereinafter referred to as 'ZEMAG'), the Commission requested information from Germany. By letter dated 24 March 1998, Germany notified the Commission of restructuring aid for the second restructuring of ZEMAG in accordance with Article 88(3) of the EC Treaty. By letter dated 5 May 1998, the Commission informed Germany that the case had been registered as non-notified aid since some of it had already been committed and partly disbursed before the Commission could take a position on it. By letters dated 8 June 1998, 2 March 1999, 18 June 1999, 6 December 1999, 23 May 2000 and 18 October 2000, the Commission requested additional information from Germany, which replied by letters dated 20 July 1998, 8 September 1998, 24 March 1999, 26 August 1999, 20 January 2000, 9 February 2000, 10 October 2000 and 22 November 2000.

(2) Talks took place on 30 March 1999 in Berlin and on 21 January 2000 in Zeitz with representatives of Germany and the investor.

(3) By letter dated 1 February 2001, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. At the same time, it informed Germany of its decision to issue an information injunction under Article 10(3) of Council Regulation (EC) No 659/1999 [2]. The Commission decisions to initiate the procedure and to issue the information injunction were published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid.

(4) On 5 June 2001 the bankruptcy administrator for ZEMAG issued his opinion on the initiation of the procedure.

(5) Germany responded to the injunction and to the initiation of the procedure on 16 January 2001, 11 May 2001 and 16 July 2001.

[1] OJ C 133, 5.5.2001, p. 3.
[2] OJ L 83, 27.3.1999, p. 1.
[3] See footnote 1.

II. **DESCRIPTION**

II.1. **Background until the second restructuring**

(6) ZEMAG is situated in Zeitz, Saxony-Anhalt (Germany). It developed and manufactured machinery and plant for the briquetting and processing of gypsum and lignite and for power station feeders and the granulation of dung. Saxony-Anhalt is an area eligible for regional aid under Article 87(3)(a) of the EC Treaty.

(7) ZEMAG belonged to a group of eight eastern German companies which were first privatised in 1994 as EFBE Verwaltungs GmbH & Co. Management KG, now LINTRA Beteiligungsholding GmbH (hereinafter referred to as 'LINTRA'). At the end of 1996 the restructuring plan undertaken by LINTRA was deemed to have failed. In January 1997 the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (the successor to the Treuhand privatisation agency and hereinafter referred to as 'BvS') decided to restructure ZEMAG with a view to preparing it for resale.

II.2. **The second restructuring**

(8) In 1997 ZEMAG had some 140 employees and a turnover of DEM 28 million. Since the employment threshold and the financial ceilings are not exceeded, ZEMAG is regarded as an SME within the meaning of the Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises [4].

(9) According to Germany, the investor for the second restructuring was chosen in an open and unconditional bidding procedure. On the basis of the negotiations carried out with the interested parties, Mr Lobeck and Mr Jacobi, two private businessmen, turned out to have submitted the best bid.

(10) On 27 October 1997 all the shares in ZEMAG were transferred from LINTRA to Mr Lobeck and Mr Jacobi for DEM 1.

II.3. **The restructuring plan**

(11) The restructuring plan submitted envisaged a restructuring period stretching from the end of 1997 to 2000. It addressed three key areas which were identified as the reasons for the failure of the first privatisation:

— Lack of commercial management: ZEMAG had a large number of highly experienced engineers but lacked experienced managers for the commercial functions of finance, control and sales,

— Overstaffing: prior to the current restructuring, ZEMAG employed some 120 people more than it needed, and this led to monthly losses of some DEM 1 to 1,5 million. The workforce was, therefore, reduced to about 140 in 1997,

— Marketing and production: given the marked decline in lignite mining, new markets had to be found for ZEMAG's products. In addition, the manufacture of structurally loss-making products, such as cranes, had to be abandoned.

(12) According to the restructuring plan, turnover would increase from DEM 28 million in 1997 to DEM 66 million in 2000. A positive operating result was envisaged from 1998 onwards.

