II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 May 1996

concerning aid proposed by Germany to Buna GmbH, Sächsische Olefinwerke GmbH, Leuna-Werke GmbH, Leuna-Polyolefine GmbH and BSL Polyolefinverbund GmbH

(Only the German text is authentic)

(Text with EEA relevance)

(96/545/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments [1],

Whereas:

I

1. The chemical industry, grouped in large 'Kombinate' (conglomerates), was one of the main industries of the former German Democratic Republic, originally employing more than 90 000 people. It was centered in the Leipzig area, inland in Saxony-Anhalt and Saxony, where the four largest complexes, namely Buna, Sächsische Olefinwerke (SOW), Leuna and Chemie AG Bitterfeld gave employment to 68 500.

In June 1990 the Government of the former German Democratic Republic founded the privatization trustee Treuhandanstalt (THA), which continued its activities after Germany had been unified. The THA transformed the planned-economy complexes into public limited companies, which remained interdependent, however, regarding the supply of raw materials, primary and intermediary products and energy. The resulting impediments to a fast restructuring and privatization of these companies were aggravated by the concomitant breakdown of traditional outlets.

The undertakings in question comprised a large number of quite diverse branches of activity. Many production plants were outdated, quite obsolete or had an uneconomic scale of production. The THA shut these plants down and tried to break down the remaining groups into smaller units, which would be easier to sell.

Of the three companies in the Leipzig area, Buna (at Schkopau), SOW (at Böhlen) and Leuna-Werke GmbH, the site of Leuna was the largest. After the hiving off of several branches, including its low-density polyethylene (LDPE) division as the independent Leuna-Polyolefine GmbH, the remainder was combined into one industrial park.

[1] 1. Opening of procedure:
— OJ No C 113, 5. 5. 1995, p. 5 (Buna),
— OJ No C 113, 5. 5. 1995, p. 13 (SOW),
— OJ No C 206, 26. 7. 1994, p. 10 (Leuna).
2. Enlargement of procedure:
— OJ No C 203, 8. 8. 1995, p. 6 (Buna, SOW, BSL),
— OJ No C 227, 1. 9. 1995, p. 8 (Leuna).

Buna was an integrated complex focused on chlorine and olefine chemistry. For environmental reasons, THA was forced to shut down acetylene production, thereby making Buna dependent on the ethylene cracker at Böhlen for this essential raw material. SOW at Böhlen and Buna were connected by pipelines, as was Leuna-Polyolefine as a consumer of ethylene.

Consequently, the dependence of these three facilities on the production of raw material by the cracker (olefines) at Böhlen, which supplies Buna's downstream activities at Schkopau and Leuna-Polyolefine at Leuna with ethylene, made it imperative for the THA to strive for privatization as a whole.

2. Based on this polyolefine concept, and after previous privatization attempts had failed, the bank Goldman Sachs & Co. was charged with the search for and negotiations with potential buyers. According to information supplied by Germany the Dow Chemical Company (Dow) presented a sound plan for a complete restructuring of the olefine complex with perspectives for long-term viability, and in the end Dow was the only bidder for the privatization of the bundled three chemical companies.

SOW's and Leuna-Polyolefine's shares were taken over by Buna for the subsequent merger into BSL Polyolefinverbund. On 3 and 4 April 1995 the privatization agreement between Dow and the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) — which had succeeded to the THA — was notarized. This contract provides for substantial payments by BvS to BSL, which by far exceed the price Dow pays for the takeover.

3. Between 1990 and 1995 the THA/BvS initiated and financed some urgent restructuring measures on the three sites and reduced the number of jobs in the three companies from 26 029 to 5 820 by January 1995. Despite these efforts, losses remained high in that period and these too were financed by THA/BvS.

II

1. The Commission made a general assessment of the interventions of the THA in 1991 (decision dated 26 September 1991) and again in 1992 (decision dated 8 December 1992). It assessed the interventions of the BvS and other successor institutions to the THA in 1995 (decision dated 1 February 1995). In those decisions the Commission laid down which of those interventions were likely to constitute aid and assessed the compatibility of such aid with the common market. Taking into account the task of the THA in the unprecedented transformation of a planned economy into a market economy, the Commission found that the financing of companies held by the THA before their privatization could well constitute aid, but that such aid could, if certain conditions were fulfilled, be considered compatible with the common market. Likewise, a privatization sale to a party other than the highest bidder in a public call for bids or at a negative price could also entail aid. The decisions stipulate that aid granted by the THA and the BvS for the financing and privatization of large companies must be notified pursuant to Article 93 (3) of the Treaty for an individual assessment. The size of all three companies Buna, SOW and Leuna is well above the thresholds laid down in the decisions.

2. Germany complied with this obligation and informed the Commission of the following interventions of the THA before privatization:

2.1. **Buna**

The Commission approved the first two notifications. The first approval (aid N 199/93 [2]) concerned guarantees amounting to DM 445,5 million to secure first investments and the infrastructure and loans amounting to DM 106,2 million to secure the company's liquidity.

A second approval (aid N 449/93 [3]) concerned a loan of DM 220,2 million for environmental and restructuring measures and a discharge of personnel under socially acceptable circumstances.

A third notification concerned DM 1 232,1 million guarantees and DM 276,8 million loans, as well as a transformation of DM 288 million of guarantees into a shareholder's loan of the same amount, to finance investment and cover losses in 1994 (aid N 375/94; after the procedure was opened, C 61/94 [4]). The Commission accepted the transformation of guarantees into a shareholder's loan, as well as a loan of DM 259,4 million and guarantees totalling DM 131,5 million for ensuring the company's liquidity and for financing environmental investment, but initiated proceedings pursuant to Article 93 (2) of the Treaty against the remaining DM 1 143 million investment aid.

2.2. **SOW**

The Commission approved guarantees on DM 142,7 million and a loan of DM 92,2 million in order to allow SOW to fulfil mandatory environmental requirements, for investment and

[2] Not published.
[3] Not published.
[4] OJ No C 113, 5. 5. 1995, p. 5.

infrastructure and to cover losses in 1993 due to its being overstaffed (aid N 466/93 [5]).

When the German Government notified additional guarantees amounting to DM 266,7 million and loans totalling DM 400,1 million to cover losses in 1994 and to finance environmental investment, the Commission decided not to object to the covering of DM 92,2 million losses and DM 45,2 million aid for complying with mandatory standards, but to initiate proceedings pursuant to Article 93 (2) of the Treaty against DM 529,1 million investment aid in the form of DM 261,7 million guarantees and DM 267,4 million loans (aid N 376/94; after the procedure was opened, C 62/94 [6]).

2.3. **Leuna**

The Commission decided not to object to DM 30,1 million guarantees for financing environmental investment, but initiated proceedings pursuant to Article 93 (2) of the Treaty against a shareholder's loan of DM 146,3 million to cover losses in the first half of 1993 and guarantees totalling DM 405,8 million (DM 230,5 million to finance investment and DM 175,3 million to cover losses in the second half of 1993: aid NN 103/93; after the procedure was opened, C 4/94 [7]).

The procedure was expanded to cover a guarantee on investment credit for 1994 awarded at a later date amounting to DM 266,2 million. At the same time the Commission approved of the transformation of the guarantees used at that stage into a shareholder's loan and closed the procedure regarding shareholder's loans totalling DM 321,6 million which had been used to cover losses in 1993 (aid N 56/94, included in C 4/94 [8]).

3. The Commission initiated the first procedure referred to above against the investment aid to Leuna, because it noted that the privatization efforts of the THA for this company had still not been successful. The Commission recognized that Buna, SOW and Leuna were interdependent companies, which could never be privatized individually. The Commission demanded that a sound privatization plan involving all three companies be worked out. Under the procedure, and as part of the notification of the third instalment of aid to Buna (aid N 375/94) and the second instalment of aid to SOW (aid N 376/94), such a privatization plan was submitted by Germany. Whilst recognizing that the plan as such was consistent and based on several studies made by outside experts, the Commission still feared that the aid would only serve to perpetuate, or even create, unviable structures for which the THA would never be able to find a buyer and which would continue to depend on aid. Procedures were therefore opened against the additional aid to Buna and SOW proposed by the THA and a study by independent consultants was commissioned to assist the Commission in its assessment. The Commission took the same view when it assessed the second aid to Leuna (NN 56/94).

Under these procedures Germany stated its view that viability could be achieved and illustrated this, as stated above, using a joint privatization plan. Germany also stressed that delays in carrying out the necessary restructuring investment would prolong the period of losses and so increase the total amount of aid. Germany furthermore stressed the extraordinary position of those companies due to the former division of Germany.

No observations were received from third parties under the original procedure against the aid in favour of Leuna. Under the procedures opened against the aid to Buna and SOW the Commission received observations from three other manufacturers of chemicals and from a national chemical industry federation. Those observations, which supported the view taken by the Commission when it opened the procedure and which also pointed out that additional aid would be awarded for the privatization of these companies (see below) were submitted to Germany for its comments.

