COMMISSION DECISION

of 13 March 1996

on the compatibility with the common market of State guarantees for measures to restructure large firms in difficulty under the State guarantee schemes of the *Länder* of Saxony-Anhalt, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Bavaria, Bremen, Mecklenburg-Western Pomerania, Schleswig-Holstein and Saxony

(Only the German text is authentic)

(96/475/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Community guidelines on State aid for rescuing and restructuring firms in difficulty [1], and in particular paragraphs 4 (1) and (2) thereof,

Having regard to the comments received,

Whereas:

I. INTRODUCTION

1. By letters:

— SG(94) D/12198 of 18 August 1994,
— SG(94) D/12184 of 18 August 1994,
— SG(94) D/15710 of 9 November 1994,
— SG(94) D/12186 of 18 August 1994,
— SG(94) D/15712 of 9 November 1994,
— SG(94) D/15714 of 9 November 1994,
— SG(94) D/15716 of 9 November 1994,
— SG(94) D/15718 of 9 November 1994,
— SG(94) D/17918 of 12 December 1994,

the Commission, acting pursuant to Article 93 (1) of the EC Treaty, proposed appropriate measures regarding the State guarantee schemes of the *Länder* of

— Saxony-Anhalt	(E 5/94)
— Lower Saxony	(E 6/94)
— North Rhine-Westphalia	(E 7/94)
— Rhineland-Palatinate	(E 8/94)
— Bavaria	(E 9/94)
— Bremen	(E 13/94)
— Mecklenburg-Western Pomerania	(E 14/94)
— Schleswig-Holstein	(E 15/94)
— Saxony	(E 16/94).

2. By letter of 23 February 1995 the German authorities, as part of the proceedings pursuant to Article 93 (1), commented on the measures proposed.

They accepted most of the measures the Commission had suggested, but they objected to others, and particularly to the proposal that there should be case-by-case notification of all planned guarantees for restructuring measures, including reorganization and consolidation projects, aimed at large firms in difficulty, 'large' firms being defined in accordance with the Community guidelines on State aid for small and medium-sized enterprises (SMEs). The German authorities said they would be prepared to notify such cases whenever the amount guranteed exceeded DM 50 million (ECU 25 million).

The Commission considered that the German authorities' position was unacceptable. The Commission has published Community guidelines on State aid for rescuing and restructuring firms in difficulty, and has stated there that all awards of aid towards the rescue or restructuring of large firms in difficulty have to be notified individually. The guidelines do not make this obligation to notify subject to any threshold in terms of the volume of aid or the amount of the guarantee.

The Commission took the view that the guarantees which were available for large firms' restructuring projects under these schemes, and which had been the subject of appropriate measures prepared pursuant to Article 93 (1), were no longer compatible with the common market. On 15 March 1995 it decided to initiate proceedings pursuant to Article 93 (2) of the Treaty.

[1] OJ No C 368, 31. 12. 1994, p. 12.

It may be pointed out here that the Commission's letter SG(94) D/12184 of 18 August 1994, already referred to (decision of 27 July 1994), which dealt with the Lower Saxony guarantee scheme, did not propose that guarantees for measures to restructure large firms in difficulty should be notified individually; this was because the original authorization for that scheme itself required the notification of all important cases, that is to say cases involving guarantees on loans of over ECU 0,5 million to enterprises with over 300 employees, or 50 employees in sensitive industries.

Thus the Article 93 (2) proceedings do not concern the Lower Saxony scheme.

3. The German Government was informed of the decision to initiate the Article 93 (2) proceedings by letter SG(95) D/4305 of 4 April 1995. The letter was published in the *Official Journal of the European Communities* so as to bring it to the attention of the other Member States and of any other interested parties (1). The letter and the notice in the Official Journal asked the German Government, the other Member States and other interested parties to submit their comments within one month.

II. COMMENTS RECEIVED

4. The German authorities submitted comments on 29 May 1995. The matter was discussed at a meeting with the German authorities on 9 November 1995.

No comments were received from other Member States or interested parties.

II.1. The German authorities' comments

5. In the comments it put forward on 23 February 1995 regarding the Commission's proposals for appropriate measures pursuant to Article 93 (1), the German Government said it was unable fully to subscribe to the suggestion that there should be individual notification of all cases where guarantees were to be given for measures to restructure firms in difficulty which were larger than the SMEs defined in the Community guidelines on SMEs; instead it proposed another test, namely that irrespective of the size and location of the firm there should be a threshold below which guarantees would be deemed to be authorized without individual notification to the Commission, a threshold which it suggested should be set at DM 50 million (about ECU 25 million).