[4] OJ L 107, 30.4.1996, p. 4; see in particular Annex, Article 1(1) and (6).

(13) According to Germany, the total cost of the second restructuring of ZEMAG was DEM 43,66 million:

(DEM)

Purpose	Amount
Workforce reduction	9 000 000
Loss cover	8 107 000
Investments	1 858 000
Bank guarantees	12 000 000
Increase in working capital	12 700 000

(14) Germany gave the following figures for the public financing of the cost of the second restructuring:

Financial measure (DEM)	Form	Origin	When granted	Purpose
Ad hoc aid paid out in full				
6 500 000	Grant	BvS	1997	Workforce reduction prior to sale
4 000 000	Grant	BvS	1997	Loss cover until 10/97
4 000 000	Grant	BvS	1997	Loss cover after 10/97
107 000	Loan	BvS/LINTRA	1997	Loss cover/compensation
9 600 000	Guarantees for credit line totalling DEM 12 million	BvS/*Land* Saxony-Anhalt	1997	80 % bank guarantee for credit line [1]
2 500 000	Grant	*Land*	1997	Work force reduction prior to sale
Aid schemes previously approved by the Commission				
1 858 000	*Land* investment grant [2]	*Land*	1995	Investments
28 565 000	Total			

[1] In 1997 HypoVereinsbank received two deficiency guarantees (80 %) totalling DEM 4,96 million and DEM 4,64 million from the BvS with a view to arranging a credit line for ZEMAG totalling some DEM 12 million. If the Commission decision had been positive, the *Land* of Saxony-Anhalt would have taken over this guarantee. The remaining 20 % of the credit line was covered by the house bank's own risk ('Eigenobligo') amounting to DEM 1,68 million and an investor guarantee for DEM 720 000.
[2] 24th general plan of the Federal Government/*Länder* joint programme for promoting investment (Aid N 531/95).

(15) Germany indicated that in the industrial sector in which ZEMAG operated large amounts of working capital in the form of guarantees ('Avalrahmen') and cash for business transactions ('Kontokorrent') are typically needed. The guarantees are used to pre-finance contractual work and to cover warranty obligations.

(16) Germany gave the following figures for the private financing of the cost of ZEMAG's second restructuring:

Private contribution (DEM)	Form	Origin	Date
1 000 000	Shareholder loan	Investor	1997
8 700 000	Workforce contribution (income forgone)	Workforce	1997 to 2000
720 000 1 680 000	Guarantees for credit line totalling DEM 12 million	Guarantees from a private bank/investor	1997
500 000	Credit line from private bank (1)	Private bank/investor	1997
2 500 000	Additional credit line from private bank	Private bank	Subject to approval
15 100 000	Total		

(1) 100 % guarantee by the investor.

(17) Germany provided further information showing that the workforce wished to help the firm by further reducing staff costs (5). However, no further information was forthcoming to indicate that the employee participation model would actually be implemented.

II.4. **Market analysis**

(18) ZEMAG developed and produced machinery and plant for the briquetting and processing of gypsum and lignite and for power station feeders and the granulation of dung. This machinery is produced as part of industrial plants or as separate machinery. The products belong to the group of general-purpose machinery, including machinery for power stations (NACE Codes 29.1 and 29.2) (6).

(19) According to information provided by Germany, the main geographic markets for ZEMAG were Germany, Eastern Europe, Turkey, India, China, South Africa and Brazil. Prior to 1997, Germany was virtually the only market for ZEMAG. After the restructuring, ZEMAG should achieve the following market shares with its products:

Products	Geographic market	Target market share
Coal briquetting machinery and plant	Germany	7,5 %
	Balkans/Turkey	7,5 %
	India	18 %
Machinery and plant for other bulk material handling such as pressers, crushing machinery, screens, dryers and bunker dischargers	Germany	10 %
	Balkans/Turkey	8 %
	Central Asia	20 %
	India	10 %
Machinery and plant for solid waste recycling/environmental machinery	Germany	17 %
Other machinery and plant for the same sector	Germany	10 %

(5) According to Germany, the workforce agreed to work for another three years without any increase in salary (saving of DEM 600 000) and without any Christmas or holiday bonus (saving of DEM 1,5 million). As quid pro quo, they would become shareholders in the firm.