4. In May 1995 the Commission was informed by Germany of the aid involved in the privatization of Buna, SOW and Leuna-Polyolefine (aid N 467/95). The Commission was also informed of certain urgent investments in Buna and SOW which needed to be carried out without delay and the financing of which was blocked under procedures C 61/94 and C 62/94. Finally the Commission was informed of the cleaning-up of Buna's and SOW's balance-sheets as at 31 December 1994 (aid N 2/95 and NN 3/95). In June 1995 the Commission decided to enlarge procedures C 4/94, C 61/94 and C 62/94 so that they would also cover the aid awarded within the framework of the privatization (aid specified in Chapter III). The Commission doubted, in particular, whether the principles of its approach to restructuring aid were being adhered to, namely that long-term viability of the companies in question had to be secured, that undue distortions

(5) OJ No C 322, 30. 11. 1993, p. 14.
(6) OJ No C 113, 5. 5. 1995, p. 13.
(7) OJ No C 206, 26. 7. 1994, p. 10.
(8) OJ No C 227, 1. 9. 1995, p. 8.

of competition were to be avoided and that the aid was to be limited to the minimum necessary.

The Commission was able to close procedure C 61/94 concerning DM 67,7 million of urgent environmental investment in Buna, and procedure C 62/94 concerning DM 173,1 million of urgent environmental investment in SOW. The Commission was also able to accept the waiving of Buna's debt to the THA as at 31 December 1994 amounting to DM 1 441,4 million and of SOW's debt amounting to DM 312 million. Additional waivers of DM 191,1 million for Buna and DM 74 million for SOW, as well as injections of capital to those companies amounting to DM 151 million and DM 61 million respectively, were added to the sums covered by procedures C 61/94 and C 62/94 [9]. That decision was communicated to Germany by letter dated 14 July 1995.

Under the enlarged procedures, Germany provided information by letters dated 30 June, 14 July, 8 August, 29 August, 5 September, 7 September and 10 October 1995 and in meetings which took place on 23 June, 10 July, 16 and 30 August 1995.

One other Member State and three companies in other Member States submitted written information under the enlarged procedures in support of the Commission's position expressed in the letter under which the procedure was expanded. Those observations were submitted to Germany for its comments. Dow also presented written information and participated in the second and third of the meetings referred to above.

III

1. The notarized privatization contract between BvS and Dow dated 3 and 4 April 1995 contains the complete financial means that BvS makes available for the privatization of BSL. These were summarized in the published enlargement of the procedure [10] as follows:

	(million DM)
— restructuring programme (maximum)	3 436
— BSL current projects (outside DOW)	1 078
— waiver of outstanding loans (minimum)	1 479
— cash flow compensation (maximum)	3 150
— up-front payment (structural deficiencies)	440,5
— demolition costs (maximum)	750
— social plans (maximum)	110
— courts and possible liabilities (maximum)	110
— consultancy fees	44
— environmental indemnification (estimate)	1 000
— energy cost (open-ended)	—
— pipeline Rostock (open-ended risk)	—

Total financing without considering the open-ended compensation payments therefore potentially amounted to DM 11 597,5 million when the procedure was enlarged. The privatization contract contains suspensory clauses for Commission approval pursuant to Council Regulation (EEC) No 4064/89 of 21 December 1989 on merger control [11] and Article 93 of the EC Treaty.

2. Also covered by the procedure is the following aid:

2.1. A guarantee to Leuna for DM 266,2 million of investment in the first half of 1994, and a shareholder's loan of DM 230,5 million for investment in 1993.

2.2. The DM 529,1 million of aid to SOW in the form of DM 261,7 million of guarantees for investment credit and DM 267,4 million of interest-bearing loans, against which the Commission had opened the Article 93 (2) procedure at the end of 1994 (see Chapter II, point 2.2) is included by the amount covered by the waiver of outstanding debt in the context of privatization (see the third item in the summary in point 1).

2.3. The same applies to the DM 1 143 million investment aid to Buna (see Chapter II, point 2.1) which was also waived as part of the privatization.

2.4. DM 477,1 million is the sum of those parts of the balance sheet clean-up for Buna and SOW as at 31 December 1994 which the Commission did not accept before the privatization (see Chapter II, point 4); it is also caught by the waiver under the privatization.

3. Under the procedure Germany communicated clarifications and certain modifications of the restructuring plan, which affect the sums of aid within the framework of the privatization, when compared with the situation when the procedure was opened, as follows:

[9] OJ No C 203, 8. 8. 1995, p. 6.
[10] OJ No C 203, 8. 8. 1995, p. 6.
[11] OJ No L 395, 30. 12. 1989, p. 1. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

— The DM 44 million consultancy fees do not constitute aid to one of the companies. They constitute internal expenditure in the BvS linked to the efforts to privatize and to manage the contract.

— The cost of making good all environmental damage has been limited to DM 1 billion. If this ceiling should be exceeded for environmental damage caused after 1 July 1990, the Commission will be notified by Germany in sufficient time, pursuant to Article 93 (3) of the Treaty.

In its general decisions on the interventions of the THA and the BvS referred to in point 1 of Chapter II, the Commission laid down that an environmental indemnification for pollution caused before 1 July 1990 does not constitute aid. The Commission took the opinion that the companies in the new *Bundesländer* cannot be held liable for the pollution they had caused under the former German Democratic Republic, when they had no say at all in the matter. The Commission agrees with Germany that by far the greater part of the pollution caused by the plants belonging to BSL took place before 1 July 1990 and that hence the bulk of the DM 1 billion does not constitute aid. The Commission also accepts the view of Germany that it is not feasible to quantify the remainder, which does constitute aid.

— Regarding the possible open-ended additional cost of an alternative pipeline provided for in the original notification, Germany stated that no such additional cost would arise. If any additional aid should nevertheless be required, the Commission would be notified in sufficient time pursuant to Article 93 (3) of the Treaty.

— The Dow investment programme laid down in the privatization contract provides for up to DM 3 436 million financing of investments by BvS. This sum comprises an amount of DM 201,5 million, however, for investments authorized by the Commission under previous decisions. Additional investment amounting to DM 459 million was added to the restructuring programme under the procedure, together with corresponding additional investment aid amounting to DM 384 million. On the other hand, DM 150 million for the construction of an aniline plant was taken out of the part of the Dow business plan financed by BvS. From the remaining ceiling for investment that can be awarded by the BvS, an amount must be deducted which will be awarded under various aid schemes in Germany which have been approved by the Commission; although decisions have not yet been taken, two *Länder* hold out a prospect of DM 483 million aid under schemes approved by the Commission [12]. The procedure therefore covers investment aid within the Dow investment programme up to DM 2 985,5 million, the compatibility of which with the common market must be examined by the Commission.

The restructuring programm as modified by Germany consists of the following investments:

[12] Land Sachsen-Anhalt, DM 345 million and Freistaat Sachsen, DM 138 million.

SOW restructuring	Capital expenditure (million DM)
Upgrading/debottlenecking of the cracker 450 000 t/a (new cracker ovens and electronic controlled processes)	195
New feedstock pipeline from Rostock	540
Infrastructure (i.a. storage tank, ethylene- and propylene pipelines to Leuna and Buna, brine pipeline, streets and rail network)	360
Modernization of butadiene extraction unit (45 kt/a); no enlargement of capacity	9
New aromatics unit (toluene/xylene dealkylation) from 220 to 375 kt/a to increase benzene production from 75 to 122 kt/a	106
Nitrobenzene and nitric acid plants, effluents	77
Additional measures lowering structural cost (propane tanks, styrol production lowering transportation cost, etc.)	287
Sub-total SOW	1 577

BUNA restructuring	Capital expenditure (million DM)
Chlorine plant upgrade (changing to the membrane process and upgrading of sodium chloride to 84 kt/a in 2002)	316
New polyethylene plant (HPDE, linear LPDE) 210 kt/a to replace existing slurry (30 kt/a) and gas-phase HPDE (30 kt/a)	218
New polypropylene unit (220 kt/a) to ensure, together with an acrylic acid unit, an outlet for the propylene	218
New acrylic acid unit (90 kt/a) to complete the utilization of propylene	272
New acrylic ester unit (93 kt/a) to use about half of the acrylic acid	93
Oxychlorination unit	143
Upgrade of the PVC unit (125 kt/a)	46
SBR rubber (increase from 60 to 70 kt/a) and PB rubber (24 kt/a)	32
Upgrading of site infrastructures (Buna water supply, internal streets, rails and sewage-purification unit)	576
Auxiliary steam boiler	172
Kiln + 1 throx	98
Phital acid, solvents, dispersions	327
Sub-total	2 511
Leuna	
Upgrade of two LDPE units	40
Sub-total Leuna	40
Total	4 125

Investment amounting to DM 2,65 billion is secured by a contractual penalty of 20 % of the difference between this amount and the lower amount of investment actually realized.

— The cost of current projects started by BVS and which are not part of the plan submitted by Dow will — contrary to previous estimations — only amount to DM 245 million. With the exception of DM 33,8 million in Buna and DM 16,4 million at Leuna this sum was authorized under previous decisions.

— At the Commission's request, Germany stated that possible compensation payments to Dow of up to DM 70 million in case of rescission of the contract would be notified separately if this should occur.

— Concerning the open-ended power and steam aid Germany informed the Commission that the amount of aid would consist of DM 162 million as part of the cash-flow compensation, in addition to DM 804 million, this being the present value of the power and steam compensation payments provided for in Article 15 of the privatization contract. After several discussions Germany informed the Commission that it would renegotiate the contract with Dow in order to reduce the cash-flow compensation by DM 162 million and to delete the clause concerning power and steam compensation payments.