The Government argued that guarantees were largely in the nature of insurance, and that it was consequently doubtful whether they constituted State aid. The default rate was within the span customary in banking, and was covered by the commissions paid. In a study carried out by the Baden-Württemberg authorities in autumn 1994, for example, it had been found that there was an annual default rate of between 1,26 and 2,84 % on guarantees given under the guarantee and liquidity assistance scheme in that *Land* over the period 1991 to 1994. The liability was contingent, being uncertain at the time the guarantee was given, and was offset by a charge of 0,5 to 1 % of the sum guaranteed. The firm's creditworthiness was investigated beforehand, usually by independent consultants. The strict legislation governing the *Länder's* finances required them to guarantee only those loans which under normal commercial circumstances would assuredly be repaid. As a rule the banks were left with a contingent liability of 20 %. It was true that guarantees for the restructuring of firms in difficulty had a higher aid intensity than guarantees for other purposes, because of the higher risk of default, but the intensity of guarantees was a great deal lower than that of other forms of aid.

6. In the comments it submitted on 29 May 1995, as part of the Article 93 (2) proceedings, the German Government observed that in deciding to initiate proceedings the Commission was assuming that a firm was necessarily in difficulty if banks were no longer prepared to help it by extending loans at their own risk, so that if it was to obtain credit it had to have outside guarantees. The Government maintained that the obligatory notification of all cases which it understood the Commission to deduce from this was unacceptable, on the grounds already set out in its letter of 25 February 1995.

(1) OJ No C 242, 19. 9. 1995, p. 5.

6.1. The Government further argued that the existing guarantee schemes in Germany were based on the principle that a State guarantee should be given only when the firm could not obtain credit otherwise because it could not provide sufficient security of the kind normal in banking. The mere fact that it could not produce such security said nothing as to its competitiveness; and the supposition that an enterprise was necessarily in difficulty if it could not obtain bank loans without a State guarantee was out of touch with the reality of bank lending, which was largely determined by the banks' willingness to take risks and the regulatory limits on lending. Healthy firms that hoped to expand but had little capital of their own were often unable to finance necessary and reasonable plans for the expansion of their business. This was particularly true of medium-sized firms, which might fall outside what the Government considered to be the restrictive limits set by the Community guidelines on SMEs, but which, unlike large enterprises, had trouble in obtaining credit because their generally narrow capital base meant that banks were reluctant to advance them funds. The gurantee schemes were especially important in such cases, because firms of that kind would otherwise be unable to take advantage of opportunities to develop, despite the fact that their development would stimulate competition and prevent the market from being shared out between a few large groupings. The Government stressed that these guarantees involved no contribution of State capital. They were provided on normal commercial terms, and merely replaced the collateral which the firm could offer, but which the banks, with their need for security, found insufficient or difficult to value. The Government did accept that it could usually be assumed that large healthy companies ought to be able to obtain the loans they needed on the financial markets. But this was not true of small or medium-sized family businesses or small companies, even if they fell outside the terms of the Community guidelines on SMEs.

6.2. The Government repeated its view that a threshold ought to be introduced, given the limited grant equivalent of the guarantees available in Germany, if indeed there was any aid component at all. In setting such a threshold it had also to be borne in mind that the additional administrative burden of individual notification, and the time taken to deal with cases, should be in reasonable proportion to the intensity of the aid and the impact of such guarantees on competition in the Community.

6.3. At the talks that took place on 9 November 1995 the German Government put forward no new arguments; it reiterated its demand for the introduction of a threshold, and emphasized the administrative burden and delay which would be caused by individual notification.

III. ASSESSMENT

7. The Commission has set out its approach to rescue and restructuring aid in the Community guidelines on State aid for rescuing and restructuring firms in difficulty, which it published in December 1994. The guidelines essentially confirm the body of practice built up in the Commission's decisions on cases of aid to ailing firms, which the Commission had already described in its Eighth Report on Competition Policy 1979 (point 228).