(6) Panorama of EU Industry 1999.

(20) Germany stated that there was no overcapacity on ZEMAG's product markets.

(21) The trends in ZEMAG's capacity and business development are as follows:

Year	1994	1995	1996	1997	1998	1999	2000
Operating result (DEM)	– 15 million	– 9 million	– 10 million	– 15 million	– 4 million	– 3 million	—
Employees	347	306	294	250/130	140	145	161
Manufacturing	86	82	75	65	63	n.a.	75
Maximum production [h]	210 000	165 000	130 000	130 000 (1 shift)	130 000 (1 shift)	130 000 (1 shift)	173 000 (2 shifts)
Actual [h]		130 044	119 482	99 983	100 547	110 650	—

(22) In 1994 ZEMAG's capacity totalled 210 000 production hours per year. This was reduced by the end of December 1996 to 130 000 production hours per year. The number of employees was cut from 347 in 1994 to 140 in 1997. In 2000 it was to be increased to 161. Given this increase and the introduction of a two-shift system, total maximum production hours would rise to 173 000 production hours per year.

II.6. **Introduction of the procedure**

(23) By decision of 21 December 2000, notified to Germany on 1 February 2001, the Commission initiated the procedure under Article 88(2) of the EC Treaty. At the same time, it informed Germany of its decision to issue an information injunction under Article 10(3) of Regulation (EC) No 659/1999 in respect of a measure allegedly granted under schemes previously approved by the Commission.

(24) In its decision to initiate the formal investigation procedure, the Commission expressed doubts:

(a) whether the restructuring plan could put the firm in a position to cover all its costs including depreciation and financial charges and whether, to that extent, the viability criterion was met;

(b) whether a relaxation of the principle of requiring a proportionate reduction in capacity could be allowed;

(c) whether the increase in production hours was essential to restoring the firm's viability;

(d) whether the aid beneficiary would make a substantial contribution to the restructuring costs from its own resources.

(25) The Commission also noted that the DEM 8,7 million reduction in wage costs was to be regarded not as a contribution by the aid beneficiary but as a contribution by the workforce to the restructuring costs. An additional payment of DEM 2,1 million by the workforce was not regarded as a contribution to the restructuring costs since it appeared that not all the details of this measure had yet been decided.

(26) The Commission also noted that a private bank was intending to increase ZEMAG's credit line to DEM 3 million and the guarantee line by DEM 3 million (to DEM 15 million in total). Since Germany gave no further indications of the exact terms of these measures and whether they would actually be granted in the end, the Commission was unable to ascertain whether they were granted unconditionally on market terms. For this reason, they were not included in the analysis of the aid proportionality.

(27) In addition, the Commission stated that aid measures for ZEMAG's first restructuring, which had been considered incompatible with the common market in the LINTRA decision, were to be included in the assessment of the private-investor contribution to the restructuring costs [7].

III. **COMMENTS FROM GERMANY AND INTERESTED PARTIES**

(28) On 16 January 2001 Germany informed the Commission that ZEMAG had filed for bankruptcy on 27 December 2000.

(29) On 5 June 2001 the bankruptcy administrator for ZEMAG submitted comments on the initiation of the procedure. He indicated that the measures in question should also be assessed in the light of Article 87(2)(c) and (3)(a) of the EC Treaty. He also took the view that the restructuring plan could have restored ZEMAG to viability. He further explained that, on account of the unresolved State aid situation, the financial resources of the firm had to be used to secure two loans from a private bank. As these resources could not, therefore, be used for financing restructuring measures, restoration of ZEMAG's viability was delayed.