— Germany also informed the Commission that the waiver of outstanding debt on 1 June 1995, taking into account that the Commission had only allowed part of the requested waiver as at 31 December 1994, would amount to DM 1 466,52 million.

— Germany informed the Commission that the compensation of structural deficiencies after the restructuring amounting to DM 440,5 million would be reduced to DM 96 million for the operation of an environmental monitoring system.

4. Consequently, the total sum of remaining aid to BSL covered by the procedure amounts to a

maximum of DM 9 556,22 million. This sum contains DM 1 billion for environmental damage, most of which does not constitute aid. Open-ended payments were capped off.

5. There is competition between manufacturers of chemicals and these products are traded between Member States, as is well documented in trade statistics. BSL will not only continue to produce some of the intermediary products made by Buna, SOW and Leuna, but will also manufacture new derivatives as part of the integrated set-up resulting from the restructuring. The effects of the plan on Dow's capacity for the various products and its market share is set out in Chapter IV, point 6.5.

Financial aid to companies strengthens their position compared with others that are competing with them in the Community and the European Economic Area. Where this occurs, such aid must be deemed to distort competition with such other undertakings.

Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement lay down the principle that aid having certain characteristics which they specify is incompatible with the common market.

IV

1. Of the derogations set out in Article 92 (2) to the principle that aid having the characteristics specified in Article 92 (1) is incompatible with the common market, those listed under points (a) and (b) are inapplicable in this instance, given the nature and the objectives of the aid, and were not in any case invoked by Germany.

2. However, Article 92 (2) (c), concerning aid granted to the economy of certain areas of the Federal Republic of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division, was invoked by Germany. Although Germany has been unified since 3 October 1990, it can be said that the economy of the new *Bundesländer* is still suffering from the consequences of the former division, such as the loss of traditional suppliers and outlets, remaining imperfect transportation infrastructure, etc. It is the Commission's view that the derogation provided for in Article 92 (2) (c) must be interpreted strictly, notably as regards the need for such aid, which must therefore be limited to the minimum necessary to compensate those specific remaining disadvantages that are caused by the former division. Difficulties companies in the former German Democratic Republic are facing, which result from the fact that these companies need to stand up to competitors in the Community and the EEA after the unification, cannot be interpreted as disadvantages caused by the former division of Germany. Such aid should rather be judged on the basis of the derogations set out in Article 92 (3) (a) and (c), which are dealt with below. The Commission also notes that Germany, whilst invoking Article 92 (2) (c) for the aid identified in Chapter III, has not convincingly demonstrated that the totality of this aid, or part of it, is limited to what is necessary to compensate for economic disadvantages caused by the former division of Germany (see also point 8.2).

3. Article 92 (3) of the Treaty specifies the aid which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and the EEA and not of a single Member State. So as to maintain the proper functioning of the common market and take account of the principles laid down in Article 3 (g), the exceptions to the principle of Article 92 (1) which are set out in Article 92 (3) must be interpreted strictly in examining any aid scheme or any individual aid measure.

In particular, the derogation may be applied only if the Commission finds that, if the aid were not granted, market forces alone or measures by the public authorities other than aid would not be sufficient to induce the recipients to act in such a way as to achieve one of the objectives pursued.

Applying the derogations to cases which do not contribute to such an objective, or where the aid is not necessary for this purpose, would mean conferring undue advantages on the industries or undertakings of certain Member States and affecting trading conditions between Member States and distorting competition, without any justification based on the common interest referred to in Article 92 (3).

4. The derogations in Article 92 (3) (b) are not satisfied in this case. It is true that German unification has had negative effects on the German economy, but these alone are not sufficient to apply Article 92 (3) (b) to an aid scheme, let alone to an *ad hoc* case of aid, because there must be a serious disturbance in the economy of a Member State, which must be judged in a Community context. The last time the Commission considered that an aid scheme remedied a serious disturbance in the economy of a Member State was in 1991, when aid

was approved for a privatization programme in Greece([13]). In that decision the Commission noted that the privatization programme was an integral part of the undertakings given under Council Decision 91/136/EEC([14]) concerning the recovery of the entire national economy. The German situation is clearly different.

Neither can the aid in question be considered to constitute aid for an important project of common European interest, nor has Germany put forward any argument that this might be the case.

5. The derogations provided for in Article 92 (3) (a), concerning aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment and in Article 92 (3) (c), concerning aid to facilitate the development of certain economic activities or of certain economic areas, may well constitute the legal basis for the verification of the compatibility of the aid measures in question with the common market.

The Commission decided in January 1994 that the new *Bundesländer* belong to the areas in need for assistance pursuant to Article 92 (3) (a) (aid N 464/93) and the Commission takes due account of this fact in this Decision.

As regards the question whether the derogations provided for in Article 92 (3) (c) can apply, it should be recalled that the Commission in its decisions concerning the THA and its successor institutions referred to in Chapter II took into consideration that the THA's task — to support the transformation of a planned economy into a market economy — is without precedent in the history of the Community. The Commission also took into due consideration the grave social and economic problems in the five new *Bundesländer* and East Berlin.

The Commission notes that in 1990 the companies and parts of companies in question were quite unprofitable, due to the large number of of obsolete plant and high operation cost. The integration in products and production processes and the interdependence of the sites made it possible to maintain a chemical industry there only if the core activities of Buna, SOW and Leuna LDPE could be privatized as one polyolefine activity, and if other activities were split off and privatized separately. It was obvious from the start that high investment was required and that the first years of operation would bring losses which no private investor would be willing to bear alone. Dow was the only investor who after several calls for tender submitted a coherent plan for the complete privatization of the polyolefine activity, with a long-term perspective of profitability, and who was thus willing to continue the restructuring that THA and BvS had initiated.

It is the Commission's opinion that the investment aid and loss compensation which were started by the THA and continued by the BvS, before the privatization took place, and which are the subject of the present procedure, should be judged together with the restructuring aid awarded under the privatization contract prepared by Dow. For both groups of aid the Commission requires that a satisfactory restructuring plan be available. The privatization plan submitted by Dow, which is based on the existing cracker and chlorine capacities and aims at expanding the value added chain based on olefines, was described in point II of the enlargement of the procedure([15]).

The Commission decided to have Dow's business plan and the basic conditions on which it is based analysed by independent consultants, who found them solid. In the present decision the Commission has given due consideration to the thorough report of its consultants.

The consultants confirmed that Dow is a suitable partner for BSL, given its experience and know-how in chlorine production as well as the production of olefines and their derivatives. In addition, Dow has major synergism in marketing and Dow's internal demand for aniline and acrylic esters is a major benefit for BSL.

6. Investments

6.1. The concentration of cracker capacity at Böhlen and the upgrading of chlorine capacity at a competitive level, which form the basis of Dow's plans, were commissioned by THA and BvS before the privatization. The remaining problem of assuring the supply of feedstock to the cracker at competitive prices was solved by the plan to build a pipeline from Rostock to Böhlen. This also necessitated new storage capacity for ethylene, as well as new brine and propylene pipelines to Buna.

6.2. As for the derivatives, there was insufficient demand to absorb the existing ethylene, propylene, chlorine and benzene capacity of the installations

([13]) Aid NN 11/91; Commission Decision of 31 July 1991.
([14]) OJ No L 66, 13. 3. 1991, p. 22.
([15]) OJ No C 203, 8. 8. 1995, p. 6.

which could be upgraded; only butadiene capacities could be used in full. Given that transportation to other sites would have entailed high cost, Dow analysed possibilities, amongst others in the form of new installations, to balance production and processing of key raw materials with minimal logistics cost, whilst having due consideration for the main existing areas of activity of BSL and Dow. This complete integration of continued processing of the complete first stage processing output is a key condition for an inland production site to become competitive, a view shared by the consultants. Only for final, solid products such as rubber, PVC and polyethylene is overland shipping usual for a distance of 200 to 500 kilometres, which according to the new plan will also take place at BSL. Taking into account the criteria of profit optimization over a chosen period of 13 years and cost minimization (capital, operation and sales cost), Dow has according to the consultants proposed an optimal configuration for the three sites. Almost none of the planned projects can be broken out of the company plan without jeopardizing the objective of profitability after restructuring. Only the necessity of aniline production and the related dealkylation plant could, in the opinion of the consultants, be questioned. The aniline plant was also questioned by a third party within the framework of the procedure.

Dow itself commented under the procedure that the production at Böhlen of aniline is an essential and necessary part of its business plan. It also stated that BSL's total aniline production will be required by Dow for captive consumption at Stade. Dow expected that there would be no sales of aniline to third parties and that Dow would continue to purchase aniline for its MDI production at Estareja in Portugal from Anilina de Portugal, who would therefore not be affected.

Germany, when requested by the Commission to comment on the production of aniline, noted that the totality of the aniline produced at Böhlen will be transported to Dow's MDI plant at Stade in Lower Saxony. Aniline being a derivative of benzene, one could in principle think of transporting benzene to Stade and to construct an aniline plant there. However, Germany pointed out that that benzene is more explosive than aniline and that it belongs to category 3 of perilous substances to groundwater, whereas aniline belongs to the less dangerous, though still perilous category 2. Through the higher value added of aniline it is more economical to transport this substance over long distances than benzene. Furthermore, the necessary supply of ammonia for aniline production is nearer in Böhlen than in Stade. Alternatives to aniline production, such as the production of phenol, would not be possible because of a lack of propylene and because a phenol production unit would not absorb the output of hydrogen. Neither would it make sense to sell benzene to others, given that there is no local demand for this product and that it would hence have to be transported to Rotterdam or even farther.