7.1. In the Eighth Competition Report the Commission stated that 'In the case of both rescue aids and restructuring aids the Commission requires that ... significant cases of application be notified in advance'. The guidelines spell out this obligation further: aid for rescuing or restructuring large firms have to be notified individually (paragraph 4.1, second subparagraph); 'For aid to rescue or help restructuring large firms ... individual notification of all awards is required' (paragraph 4.2, first subparagraph).

In the German version of the Eighth Competition Report the term corresponding to the English version's 'restructuring aid' was *Begleitbeihilfe*, the guidelines speak instead of *Umstrukturierungsbeihilfe* or *Restrukturierungsbeihilfe*, with no change in meaning.

7.2. The guidelines define 'large firms' as 'those not falling within the definition of SME' (paragraph 4.2, first paragraph); for the definition of 'SME' they refer to the 'uniform definition of SME for State aid control purposes' in the Community guidelines on State aid for small and medium-sized enterprises (SMEs) [1] (paragraph 3.2.4).

[1] OJ No C 213, 19. 8. 1992, p. 2.

7.3. A 'firm in difficulties' is defined in the guidelines as one which is 'unable to recover through its own resources or by raising the funds it needs from shareholders or by borrowing' (paragraph 2.1, first subparagraph); the Commission comments in the same place that 'The financial weakness of firms that are rescued by their governments or 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. In acute cases the company may already have become insolvent or gone into liquidation.'

7.4. The guidelines also define the concept of 'restructuring' (paragraph 2.1, fourth subparagraph). It 'is part of a feasible, coherent and far-reaching plan to restore a firm's long-term viability'. Restructuring plans 'allow an orderly transition of the firm to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further State assistance'. Restructuring can be divided into physical restructuring — reorganization and rationalization of the firm's activities — and financial restructuring — capital injections and debt reduction.

8. In initiating the present proceedings the Commission made express reference to the notice of 23 December 1994 in which it published these guidelines.

9. The German Government appears in its correspondence to cast doubt on the classification of guarantees as State aid, arguing more particularly that they are largely in the nature of insurance, that the aid intensity is low, and that the default rate is low and covered by commissions charged in line with normal banking practice. But clearly it does not claim that guarantees may never comprise an aid component.

9.1. The Commission takes the view that a guarantee provided to a firm does not constitute aid when the following tests are satisfied:

— the firm is in a financially sound position,

— the firm would be able to obtain a private-sector loan without the State guarantee,

— the guarantee is provided against payment by the firm of a premium corresponding to the usual commercial rate of remuneration for the risk incurred by a lender of private loans for the same duration and on comparable terms, taking account of the beneficiary's financial position, sector of activity and prospects and of the security put up for the loan,

— the guarantee is limited in size and duration and is linked to a specific financial transaction,

— in the event of default, the contract provides that the guarantor is entitled to recover the balance due, if necessary through the sale of assets owned by the beneficiary or liquidation.

The guarantees for measures to restructure large firms in difficulty which are the subject of the present proceedings do not satisfy these tests, because:

— they are given to undertakings whose financial position is unsound,

— under what is referred to as the 'subsidiarity principle', they are provided only if the firm cannot obtain a loan otherwise, being unable to provide acceptable banking security (see the German Government's letter of 29 May 1995).

In the Commission's view there can be no doubt that the guarantees which are the subject of the Article 93 (2) proceedings do constitute State aid caught by Article 92 (1). The guarantee enables the firm to obtain financing which prevents its disappearance from the market. If it were to disappear, then either there would be a shutdown of over-capacity or else the vacated market share would be occupied by competitors; in either event its competitors would be able to improve their profitability. And the schemes at issue do not rule out the provision of guarantees to firms trading across borders within the Community. It must be concluded that they may affect trade between Member States.

9.2. The Commission considers that the aid intensity of guarantees on loans to ailing firms cannot be measured in terms of the default rate *ex-post*, after successful restructuring: if at the time the loan is granted there is clearly a strong possibility that the borrower may become insolvent, the value of the guarantee may be anything up to the sum actually guaranteed.

9.3. The Commission further considers that the charges paid under the schemes, which according to the German Government's letter of 23 February 1995 amount to between 0,5 and 1 % of the sum guaranteed, are certainly not sufficient to offset the foreseeable defalt rate, which according to the same letter amounted to between 1,26 and 2,84 % in Baden-Württemberg from 1991 to 1994; there is some doubt, too, whether the default rate observed in Baden-Württemberg will necessarily be duplicated in other *Länder*, and especially the new *Länder*.