(30) On 16 July 2001 Germany submitted the information necessary to determine whether the aid was granted under a previously authorised scheme and whether it satisfies the conditions laid down in this Decision. At the same time, it submitted its comments on the initiation of the formal investigation procedure. It holds to the view that, at the time the aid was granted, the restructuring plan could have restored the company to long-term viability.

IV. **ASSESSMENT OF THE AID**

IV.1. **Compatibility of the aid with the EC Treaty**

(31) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Pursuant to the case law of the European Court of Justice, the criterion of the aid being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(32) The Commission notes that the aid was granted through State resources to a firm that was favoured by reducing costs it would normally have had to bear if it wanted to carry out the notified restructuring project. Moreover, the aid recipient ZEMAG developed and manufactured machinery that is the subject of trade between Member States. Accordingly, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

(33) Exemptions or derogations from the basic prohibition on aid under Article 87(1) may be granted under Article 87(2) and (3).

(34) Article 87(2)(c) empowers the Commission to approve State aid granted to the economy of certain areas of Germany affected by the division of Germany in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

(35) Germany and the interested parties have not provided any information proving that this aid is specifically designed to compensate for advantages caused by the division of Germany. On the contrary, it appears from the information submitted by Germany that the aid was granted in order to restructure a firm in difficulty. The division of Germany did not cause the firm's difficulties. Pursuant to the case-law of the European Court of Justice, the application of Article 87(2)(c) of the EC Treaty to this case would not be justified [8].

[7] On 28 March 2001 the Commission took a partly negative decision on aid for LINTRA and its subsidiaries. Germany was required to recover from them an amount of DEM 34,978 million. The amount of misused aid granted to ZEMAG totals DEM 6,37 million.

[8] See *inter alia* Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen* v *Commission* [1999] ECR II-3663.

(36) This case falls within the scope of Article 87(3) of the EC Treaty, which empowers the Commission to approve State aid in certain specified circumstances. Under Article 87(3)(a), the Commission is authorised to grant State aid designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The *Land* of Saxony-Anhalt is caught by this provision. In this case, however, the main purpose of the aid was to promote the development of a certain economic sector rather than to promote the economic development of a region. Accordingly, the aid should be assessed under Article 87(3)(c) and not under Article 87(3)(a).

(37) In the guidelines on rescue and restructuring aid [9] (hereinafter referred to as the 'guidelines'), the Commission spelt out in detail the criteria for assessing aid designed to restructure a firm.

(38) According to paragraph 2.1 of the guidelines, typical symptoms of a firm in difficulty are deteriorating profitability or increasing size of losses, diminishing turnover, declining cash flow and low net asset value. The Commission notes that ZEMAG has made losses since being privatised in 1994. The losses amounted to DEM 15 million in 1997. The firm is, therefore, regarded as a firm in difficulty.

IV.2. **Aid allegedly granted under an approved scheme**

(39) In its decision to initiate the investigation procedure, the Commission noted that, of the total public contribution to the restructuring costs, DEM 1,85 million was allegedly granted on the basis of an approved scheme. As Germany did not provide sufficient details to enable the Commission to determine whether the measure complied with the thresholds and conditions laid down in the scheme, it issued an information injunction pursuant to Article 10(3) of Regulation (EC) No 659/1999.

(40) From the information submitted by Germany in response to the information injunction it appears that on 27 September 1995 Germany provided ZEMAG with an investment grant of DEM 4,345 million. This aid was granted on the basis of an aid scheme previously approved by the Commission [10]. On account of a lower level of investment by ZEMAG, the grant was reduced on 26 July 2000 to DEM 2,07 million. Since ZEMAG filed for bankruptcy in December 2000, only DEM 1,85 million was paid out to it.