The consultants found the arguments of Germany and of Dow valid, in the sense that any alternative to the aniline plant would be less commercially attractive and have the effect of reducing cash flow and hence impact on the profitability of the project.

The Commission subscribed to its consultants' view that the dealkylation plant and the aniline plant form an essential and necessary part of the Dow business plan, but also agreed with its consultants that it is not essential that the aniline plant should be built at Böhlen, even though alternative sites would be less attractive financially. The Commission concluded that the need for aid going beyond the regional incentives available in Germany had not been convincingly demonstrated for the aniline plant in Dow's business plan.

By letter dated 10 October 1995 Germany informed the Commission that it would exclude the cost of the aniline plant, which amounts to DM 150 million, from the Dow business plan aided by BvS. Within the framework of the privatization, no investment aid or cash-flow compensation would therefore be awarded to the construction of an aniline plant.

The Commission notes that the cost of the aniline plant was estimated at DM 227 million in Annex 7 to the privatization contract. The difference between this sum and the DM 150 million which Germany has excluded from the plan, consists of the following items:

— DM 27 million for a nitric acid plant,

— DM 35 million for a nitrobenzene plant, and

— DM 15 million for a waste water installation.

Both the nitric acid plant and the nitrobenzene plant are necessary for processing benzene to nitrobenzene, which can be processed to aniline. The two plants in question serve no other purpose. The Commission is of the opinion that Germany has failed to demonstrate that the two plants in question are necessary and essential for the complex, given that the aniline plant has been excluded from the Dow business plan. Consequently, no sufficient justification has been presented for the DM 62 million investment aid which Germany intends to award for these plants.

Regarding the waste water installation, the Commission notes that this benefits several other installations than those linked to aniline production. The Commission therefore accepts the necessity of this part of the aid, amounting to DM 15 million.

Within the framework of the procedure, a third party also questioned the investment in the VCM and PVC plants.

The Commission notes that the upgrading of the PVC plant, which is estimated to cost DM 46 million, will not increase nominal production capacity. The Commission also notes that, according to its consultants' expectations, this capacity of 125 000 t/a will only account for 1,9 % of installed PVC capacity in western Europe by the year 2000 and that the utilization of capacity in the coming 10 years is expected to be above 89 %.

Neither does the investment in the VCM plant constitute additional capacity. Buna possessed a relatively large and competitive VCM plant with a capacity of 330 000 t/a before its acetylene cracker was shutdown. This shutdown created imbalances between chlorine production capacity and VCM capacity; the very low operating level of the VCM plant will come to an end by the investment in an additional EDC train. The Commission's consultants consider this balancing to be very important to ensure the economic viability of the chlorine chain. The Commission notes that Dow/BSL are expected to account for 4,8 % of VCM capacity in western Europe by the year 2000 and that the utilization of capacity in the coming 10 years is expected to be above 89 %.

6.3. The Commission concludes that the investment programme consists of interlinked elements, each of which is necessary in order to create the integrated and viable complex proposed by Dow. None of these elements can be left out or modified without endangering the complex as a whole.

6.4. The Commission has also looked at the evolution of capacities resulting from the investment programme.

In 1990, when the THA started the restructuring of the companies in question, olefine capacities in the new *Bundesländer* was as follows:

— Ethylene Böhlen (SOW)	330 kt/a
— Ethylene Leuna	90 kt/a
— Ethylene equivalent Buna (acetylene)	300 kt/a
— Total capacity	720 kt/a

Since 1990, these olefine capacities were reduced to 450 kt/a further to the shutdown of the crackers in Leuna and Buna (a reduction of 37,5 %), despite the upgrading of the cracker at Böhlen by 120 kt/a. Furthermore, total cracker capacity (C2—C4 and secondary cracker products) will be reduced by 12 % from 918 to 808 kt/a. Because of the feedstock supply (LPG, propane, butane) the downstream plants dispose of less aromatics and pyrolysis gasoline. This capacity reduction represents a certain counterpart in the interest of competitors to the distortive effect of the aid.

At Buna, the older, less efficient and more polluting plants were shut down. Other production units will be shut down at a later date, such as the existing 100 kt/a ethylene oxide plant, the 40 kt/a propylene oxide and the expanded polystyrene plant (12 kt/a).

The planned capacity increase for derivatives is, as set out above, necessary in order to process feedstock and thereby to establish and secure the competitiveness of the company. It is the unavoidable consequence of the integrated concept which Dow is proposing. Basically it concerns the expansion of benzene capacity from 75 to 122 kt/a and production of caustics, as well as the introduction of new capacity through new installations for the production of LLDPE (210 kt/a), PP (200 kt/a), VCM/EDC (300 kt/a), acrylic acid (90 kt/a), acrylic ester (93 kt/a), oxychlorine and aniline (130 kt/a). As was explained above, the aniline plant has been excluded from the investment plan aided by BvS.

The construction of an additional oxychlorination train allows for a complete use of capacity of the existing chlorine plant, as well as the existing VCM plant.

The construction of the new LLDPE plant with Dow's own technology replaces the HDPE plant, which the THA had planned to balance ethylene capacity in Böhlen with processing capacity in Leuna and Buna. Dow's choice fits better in the product range.

Propylene needed to be balanced as well as supply and demand for ethylene. This should be achieved by constructing the polypropylene plant and the acrylic acid plant. In order to integrate production of acrylic acid as well in the production of derivatives, Dow intends adding an additional acrylic esters plant.

The Dow programme also provides for a replacement of the existing aromatics plant by new

C5—C9 plants and a pyrolyse gasoline/distilling plant, in order to maximize production of benzene. Half of benzene production will be consumed by the new aniline plant that was excluded from the Dow business plan aided by BvS.

With these new capacities Dow will be able to further process on the spot all products of the first processing range, namely ethylene, propylene, butadien and chlorine which, although manufactured at competitive prices, could only be transported to other plants with heavy cost, thereby losing their competitiveness. The configuration chosen by Dow frees the products it brings on the market from their important logistic handicap, by adding value. The configuration makes the products competitive by achieving the best possible integration. If a link were to be removed from this chain, capacity in the first processing range would remain idle, or the product would have to be transported to other sites, which would undermine the soundness of the concept.

The Commission has also investigated whether the expansion of capacity and the introduction of new capacity will lead to overcapacity on the Community market or will take place in areas where structural overcapacity already exists. The Commission is of the opinion that none of the plants will create overcapacity, nor do its consultants expect that there will be structural overcapacity in any of the product areas in question, perhaps with the exception of aniline. As set out above, the aniline plant will not receive aid under the privatization contract.

The independent consultants expect the following growth in demand in western Europe between 1994 and 2000 and utilization of capacity in the latter year:

Ethylene (%)	LDPE (%)	LLDPE (%)	HDPE (%)	PP (%)	Acrylic acid (%)	Butadiene (%)	VCM (%)	PVC (%)	Benzene (%)	Aniline (%)
2,3	0,6	8,1	3,5	4,4	11,5	2,7	1,4	2,3	1,2	5,4
96	90	90	99	90	90	92	90	94	86	78

Neither have any third parties demonstrated within the framework of the procedure that the aid in question would serve to create or expand capacity in areas with structural overcapacity.

6.5. The Commission has also looked at the effects of the planned rationalization and restructuring on the European market for petrochemicals.

Product	Dow capacity in Europe		Dow market share (%)	
	1995	2000	1995	2000
Polyethylene	1 025	1 380	8,8	11,2
Polypropylene	—	200	—	2,6
Caustic	990	1 215	7,0	8,7
Chlorine	880	1 080	7,1	8,7
VCM	—	330	—	4,8
PVC	—	125	—	1,9
Acrylic acid	—	90	—	9,9
Aniline	—	130	—	13,0
Benzene	870	1 070	11,3	13,3
PBR	—	50	—	9,7
SBR	—	70	—	6,9
Ethylene	1 575	2 065	8,0	9,9
Propylene	720	965	5,3	6,7
EDC	310	765	2,5	6,1

The Commission verified the compatibility of the merger pursuant to Council Regulation (EEC) No 4064/89 and decided not to object to it [16].

6.6. The sum of investment in current projects outside the original DM 3 816 million laid down in the Dow's business plan, which THA and BVS had begun earlier and which could be inserted into Dow's plan, amounts to DM 245 million in so far as Buna and SOW are concerned. This amount consists of DM 70 million purchase and construction cost of investment incompatible with the Dow plan, DM 159,6 million cost for the EPS (expanded polystyrene) and oxychlorination plant and the plant for producing unsaturated polyesters and the dispersion plant amounting to DM 14,1 million. Apart from an amount of DM 33,8 million for which the Commission had not yet given its approval, these amounts were approved by the Commission in previous decisions (see Chapter II, points 2.2 and 2.3). In Leuna-Polyolefine DM 16,4 million was not yet approved by the Commission. In order to prepare the privatization, to secure the safety of employees and the environment and to reduce the cost of operating obsolete and uneconomical installations, the THA and the BvS had to begin the restructuring even before an investor had been found. The measures were limited to the minimum necessary for this purpose.

6.7. The Commission has also considered whether the totality of the investment aid in question really is necessary for the project to be achieved, taking into account that investment aid will also be awarded under schemes for regional development.