The German authorities have argued that the guarantees are provided on normal commercial terms, and serve merely to replace the collateral offered by the firm concerned, which the banks with their need for security consider insufficient or difficult to evaluate; but this argument contradicts itself by artificially placing the beneficiary in a segment of the market in which it cannot be classified and which is in fact closed to it.

For the same reason the insurance argument is not tenable in the case of the ailing firms concerned here.

9.4. To sum up, the Commission continues to believe that guarantees for measures to restructure firms in difficulty constitute State aid towards the restructuring of those firms, and are to be judged in accordance with the Community guidelines on the subject.

10. In its formal statement of 29 May 1995 the German Government asserts that in commencing the procedure the Commission uses the premise that a business is necessarily in difficulty if banks are no longer prepared to help it by extending loans at their own risk, and if credit is granted only on the production of guarantees. The Government believes that the Commission is deducing from this an obligation to notify all cases.

10.1. The Commission fails to understand this assertion. It certainly cannot be supported by a reading of the letter announcing the initiation of the Article 93 (2) proceedings:

— the proceedings are concerned only with 'large firms',

— the proceedings are concerned only with 'guarantees for restructuring projects',

— the proceedings are concerned only with 'firms in difficulty', and the letter refers expressly to the Community guidelines on State aid for rescuing and restructuring firms in difficulty; that the concept of a firm in difficulty is the one used in those guidelines should be clear at least from the explicit reference to them (see point 7.4). According to the definition in the guidelines a 'firm in difficulties' is one which is 'unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing'. The decisive factor in the present case is that the firm needs to recover.

10.2. Nor can the Commission understand the German Government's view when the Commission, in formulating the proposals for appropriate measures referred to in the introduction, had at no stage claimed that, for example, there was necessarily State aid to firms in difficulty wherever guarantees were provided on loans to finance initial investment because banks were no longer prepared to lend to the firm at their own risk.

In the interest of clarity the Commission would like to make the following points:

Paragraph 18 (i) of the Annex to the principles of coordination of regional aid systems [1] defines 'initial investment' as 'investment in fixed assets in the creation of a new establisment, the extension of an existing establishment or in engaging in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalization, restructuring or modernization). Investment in fixed assets by way of takeover of an establishment which has closed or which would have closed had such takeover not taken place, may also be deemed to be initial investment'.

[1] OJ No C 31, 3. 2. 1979, p. 9.

In its proposals for appropriate measures the Commission noted that the guarantee schemes which formed the subject of the appropriate measures guarantees to be given on loans intended to finance initial investment, including investment in fixed assets for engaging in an activity involving a fundamental change in the product or production process of an existing establishment by means of rationalization, restructuring or modernization, or investment in fixed assets by way of the takeover of an establishment which would otherwise have closed.

The Commission then observed that it appeared difficult to draw a distinction between measures to restructure firms in difficulty (including consolidation and reorganization projects) and projects for investment in an existing establishment by means of rationalization, restructuring or modernization; and that the difficulty was compounded if the takeover of an existing establishment which had closed or which would otherwise have closed was secured by a guarantee and was combined with rationalization, restructuring or modernization investment that was itself covered by guarantees.

The Commission therefore argued that at least as far as large firms were concerned it had to be able to satisfy itself that these classes of guarantee (for a fundamental change and for the takeover of an establishment which had closed or which was threatened with closure) did not contain any element of State aid for restructuring firms in difficulty. The Commission accordingly proposed, as an appropriate measure pursuant to Article 93 (1) of the EC Treaty, that the German authorities should notify all cases in which guarantees were to be given on loans to large firms which were intended to finance investment in fixed assets with a view to an activity involving a fundamental change in the product or production process of an existing establishment by means of rationalization, restructuring or modernization, or to finance investment by way of takeover of an establishment which had closed or which would have closed had such takeover not taken place (the Lower Saxony scheme was not affected).