(41) The Commission notes that the measure complies with the thresholds and conditions laid down in the scheme. Accordingly, the measure is regarded as existing aid within the meaning of Article 1(b)(ii) of Regulation (EC) No 659/1999. The Commission need not, therefore, assess its compatibility in its decision. However, the aid of DEM 1,858 million must be taken into account in assessing the proportionality of the aid pursuant to paragraph 3.2.2(iii) of the guidelines.

IV.2.1. *Restoration of viability*

(42) The granting of restructuring aid requires a detailed restructuring plan capable of restoring the long-term viability and health of the firm within a reasonable time span and on the basis of realistic assumptions as to its future operating conditions. To fulfil the viability criterion, the restructuring plan must put the firm into a position of covering all its costs including depreciation and financial charges.

(43) In initiating the formal investigation procedure, the Commission expressed its reservations whether the restructuring plan could be considered capable of putting the firm into a position of covering all its costs. It thus raised doubts as to whether the submitted restructuring plan fulfilled the viability criterion laid down in the guidelines.

[9] Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994): the guidelines were revised in 1999 (OJ C 288, 9.10.1999, p. 2). The new version of the guidelines is not applicable here since all the aid was granted before the revised guidelines were published (see Section 7 of the 1999 version).

[10] 24th general plan of the Federal Government/*Länder* joint programme for improving regional economic structures (Aid N 531/95).

(44) In its response to the initiation of the investigation procedure, Germany and the bankruptcy administrator for ZEMAG pointed out that, at the time the aid was granted, the restructuring plan could have restored ZEMAG to long-term viability.

(45) The Commission notes that ZEMAG was operating in a market segment where it is necessary to provide various contract-related guarantees. These guarantees have to be provided for up to five years after the contract has been fulfilled. Moreover, firms operating in this market segment need to be able to pre-finance contracts and cover unsettled claims in case the client does not pay on time.

(46) The Commission also notes that, in the past, ZEMAG covered its need for guarantees and pre-financing to a large extent by way of public measures. According to the restructuring plan submitted, the need for guarantees was to be covered in the future by a guarantee line from the *Land* of Saxony-Anhalt ([11]).

(47) The Commission would also point out that the investors in ZEMAG were two private businessmen who had only limited resources to provide finance to the firm.

(48) Furthermore, the Commission notes that the restructuring plan submitted envisaged an additional financial contribution to the restructuring costs (see recitals 25 and 26) by the workforce and a private bank. On the basis of the information provided, it appears that this financial contribution would never be provided. This indicates that market investors were, on the basis of the restructuring plan, not prepared to provide the firm with the necessary financial resources.

(49) Taking these facts into account, the Commission is of the opinion that the restructuring plan has not adequately tackled the problem of putting the firm into a position of covering by itself all its costs including depreciation and financial charges. This view is borne out by the firm's economic development during the restructuring period. Accordingly, the Commission takes the view that the restructuring plan does not satisfy the viability criterion laid down in the guidelines. It should also be noted that the recovery claim on LINTRA was an additional burden on the firm.

(50) The Commission notes that the firm filed for bankruptcy on 27 December 2000. It is thus clear that long-term viability of ZEMAG will not be achieved.

IV.2.2. *Avoidance of undue distortions of competition*

(51) The restructuring must contain measures that offset as far as possible adverse effects on competitors; otherwise the aid will be contrary to the common interest and not eligible for exemption under Article 87(3)(c) of the EC Treaty.

(52) This means that, if the firm operates on a market within the Community where an objective assessment of supply and demand shows that there is a structural excess of production capacity, the restructuring plan must make a significant contribution, proportionate to the amount of aid received, to the restructuring of the industry serving the relevant market by irreversibly reducing or closing capacity.

(53) The markets on which ZEMAG operated are highly specialised product markets. According to Germany, there was no overcapacity on those markets.

(54) According to the restructuring plan submitted, ZEMAG was to reduce its production capacity from 130 000 hours per year to 173 000 hours per year between 1997 and 2000. A firm in receipt of restructuring aid should increase its capacity only if its survival would otherwise be threatened. Such an exemption must be explicitly invoked and justified. In the present case, no such explanation of the need for an increase in capacity was given.