Given that various other types of aid will also be granted to this project, the question of the necessity of all of the investment aid should not be judged in isolation. It would be more appropriate to look at the justification for each type of aid first and then to assess whether the aid package as a whole is necessary.

6.8. The compatibility with the common market of DM 684,5 million of the investment aid provided for in the privatization contract need not be assessed in the present decision. This sum consists of DM 201,5 million for investments, the financing of which by means of guarantees and loans had already been authorized by the Commission under previous decisions. The Commission also notes that DM 483 million of the proposed investment aid can be replaced by aid under regional investment aid schemes approved by the Commission. The Commission is well aware that the *Länder* Saxony-Anhalt and Saxony have not yet finally decided to award the aid. It is, however, the opinion of the Commission that investment aid in assisted regions should in the first place be awarded under aid schemes approved by the Commission for that purpose. Supplementary aid, such as that awarded by the BvS, should not take the place of such aid schemes.

6.9. The Commission has also looked into the possibility that Dow may have over-estimated the amount of investment necessary for the restructuring. The Commission notes that investment aid will only be awarded for investment that has actually been realized. However, given that BvS will pay an incentive of 20 % to BSL for that part of its potential contribution that will not be spent, Dow could have had an interest in presenting inflated plans. The Commission notes in this context that its consultants believe that Dow's estimations are indeed on the high side. They assume that the estimations for installations are inflated in the order of 10 to 20 %, whilst conceding that there is a general tendency in the chemical industry to inflate investment estimations.

Germany noted on this point that the investment in question does not take place on a green-field site, but has to be integrated in an existing and highly interdependent group of sites, in an ongoing production process, which could increase investment cost.

The difficult integration of inter-linked individual building blocks involves risks which can hardly be estimated in a blueprint.

Calculation margins are unavoidable when planning such installations with highly complicated process technology and unknown factors. In order to be able to control precisely the cost that actually takes place, BvS included the following control mechanisms in the privatization contract:

— Under Article 8 (3) (1) of the privatization contract, BvS provides its capital contributions as follows: for the period between the economic transfer date and 31 December 1995 BvS shall pay to BSL an instalment in the amount of DM 250 million for quite specific projects. For each year of the restructuring period beginning in 1996 BSL shall provide BvS no later than on 7 November of the previous calendar year with an investment budget in which the investments budgeted in that calculation period and the type, cost and financing of such investments are described and all significant deviations from the reconstruction programme, if any, are explained and justified qualitatively and quantitatively.

[16] OJ No C 148, 15. 6. 1995, p. 4.

The investment budget shall include a funding schedule stating the amounts to be financed by BvS and the respective due dates of all amounts in detail, an updated overall calculation and an updated project schedule for the reconstruction programme.

— Under Article 8 (3) (2) of the privatization contract, BSL shall provide to BvS together with the capital budget by no later than 7 November of each calculation period a preliminary investment report stating the amounts actually spent for the first three quarters of such calculation period and scheduled to be spent during the remainder. Any difference between the capital contributions by BvS and the amounts spent on projects listed in the preliminary investment report shall be offset against the capital contributions to be paid by BvS for the following calculation period.

— In addition, BSL shall for each calculation period submit, together with the annual financial statements, an investment report containing a detailed report on the implementation of the investments contemplated in the capital budget and the amounts actually spent on such investments. The investment report will be audited by the auditors of BSL. Any difference between the amounts stated in the preliminary investment report for such calculation period and in the investment report will be offset against the capital contributions to be paid by BvS for the following calculation period.

— Under Article 8 (3) (3) of the privatization contract, BSL shall prepare a final report within three months after the end of the restructuring period on the basis of the investment reports.

— Under Article 13 (2) of the privatization contract, the annual budget of BSL, together with the investment budget and the updated reconstruction programme, is submitted to the shareholders' meeting of BSL (with BvS as a shareholder) in November for final approval as a binding basis for its implementation and for the investment budget for the next accounting period.

— Under Article 14 (2) (1) of the privatization contract, BSL shall submit to its shareholders (including BvS) after the end of each calendar quarter a reviewable quarterly report, which *inter alia* includes the status of the capital budget showing the investment of the funds provided by BvS.

— The audit of the year end financial statements of BSL will be conducted jointly by an auditor nominated by Dow and an auditor nominated by BvS (Article 14 (2) (2)).

— Article 14 (4) of the privatization contract provides that the Bundesrechnungshof shall have the right to conduct a special audit for each calculation period pursuant to Section 104, paragraph 1, No 3 in connection with Section 88 *et seq.* Bundeshaushaltsordnung.

It is the Commission's view that BvS has instituted the mechanisms needed for a comprehensive, detailed and ongoing control of the investments, as a shareholder and as financier of that necessary investment.

Finally, BvS included an additional control mechanism through its incentive scheme. In general terms the Commission is of the opinion that an incentive to limit investment — and hence the aid linked to that investment — to the minimum necessary is to be applauded. Under these circumstances the Commission does not object to the incentive as a matter of principle, the more so as BSL is obliged pursuant to the privatization contract to reinvest incentive payments in the petrochemical complex. However, the Commission cannot accept that incentive payments take place on the margin of 10 %, which according to the Commission's consultants is the minimum over-estimation of investment cost. An incentive of 20 % can therefore only apply to a reduction of investment in excess of 10 %.

The Commission has in this context also taken note of the explanation provided by Germany on the interpretation of Annex 8.3.4 to the privatization contract, which excludes the possibility of incentives being paid to BSL for the DM 483 million aid that BvS does not need to pay because of payments under aid schemes already approved by the Commission (see point 6.8).

7. Cash-flow compensation

7.1. Under Article 9 of the privatization contract, BvS will compensate to BSL any negative cumulative cash flow during the restructuring period in full up to a maximum of DM 2 650 million. BvS will furthermore compensate one half of any negative cumulative cash flow in excess of DM 2 650 million up to DM 3 650 million. The maximum BvS could be called upon to pay under this heading would therefore amount to DM 3 150 million, in which case Dow would contribute DM 500 million as well.

According to Article 15.3.1 of the privatization contract part of the cash-flow compensation

payment will be used to subsidize the price BSL will pay for power. Under the procedure this element was quantified by Germany as amounting to DM 162 million. As set out in detail in point 8 of this chapter, the Commission is of the opinion that the subsidization of energy prices, even for a limited period, is not related to the restructuring that is being carried out and that such aid is in principle a form of operating aid that is incompatible with the common market. As set out in Chapter III point 3, Germany, in the course of the procedure, decided to withdraw this part of the proposed aid and announced that the privatization contract would be modified accordingly. The proposed aid ceilings referred to above are hence reduced by DM 162 million from DM 2 650 to DM 2 488 million and from DM 3 150 to DM 2 988 million.

7.2. The Commission has investigated this compensation in relation to the restructuring programme. Based on its experience with other cases of restructuring aid, it is of the opinion that a five-year restructuring plan, which can be prolonged to seven years if unforeseen circumstances should occur, is relatively long. However, the present case involves important investment in several links of the production chain, and this at three different sites, which creates problems of timing in order to avoid bottlenecks in the production process. Under those circumstances a duration of the restructuring period of five years is justifiable. If unforeseen circumstances should occur that would make it necessary to prolong the restructuring period beyond five years, this should be notified to the Commission in sufficient time pursuant to Article 93 (3) of the Treaty.

The complexity of the restructuring referred to above also entails considerable risk of extraordinary losses during the restructuring period. Notably delays in the construction of the pipeline to Rostock would entail huge additional transportation cost for the duration of the delay. Other important factors likely to lead to losses in the restructuring period are the cost of overstaffing, given that excessive personnel will be discharged gradually from 5 600 on 1 June 1995 to 2 200 by 1 June 1999, and the unprofitable exploitation of the existing installations until these have been upgraded or replaced. Risk in excess of the cash-flow compensation will be borne by Dow.

7.3. The Commission has also verified whether there is a risk that BSL will artificially raise its losses in order to consume the maximum of the potential compensation, whether BSL might pass on parts of the compensation to its mother, Dow, and whether BSL might use the compensation in order to sell its products at inappropriately low prices.

The Commission notes that the privatization contract contains a system of quarterly reports, as well as audits of the annual financial statements of BSL. Furthermore, BSL will submit to BvS annual reports on its financial relationships with Dow and companies belonging to Dow. The Bundesrechnungshof will have the right to conduct a special audit. The Commission also notes that the privatization contract contains an incentive for BSL not to consume the totality of the cash-flow compensation up to the maximum of DM 2 650 million, in the form of a 33 % premium on the amount not consumed by the end of the restructuring period.

Article 10 of the privatization contract and the corresponding Annexes, which were all submitted to the Commission, contain the conditions on which products, services, licenses, technical assistance and loans are made available between the companies. These commercial conditions are unusual in their set-up, but they are not completely uncommon between related companies — a point of view with which the Commission's consultants concur. The marketing and sales agreement annexed to the contract contains clauses which exclude the possibility that Dow as BSL's marketing and sales agent might sell BSL's products at inappropriately low prices.