The German Government did not accept this proposal (point (bb) in its letter of 23 February 1995). The proposal is still being discussed at the talks going on as part of the proceedings pursuant to Article 93 (1). The present proceedings, pursuant to Article 93 (2), are concerned only with the notification of all individual cases in which guarantees are to be provided for measures to restructure firms larger than SMEs which are in difficulty (including consolidation and reorganization projects) (point (dd) in the German Government's letter of 23 February 1995). In the Commission's letter SG (95) D/4305 of 4 April 1995, which informed the German authorities that the Commission had initiated Article 93 (2) proceedings, the Commission expressly stated that the proceedings were concerned only with this aspect, and that with regard to the other aspects dealt with in the measures rejected by the Government in its letter of 23 February 1995 the Commission considered that more detailed examination of the Government's comments was necessary; it would spell out its position on those aspects later.

10.3. The observations which the German Government made in its letter of 29 May 1995 regarding the position of firms which cannot obtain bank loans without a State guaranteee, and especially healthy firms with a narrow capital base, which are summarized in point 6.2, are consequently irrelevant to the present Article 93 (2) proceedings.

11. The proposal put forward in the German Governments's letter of 23 February 1995 that there should be a threshold of DM 50 million below which individual notification would not be necessary does not appear to be compatible with the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

As was explained in point 7.1, Commission policy on aid to firms in difficulty calls for individual notification wherever aid of the relevant kind is provided to large firms. By this Decision the Commission is confirming that approach.

11.1. In the introduction to the guidelines, the Commission once again emphasized the need for comprehensive and firm control of State aid in a single market (paragraph 1.1). This applies with particular force to aid to firms in difficulty. Such aid neutralizes the normal market selection mechanism, which is a vital factor in the maintenance of the European economies' competitiveness: especially on markets suffering from overcapacity, it ensures that the least cost-effective firms are forced off the market and that the more efficient can expand

their activities and their market shares in internal and in some cases in external trade. Aid to firms in difficulty has the effect of penalizing efficient firms by lowering their profitability and narrowing their opportunities for development. These efficient firms will often have recognized a need for restructuring in good time, and will already have completed a self-financed restructuring process; they will now be deprived of the fruits of their efforts by State aid directed to the restructuring of their competitors. In the medium term, indeed, their very existence may be threatened by successful State-aided restructuring operations in competing enterprises.

Apart altogether from the long-term danger to the competitiveness of the European economies which may arise as a result of an excessive resort to State aid for firms in difficulty, there is also the specific danger of a subsidies race between local, regional and national authorities within individual countries and within the Community.

11.2. For these reasons the Commission attaches particular importance to the careful monitoring of restructuring aid and to compliance with the fundamental tests of the acceptability of restructuring aid which it set out in the guidelines:

— a viable restructuring plan must be submitted and implemented which restores the firm to competitiveness within a reasonable period,

— the aid must be limited to the strict minimum needed to enable restructuring to be undertaken,

— adverse effects on competitors must be offset as far as possible, involving capacity closures in appropriate cases,

— progress will be monitored continuously on the basis of annual reports.

The Commission takes the view that large firms will as a rule be involved in cross-border trade and that the vetting of aid to them should, in the interests of competitors, be carried out on a case-by-case basis by the Commission. This is necessary — not least, in order to ensure that firms in different Member States in this size bracket, which is of special importance in cross-border trade, are treated equally as to the stringency of the requirements applied to them, and also as to the related question of the assessment of the market generally.

For this reason it is only for SMEs that the Commission is prepared to authorize whole schemes of assistance for rescue or restructuring purposes, as it stated in paragraph 4.1 of the guidelines. It explained in paragraph 3.2.4 of the guidelines that it was willing to take a less restrictive approach to restructuring aid for SMEs because 'aid to firms in the small to medium-sized category tends to affect trading conditions less than that to large firms and any harm to competition is more likely to be offset by economic benefits'. Here the Commission referred to a paragraph 3.3 of the guidelines on SMEs.

11.3. The Commission feels that the introduction of a threshold would be unreasonable for another reason too: it believes that a large firm in difficulty will generally need a substantial amount in aid, and that restructuring operations on too small a scale will not normally restore the competitiveness of the enterprise in the long term; restructuring aid of that kind is in the Commission's view incompatible with the common market, and the excessively small scale of the measures initially envisaged conceals the danger that repeated packages of restructuring aid may be required later. Successive instalments of small-scale aid would tend to degenerate into continuous operating aid, and the firm's underlying structural problems would still not have been addressed.