(55) For these reasons, the Commission cannot conclude that the restructuring plan submitted contains sufficient measures to counter possible negative effects on competitors.

([11]) To this end, the two guarantees granted in 1997 by the BvS should be converted into a guarantee of the *Land* of Saxony-Anhalt. This guarantee should be granted on the basis of an aid scheme previously approved by the Commission.

IV.2.3. *Aid in proportion to restructuring costs and benefits*

(56) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid recipients must make a significant contribution to the restructuring costs from their own resources or from external commercial financing.

(57) In initiating the formal investigation procedure, the Commission noted that the workforce contributed DEM 8,7 million to the restructuring costs. An additional contribution by the workforce of DEM 2,1 million was not taken into account since the details of the participation by the workforce were not definitively decided. Moreover, since the measure was to be granted outside the restructuring period, it was questionable whether the Commission could regard it as a restructuring measure at all.

(58) The Commission also noted that a private bank intended to increase ZEMAG's credit line to DEM 3 million and the guarantee line to DEM 15 million. As Germany did not provide any further information on the exact terms of these measures and on whether they would be granted in the end, the Commission could not include them in the proportionality analysis either as a restructuring measure or as a contribution by external commercial financing to the restructuring costs.

(59) For the above reasons, the Commission took the view in its decision that the total costs of the second restructuring of ZEMAG would amount to DEM 41,058 million. The contribution by the aid recipient would be DEM 3,9 million i.e. less than 10 % of the total costs, without taking into account the additional burden of the recovery claim on LINTRA. This cannot be regarded as 'significant' within the meaning of the guidelines.

(60) The Commission notes that, on the basis of the information submitted in response to the initiation of the investigation procedure, neither the additional contribution to the restructuring costs by the workforce nor the additional bank finance would actually be granted.

(61) Moreover, in initiating the formal investigation procedure, the Commission stated that the aid granted to ZEMAG until 1997 via LINTRA had to be assessed as part of Case C-41/99 (LINTRA Beteiligungsholding GmbH). In the present case, this amount of aid was to be taken into account in examining whether the investor would make a significant contribution to the restructuring costs.

(62) On 28 March 2001 the Commission took a partly negative decision on aid to LINTRA and its subsidiaries. Germany was required to recover DEM 34,978 million from LINTRA and its subsidiaries. The amount of aid granted to ZEMAG that was incompatible with the common market totals DEM 6,37 million.

(63) The Commission notes that Germany has not supplied any information on how this amount is to be taken into account in analysing whether the aid is limited to the strict minimum and whether the aid recipient is making a significant contribution to the restructuring plan from its own resources.

(64) Lastly, it should be borne in mind that the aid recipient is apparently contributing DEM 3,9 million to the restructuring costs of DEM 41,058 million. The public measures for the second restructuring, including the DEM 1,85 million granted under previously approved schemes, amount to some DEM 28,45 million. This amount does not include the aid measures amounting to DEM 6,37 million that are regarded as being incompatible with the common market and are to be recovered as a result of the LINTRA decision. It cannot, therefore, be concluded that the aid is in proportion to the restructuring costs and benefits. In addition the fact that the restructuring plan is not suitable for returning ZEMAG to long-term viability bears out the Commission's assessment.

(65) In view of the foregoing, the Commission cannot conclude that this criterion laid down in the guidelines has been met.

V. **CONCLUSION**

(66) The Commission finds that Germany has granted the aid in question in breach of Article 88(3) of the EC Treaty.

(67) The amount of DEM 26,6 million in aid that is incompatible with the common market is to be recovered from ZEMAG,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Zeitzer Maschinen, Anlagen, Geräte ZEMAG GmbH, amounting to DEM 26,6 million, is incompatible with the common market.

Article 2

1. Germany shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 10 October 2001.

For the Commission

Mario MONTI

Member of the Commission