8. Energy

8.1. In Article 15 (1), the privatization contract states that the existing power and steam contracts between Buna and Veba Kraftwerke Ruhr AG and Kraftwerk Schkopau GmbH (collectively VKR) need to be substantially renegotiated and changed. Until these changes have been achieved and in so far as changes would not be sufficient for a profitable exploitation of BSL, the contract contains four clauses under which the price BSL pays for its purchase of steam and power is to be subsidized by BvS: Article 15 (3) provides for an unquantified subsidy of power and steam prices during the restructuring period in addition to the cash-flow compensation discussed in point 7 of this chapter, Article 15 (4) provides for the possibility — for which renegotiations would be a prerequisite — of an additional subsidy of power and steam prices in the period after the restructuring and up to 31 December 2014, Article 15 (3) in combination with its Article 9 provides that an unquantified part of the cash-flow compensation discussed in point 7 of this chapter would also be destined to subsidize power prices, Article 15 (5) provides for additional steam operating cost.

8.2. In its letter dated 14 July 1995 enlarging the procedure and within the framework of that procedure the Commission took the position that it saw no justification for such operating aid. Energy contracts are negotiated between individual companies, without State aid being available to cover the gap between the amount the purchaser of energy is prepared to pay and the amount the supplier wishes to receive. Germany has furthermore not demonstrated convincingly that such aid to energy prices is the consequence of, or even linked to, the restructuring process. Neither could such aid be considered compatible pursuant to the derogation provided for in Article 92 (2) (c) of the Treaty, because aid to subsidize energy prices is not required to compensate any disadvantages caused by the former division of Germany. This view is confirmed by the facts of the present case, as the existing energy contracts were concluded after the unification of Germany, VKR's power plant at Schkopau was also built after the unification, and Buna and Leuna already existed before the division of Germany took place.

8.3. During the procedure Germany stated that no aid would be awarded pursuant to Article 15 (4) of the privatization contract. Germany quantified the other three open-ended energy aid amounts described in point 8.1 as follows: The part of the cash-flow compensation that subsidizes power cost referred to in Articles 15 (3) and 9 of the privatization contract would amount to DM 162 million. The additional compensation of power and steam cost referred to in Article 15 (3) and (5) of the privatization contract, would have a present value of DM 804 million. Total energy aid would hence amount to DM 966 million.

8.4. After lengthy discussions, in which also DOW and VKR participated, Germany agreed to withdraw its proposal and to renegotiate the privatization contract in the sense that Article 15 (3) and (5) would be completely deleted and the cash-flow compensation ceilings would be lowered by DM 162 million, in order to exclude the compensation.

The Commission concludes that these modifications, which it will be able to verify in the renegotiated privatization contract, completely meet its initial objections.

9. Structural deficiencies

9.1. Article 9 (2) of the privatization contract provides for an up-front payment by BvS to BSL of DM 440,5 million, which will be booked as capital contribution, and which will serve to compensate remaining structural deficiencies after the restructuring period.

9.2. The Commission had two objections to this aid. First, aid should be necessary to compensate certain disadvantages after the restructuring had been completed. This would lead to the conclusion that the restructured BSL would still not be viable and under those circumstances the compatibility of the aid package as a whole would become doubtful. Secondly, aid destined for the period after the five-year restructuring period should be paid at the beginning of that restructuring, thus providing BSL with interest on this sum during five years.

9.3. Within the framework of the procedure Germany justified DM 96 million of the DM 440,5 million. It concerns the cost of operating an environmental monitoring system after the restructuring period. This sum and its justification are described in detail in point 12 of this chapter.

A justification was also provided for the cost of constructing an additional boiler system, initially amounting to DM 129 million. Under the procedure it was clarified by Germany that the cost in question constitutes investment cost rather than operating cost and that it was not included in the investment sum mentioned in the original notification, although the investment would take place inside the restructuring period. After discussions with the Commission, Germany decided to increase the sum of restructuring investment by DM 172 million. Similarly, the remaining DM 215,5 million up-front payment was also replaced by additional investment in the cracker and the benzene plant, the construction of propane tanks and a styrene plant amounting to DM 286 million. The additional investment, will replace operating costs that would otherwise be necessary after the restructuring period. The investment aid ceiling will correspondingly be raised by DM 384 million.

9.4. It is the Commission's view that there is an important difference between aid to finance restructuring investment leading to a profitable exploitation, and operating aid serving to compensate operating cost for a longer period. Under the Community guidelines on State aid for rescuing and restructuring firms in difficulty [17] the first type of aid can be considered compatible, if certain conditions are fulfilled, but not the second type.

[17] OJ No C 368, 23. 12. 1994, p. 12.

9.5. The Commission concludes that of the DM 440,5 million only DM 96 million aid to compensate structural disadvantages remains. The compatibility of this aid is examined in point 12. The remaining sum of DM 344,5 million will not be awarded in its original form, but a corresponding amount will be awarded as investment aid, the compatibility of which was examined above in point 6. None of these amounts will be awarded as up-front payments, unless they are discounted to their present value (see also point 13).

10. Social cost and liabilities

10.1. As set out in point 7.2 of this chapter, BSL will reduce its employment from 5 600 to a level of at least 2 200 by 1 January 1999; under the privatization contract Dow is obliged to maintain 1 800 jobs until the year 2003. For the discharged personnel a social plan has been worked out with a budget of DM 110 million. The Commission, in accordance with point 3.2.5 of the aforementioned Community guidelines on State aid for rescuing and restructuring firms in difficulty, looks favourably on such aid.

10.2. DM 110 million is the maximum liability for BvS for legal reasons not expressly provided for in the privatization contract (see privatization contract Article 29). DM 10 million of this sum is the maximum risk for legal costs entailed by the discharge of personnel referred to above.

The Commission notes that the sum of DM 110 million is not a grant to BSL or Dow, but rather constitutes a guarantee against unknown claims, which is not unusual in the case of transfers of companies. The Commission accepts that it is a *conditio sine qua non* for the privatization and hence for the restructuring to take place.

11. Waiving of debt

11.1. In previous communications (see Chapter II, point 4) Germany informed the Commission of previous waivers of debt. For a succesful restructuring according to Dow's business plan a complete waiver of long-term debt by the date of transfer (31 May 1995) is held necessary. In its decision of 25 November 1992 on the activities of the THA the Commission noted that the longer a company is held by the THA, and the higher its debt to or guaranteed by the THA is, the less likely will it be that a buyer can be found who will take over these debts or guarantees; as time goes by, loans and guarantees end up being grants. In the present case the waiving of loans, which were at the time granted legally according to Community law, reflect the fact recognized by the Commission in 1992. In order to give the companies a chance to re-establish their long-term profitability, Germany needed to forgo its claims on repayment of loans. This was the only way to prevent that the burden, resulting from the revolutionary changes that took place in the chemical industry in the former German Democratic Republic between 1990 and 1995, would become excessive.

The Commission also notes in this context that there is no difference, in terms of aid control, between a situation where BSL is taken over free of debt for an appropriate price, and on where it is sold with its debt for a negative price. The higher indebtedness in the latter case would, however, cause a more negative cash-flow and correspondingly higher compensation payments during the restructuring period.

The waiver on 31 May 1995 amounted to DM 765,98 million for Buna and to DM 700,54 million for SOW, making a total of DM 1 466,52 million.

11.2. The Commission also investigated whether the waiver provided for in Article 3 of the privatization contract leaves BSL in a better position than other chemical companies in Europe in general and in Germany in particular and whether all debt is waived. Germany stated in this context that there is no complete remittal, given that only specific loans are waived and that other liabilities resulting from current operations are not remitted. The waiver goes together with the skimming of BSL's positive working capital at that date.

After the waiver BSL's equity/total assets ratio of 33 % will be lower than the latest available figures for this sector (1991) of the Bundesbank showing a German average of 39 %. The German chemical industry association calculated an average of 36,5 % for 1994. According to balance sheet comparisons made by Goldman Sachs, the equity/total assets ratio of European and American competitors varies between 32 and 42 %. Consequently BSL's equity/total assets ration is not more advantageous than those of its competitors.

A second way of measuring the proportionality of the waiver of BSL's debt is to calculate the

financial cost of companies in relation to their turnover. The Commission notes that BSL's interest burden will account for 2 % of projected turnover, whereas the industrial average in this sector in Germany according to the Bundesbank was 1,3 % in 1991 and 1,6 % in 1992. Competitors in the Community had an average interest burden of 1,6 % in 1994.

BSL's interest burden of 2 % takes into account the financing of the first part of the purchase price (DM 300 million), but not the future sale of the remaining 20 % of the shares, nor Dow's contribution to investment, nor its compensation payments to a cash-flow deficit.

The Commission concludes that the waiver does not leave BSL in a more advantageous position than its competitors. The Commission also notes that Dow could have opted instead for buying the assets only of the three companies, in which case all liabilities would have remained with the BvS.

11.3. As was set out in Chapter II, point 3, the Commission expanded the procedure of Article 93 (2) against aid to Leuna, in order to ensure equal treatment with the aid to Buna and to SOW, given that all three companies were caught by the same restructuring plan. Leuna-Polyolefine GmbH was split off without debt from Leuna, leaving its liabilities with the latter company. The aid falling under the procedure includes a guarantee of DM 266,2 million for investment in the first half of 1994, as well as a shareholder's loan of DM 230,5 million for investment in 1993. Of this aid, DM 33,8 million relates to investment in Leuna's LDPE business, of which DM 17,4 million was withdrawn, leaving DM 16,4 million still to be assessed, of which sum Leuna-Polyolefine GmbH is the real beneficiary.