11.4. The Commission has already observed in point 10.2 that it appears difficult to draw a distinction between measures to restructure large firms in difficulty (including consolidation and reorganization projects) and projects for initial investment in an existing establishment by means of rationalization, restructuring or modernization; and that the difficulty is compounded if the takeover of an existing establishment which has closed or which would otherwise have closed is secured by a guarantee and is combined with rationalization, restructuring or modernization investment that is itsef covered by guarantees.

In accordance with the body of practice the Commission has built up in its decisions, aid to initial investment by large firms is admissible only in regional development areas within the scope of

Article 92 (3) (a) or (c) of the EC Treaty, so that vetting individual cases of notified restructuring aid for large firms can also ensure that initial investment by large firms in good health does not receive assistance under a scheme intended to help firms in difficulty.

11.5. The Commission further considers that State aid caught by Article 92 (1) must be treated in the same way whatever form it takes. Guarantees which constitute State aid cannot be placed in a better position procedurally than other forms of State aid to large firms in difficulty. This principle is particularly important given that, according to the Commission's information loan guarantees are a form of aid that is used very frequently in various Member States.

11.6. Special treatment for guarantees cannot be justified on the ground that the *ex-post* aid intensity is low. As has already been said in point 9.2, the Commission's view is that the value of the aid component in a guarantee given to a firm in difficulty can be anything up to the amount of the loan which the guarantee makes possible.

Precisely because of the small burden imposed on public budgets by the the takeup of guarantees, the distorting effect which guarantees have on competition is especially strong in terms of the economy as a whole, by comparison, for example, with direct cash grants. Guarantee schemes are consequently a very effective instrument of State economic policy, and call for particular vigilance when they are used to help firms in difficulty.

11.7. The German authorities have not sought to justify the level of the proposed DM 50 million threshold on competition grounds. In particular, they have not offered any explanation as to why it should be only from DM 50 million upwards that guarantees distort competition and affect trade to an extent which justifies individual vetting.

11.8. The pragmatic argument of the administrative burden and the reference to 'the need to notify hundreds of cases' will be helpful in the organizational preparation for the scrutiny of the aid, but cannot release the Commission from its obligation to protect competitors.

The Commission is aware of the administrative burden which will be imposed by the individual notification of restructuring aid to large firms in difficulty, and of the delays which may ensue. In paragraph 4.2 of the guidelines it undertook to make every effort to take decisions quickly, and expressly suggested ways in wich the Member States could help to avoid unnecessary delays.

IV. APPLICATION

12. When it initiated the Article 93 (2) proceedings the Commission noted that 'following the initiation of a procedure for refusal to apply appropriate measures proposed ... a Member State may lawfully continue to grant the aid at issue in the procedure pending the adoption of a final decision by the Commission.'

12.1. This means that in a final decision like the present one the Member State should be allowed reasonable time to adapt arrangements which operated quite lawfully in the past. Given the need for a rapid decision in restructuring cases, it is particularly important to avoid jeopardizing the position of firms which have already applied for aid under the existing rules and which cannot be expected to foresee the changes that will have to be made to the aid schemes. The Commission takes the view that this requirement will be satisfied if the individual notification obliagation for restructuring projects in large firms takes effect on 1 July 1996, applying to all cases in which no formal application for a guarantee has been received by the responsible authority by 30 June 1996,

HAS ADOPTED THIS DECISION:

Article 1

The guarantee schemes of the *Länder* of Saxony-Anhalt, North Rhine-Westphalia, Rhineland-Palatinate, Bavaria, Bremen, Mecklenburg-Western Pomerania, Schleswig-Holstein, and Saxony are incompatible with the common market in that they provide for the provision of guarantees for measures to restructure large firms in difficulty (including reorganization and consolidation projects) without advance notification to the Commission.

Individual cases in which guarantees under these schemes are to be provided for measures to restructure large firms in difficulty shall be notified to the Commission in accordance with Article 93 (3) of the EC Treaty so as to enable it to establish whether they are compatible with the common market.

Article 2

This Decision shall apply with effect from 1 July 1996 to all guarantees for measures to restructure large firms in difficulty (including reorganization and consolidation projects) under the guarantee schemes of the *Länder* of Saxony-Anhalt, North Rhine-Westphalia, Rhineland-Palatinate, Bavaria, Bremen, Mecklenburg-Western Pomerania, Schleswig-Holstein and Saxony where no formal application for a guarantee has been received by 30 June 1996 by the office to which applications are to be submitted.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 March 1996.

For the Commission

Karel VAN MIERT

Member of the Commission