The remaining guarantee and the shareholder's loan totalling DM 462,9 million to Leuna-Werke GmbH were necessary for carrying out plans to privatize parts split off, such as Leuna-Tenside GmbH (70 employees), Leuna-Katalysatoren GmbH (157 employees) and Leuna Chemtec GmbH (92 employees). The measures necessary for maintaining the site and for fulfilling legal environmental and safety requirements were limited to what was absolutely necessary, thus stabilizing production without creating any new capacity.

In its decision of 18 September 1991 on the activities of the THA referred to in Chapter II, point 1, the Commission laid down that the THA can award guarantees and loans to its companies before their privatization, allowing them to continue operations. The Commission decided in 1991 that these can be considered compatible with the common market, if they are limited to the minimum necessary to secure the continued existence of the companies. As stated above, the measures taken to prepare for privatization and to prevent environmental and other damage were absolutely necessary. As they furthermore did not increase capacity, the Commission considers them compatible with the common market, based on its decisions of 1991 and 1992 on the activities of the THA and of 1995 on the THA's sucessory institutions.

11.4. In accordance with point 3.2.2 (iii) of the aforementioned Community guidelines on State aid for rescuing and restructuring firms in difficulty, if such aid is used to write off debt resulting from past losses, any tax credits attaching to the losses must be notified.

12. Demolition cost and environmental measures

12.1. In its Article 21 the privatization contract provides for a full environmental indemnification by BvS for pollution which was in existence prior to the economic transfer date, or which arises during the restructuring period from operations existing as of the economic transfer date, without any quantification of the cost this entails to BvS. Under the procedure Germany communicated to the Commission that according to their best estimates the sum would not exceed DM 1 billion and that they would notify the Commission pursuant to Article 93 (3) of the Treaty if this ceiling should be insufficient. Article 21.11 of the privatization contract provides that the environmental pollution referred to above will be recorded by an expert, who will be appointed jointly by the contracting parties.

As was set out in Chapter III, point 3, the bulk of the DM 1 billion does not constitute aid and the remainder, which does constitute aid, cannot be quantified. The Commission also recognizes that it was materially impossible for companies in the new *Bundesländer* to adapt their installations on 1 July 1990 to the standards applicable in the old *Bundesländer*. The THA and subsequently the BvS shut down the most polluting installations and carried out necessary investment to adapt the

remaining installations to mandatory standards, as referred to in Chapter II, points 2, 3 and 4, but this took time and meanwhile pollution continued. In such a situation the Commission believes it justifiable to divert from the 'polluter-pays principle' laid down in Article 130R (2) of the Treaty, in accordance with the Community guidelines on State aid for environmental protection([18]) which in its point 3.4 allows for environmental operating aid under certain well-defined circumstances.

12.2. Chlorine and mercury pollution at great depth on the Buna site causes a continuing threat to groundwater. It is therefore necessary to develop and to apply for a very long period a monitoring system to deal with this hazard. The cost of developing such a system is estimated to amount to DM 75 million; this development, as well as its operation during the restructuring period, will be aided under the cash-flow compensation dealt with above under point 7. The cost of operating the system after the restructuring period is estimated to have a discounted value of DM 96 million and was mentioned above in point 9.3 The Commission notes that the monitoring system is exclusively designed to deal with the mercury pollution caused in the past and which has been brought to an end. Under these circumstances the Commission accepts that the amount of DM 96 million will have no effect on BSL's operations and that it can hence be considered compatible with the common market.

12.3. During the restructuring period BSL will completely dismantle, demolish, vacate and dispose of all obsolete or redundant plants, equipment and property located on all land of BSL. Pursuant to Article 22 (5) of the privatization contract BvS will reimburse BSL up to a maximum amount of DM 750 million.

The Commission notes that most of the buildings are heavily polluted and that their demolition includes the excavation of polluted land. The Commission is of the opinion that these demolition measures, which have already been started by the THA and the BvS, are a necessary prerequisite for the restructuring to take place. As set out in point 12.1 above, there are good reasons in this case to deviate from the 'polluter-pays principle' and to allow the State to finance the demolition, which furthermore does not affect BSL's own operations.

([18]) OJ No C 72, 10. 3. 1994, p. 3.

12.4. The Commission also verified whether BSL might make a profit by selling land after it had been cleaned up. The Commission notes that any such sale above DM 1 million during the period in which BvS is a shareholder would need the latter's approval. Furthermore, any income from such sales during the restructuring period would decrease the cash-flow compensation awarded by BvS. The Commission also took note of Germany's assurances that Dow has no intentions to sell land belonging to BSL, but wishes to maintain a green belt around the production sites.

13. General observations

13.1. The Commission's consultants concur in their report with Germany's opinion that the restructuring plan drawn up by Dow will make BSL a profitable company. The Commission's original fears that continued operating aid might be necessary after the restructuring have therefore been shown to be unfounded.

On the other hand, the Commission also requested its consultants to indicate whether the aid package to BSL, the details of which are described in points 6 to 12, would exceed the minimum necessary for establishing BSL as a profitable company. On the basis of cash-flow expectations calculated in several ways, the consultants concluded that the profitability of the venture to Dow appeared to be above average and that Dow's own contribution could hence be raised by DM 380 to 760 million, before reaching what could be considered an average profitability.

The Commission notes that these calculations were based on the original aid package, which included the DM 966 million energy aid described in point 8 and the DM 150 million aid to the aniline plant described in point 6. The Commission also notes that this aid totalling DM 1 116 million will now not be granted. Taking into account that the withheld energy aid will be shared between BSL and its energy supplier VKR in proportions to be negotiated between these two companies, the Commission concludes that BSL's own contribution will increase to an amount above the range indicated above and that its — and hence also Dow's — profitability will not be excessive when compared with competitors. The Commission also notes in this context that there are many hidden risks due to the very

unusual nature of the project and that despite all privatization efforts of the THA and the BvS, Dow was the only company willing to take over Buna, SOW and Leuna. The Commission therefore also concurs with the view of its consultants that the point where Dow would lose interest in the project would be reached very quickly.

When it opened the procedure, the Commission also believed that the total amount of aid would be very high, both in absolute terms and in relation to the number of jobs that would be maintained. In this connection, it notes that BvS would have to finance social cost and liabilities (see point 10), the waiving of debt (see point 11), and environmental and demolition cost (see point 12), even if the companies were to shut down immediately. The environmental and demolition costs, and especially social costs, would even be considerably higher in the case of an immediate shutdown.

13.2. The Commission also investigated the price of DM 250 million which Dow will pay for the remaining 20 % of BSL's shares, if it exercises its option to buy these from BvS. On this point Germany stated that BvS and Dow had negotiated this fixed price on the basis of the profit/stock quotation rate in comparable companies, which was extrapolated to the restructured BSL. The Commission notes that the price of DM 250 million is within the higher part of the range thus calculated and that after the completion of the restructuring programme, an annual interest rate of 8 % will be added. The Commission concludes that the price does not involve additional aid.

13.3. Finally, the Commission also investigated whether Dow's contribution to the restructuring is sufficient. The Commission notes that if the totality of the aid described in the preceding points 6 to 12 will be paid out, Dow will contribute the following identifiable sums:

— DM 300 million purchase price for 80 % of the shares in BSL,

— DM 250 million purchase price for the remaining 20 %,

— DM 380 million minimum investment,

— DM 75 million supplementary investment,

— DM 500 million contribution to the cash-flow deficit,

which makes a total of DM 1 505 million. If Dow should decide to carry out its intention to build an aniline plant and necessary ancillary plant, it will itself have to finance this DM 212 million investment.

In view of this sizeable sum and the finding set out in point 13.1, that the aid is limited to the minimum necessary for the restructuring to succeed, it is the Commission's opinion that Dow's contribution is sufficient. In arriving at this conclusion, the Commission has also taken account of the various operating risks during the restructuring period, which may well exceed the modified cash-flow compensation ceilings referred to in point 7 and which would then lead to additional payments by Dow. Dow's commitments to operate the Buna and Böhlen site as well as each of the plants listed in the privatization contract for well-defined periods after the restructuring programme has come to an end also entail a risk, the more so as these commitments are linked to contractual penalties. As set out in point 6.4, no increase in capacity will take place other than what is absolutely necessary for the viability of the project.

13.4. The Commission has also taken into consideration the point that the aid secures an industrial base, with all of its positive ramifications on the employment levels and the region. Article 8 (4) of the privatization contract lays down that Dow and BSL contemplate making investments of DM 1 250 million in addition to the investments under the reconstruction programme until the year 2010, in order to secure the long-term competitiveness, growth and economic viability of the petrochemical complex. According to information provided by Germany, Dow has done its best to attract related manufacturers, notably of synthetic materials, to these sites. Several manufacturers have already signed letters of intent to develop the sites together with Dow.

If the privatization were to fail, however, the basis for the chemical industry in the new *Bundesländer* would be taken away. As set out above, Dow was the only interested party willing to carry out the privatization plan of THA/BvS in its restructuring plan for all three companies. As the companies are not yet competitive, and as one cannot expect that other investors will be found, the companies would have to be shut down, because they cannot be subsidized for an unlimited period. Such closure would, in turn, at the very least endanger other companies and productions in the new *Bundesländer* which depend on the products of the petrochemical complex. This applies, amongst

others, to Domofin NV's caprolactam production, which depends on the supply of, notably, hydrogen by Leuna, the Stickstoffwerke Piesteritz AG, which itself belongs to the hydrogen league of Leuna, Buna, Bitterfeld and supplies part of its production such as ammonia to the petrochemical complex, and the refinery Leuna 2000.

In its considerations the Commission has also taken into account that the new *Bundesländer* belong to the regions in need of regional aid pursuant to Article 92 (3) (a) of the EC Treaty and that the aid in question will promote the economic development in Saxony and Saxony-Anhalt.

13.5. The Commission's assessment of the compatibility with the common market of the aid to BSL takes full account of the unprecedented problems which exist in the new *Bundesländer*. The Commission has repeatedly recognized the importance of these problems in its general decisions concerning aid awarded by the THA and BvS, as referred to in Chapter II, point 1 of this Decision.

In this context the Commission notes the following: On the basis of the polyolefin concept forwarded to the Commission by letter dated 21 June 1994 and after previous privatization efforts had failed, Goldman Sachs & Co. was charged with the search for and negotiations with potential purchasers by means of an open and unconditional call for tender. In 1994 the THA offered a letter of intent (LOI) to three potential investors after presentations and concrete negotiations. Two of the three interested parties rejected the LOI, because they only had an interest in certain areas of production. Dow signed a LOI in September 1994. According to the information provided by Germany only this investor presented a conclusive concept for the complete privatization of the olefin complex of all three companies (only part of Leuna) with a perspective of long-term viability. A report forwarded by Germany to the Commission concerning the privatization efforts of Goldman Sachs demonstrates that Dow was in the end the only bidder for the privatization of the three joint chemical enterprises (BSL).

The Commission notes that the restructuring plan which Dow has worked out for BSL meets the requirements listed in the Community guidelines on State aid for rescuing and restructuring firms in difficulty: viability will be restored, undue distortions of competition through the aid are avoided, the aid is limited to the strict minimum needed to enable restructuring to be undertaken, the aid is related to benefits from a Community point of view, the buyer makes a significant contribution to the restructuring plan from his own resources, no investment is financed unless required for the restructuring, aid for financial restructuring will not unduly reduce the firm's financial charges, the restructuring plan will be fully implemented and will be monitored by the Commission.

In this context, the Commission notes that the restructuring plan will transform the three former companies Buna, SOW and Leuna into a viable, integrated complex. The aid package, as modified within the framework of the procedure and verified by the Commission's consultants, consists of the minimum necessary to achieve this goal; aid amounts for which no justification could be found or which exceeded the minimum necessary were deleted. Whereas olefine capacity will be reduced, capacities for certain downstream products will replace others, increase or be created. The Commission has verified that every one of these increases is an essential and necessary element of the integrated concept and that none of them will create overcapacity. The only doubtful element, the aniline plant and its ancillary plants, was excluded from aided investment. Apart from securing jobs in BSL itself, the restructuring will also have the effect of maintaining and creating employment in this Article 92 (3) (a) region both upstream and downstream from BSL. The Commission finds that, for the reasons stated above, the aid is offset by the Community interest, and concludes that the positive effect of the aid outweighs its negative effects for competitors.

V

Conclusions

1. Of the various interventions covered by the procedure the Commission finds that DM 44 million internal BvS consultancy cost does not constitute aid to the companies in question. A large, but not fully quantifiable part of the DM 1 billion environmental indemnification does not constitute aid either.

2. The Commission has identified a maximum of DM 9 556,22 million to BSL which does constitute new aid and which fulfils the requirement of Articles 92 (1) of the EC Treaty and 61 (1) of the EEA Agreement. The Commission has also identified DM 462,9 million new aid to Leuna-Werke AG.

3. Of the aid to BSL the following elements are compatible with the common market pursuant to Article 92 (3) (a) and (c) of the Treaty, if the conditions set out in point 4 below are met:

   — a maximum of DM 2 985,5 million investment aid of the DM 3 436 million provided for in the privatization contract, plus DM 50,2 million for investment outside the Dow programme, minus DM 62 million for nitric acid and nitrobenzene plant (see Chapter IV, point 6),

   — a maximum of DM 2 988 million of the DM 3 150 million cash-flow compensation during the restructuring period (Chapter IV, point 7),

   — a maximum of DM 220 million social aid (Chapter IV, point 10),

   — a waiver of debt amounting to DM 1 466,52 (Chapter IV, point 11),

   — the remainder of the DM 1 billion environmental cost and DM 750 million demolition cost (Chapter IV, point 12), plus DM 96 million to operate an environmental monitoring system.

   The DM 462,9 million aid to Leuna-Werke is also found compatible with the common market if the conditions in point 4 below are met.

4. The following conditions must be met if the aid set out in point 3 is to be compatible with the common market:

   — The privatization contract must be amended in order to insert the modifications of the investment aid described in Chapter IV, point 6, among which the exclusion of the aniline, nitric acid and nitrobenzene plant from aided investment. Article 8.3.4 of the privatization contract must be amended in order to exclude incentive payments on the first 10 % of investment cost saved, as set out in point 6.9.

   — The privatization contract must also be amended in order to exclude payments to compensate structural deficiencies after the restructuring period (see Chapter IV, point 9), other than DM 96 million for the operation of an environmental monitoring system mentioned in Chapter IV, point 12.2.

   — Article 15.3 and 15.5 of the privatization contract must be deleted, as set out in Chapter IV, point 8.

   — The privatization contract must also be amended in order to insert the obligation of prior notification pursuant to Article 93 (3) of the Treaty in the following cases provided for in that contract: additional cost of an alternative routing of the pipeline, environmental cost in excess of DM 1 billion, payments to Dow in case of the rescission of the contract.

   — If the restructuring is delayed for any reason which is beyond the control and the resposibility of Dow, BSL, or their affiliates, and if Dow and BvS should in such case decide to prolong the restructuring period for up to another two years as provided for in Article 7 of the contract, such prolongation must be notified to the Commission pursuant to Article 93 (3) of the Treaty. The privatization contract must be amended in that respect as well.

   — In order to avoid that incompatible aid is granted, any award of fiscal advantages attaching to past losses which have been remitted in accordance with point 3.2.2 (iii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty must be notified to the Commission.

   — A copy of the modified contract must be submitted to the Commission within one month of its conclusion.

   — Half-yearly reports must be submitted to the Commission on the progress of restructuring and the amount of aid actually awarded under the various items, allowing it to verify that this Decision is complied with. These reports must be submitted in the first semester of the year following the reporting period. For the same purpose, the Commission also wishes to receive the investment reports referred to in Article 8 of the privatization contract, the annual audits referred to in Article 14.2.4 of the privatization contract and the final report referred to in Article 8.3.3 of the privatization contract. If the Commission should find that aid is awarded for other purposes than provided for in the modified privatization contract, or if other misuse of aid takes place, or if more aid is awarded than allowed under this Decision, the Commission can decide on the basis of Article 93 of the Treaty that such aid amounts must be recovered with interest running from the date of payment,

HAS ADOPTED THIS DECISION:

Article 1

Of the new aid which Germany intends to grant to BSL Olefinverbund GmbH, the Commission finds the following amounts compatible with the common market:

	(million DM)
Investment aid up to	2 973,7
Cash-flow compensation up to	2 988
A waiver of debt	1 466,52
Operating a monitoring system	96
Demolition costs up to	750
A social plan up to	110
Court action and liabilities up to	110
Environmental indemnification up to	1 000

Furthermore, the aid of over DM 462,9 million to Leuna Werke AG is also compatible with the common market.

Article 2

Germany shall ensure that the privatization agreement between The Dow Chemical Company, Buna GmbH, Sächsische Olefinwerke GmbH, Leuna-Polyolefine GmbH and Bundesanstalt für vereinigungsbedingte Sonderaufgaben is altered. The following points shall be amended, inserted or deleted:

1. The privatization agreement shall be amended in order to exclude the cost of the aniline, nitric acid and nitrobenzene plant amounting to DM 212 million from the capital contribution of BvS provided for in Article 8.3 of the privatization contract and to include DM 384 million additional contribution for DM 459 million additional investment. Article 8.3.4 of the privatization contract shall be amended in order to exclude incentive payments on the first 10 % saved of the investment cost laid down in the privatization contract.

2. The privatization contract, and in particular Article 9.2 thereof, shall be amended in order to exclude payments to compensate structural deficiencies after the restructuring period, other than DM 96 million for the operation of an environmental monitoring system.

3. Articles 15.3 and 15.5 of the privatization contract shall be deleted.

4. The privatization contract shall be amended so as to include the obligation of prior notification pursuant to Article 93 (3) of the Treaty in the following cases provided for in that contract: additional cost of an alternative routing of the pipeline, environmental cost in excess of DM 1 billion, prolongation of the restructuring period beyond five years, payments to Dow in the event of rescission of the contract.

5. Germany shall ensure that no fiscal advantages can be derived from past losses that are written off.

Article 3

1. A copy of the modified contract shall be submitted to the Commission within one month of its conclusion.

2. Any deviations from the modified contract together with any award of fiscal advantages attaching to past losses shall be notified to the Commission pursuant to Article 93 (3) of the EC Treaty.

Article 4

1. Germany shall submit to the Commission half-yearly reports on the progress of restructuring and the amount of aid actually awarded under the various items in the privatization contract, allowing it to verify that this Decision is complied with. These reports shall also specify all incentive payments made for investment costs saved pursuant to Article 8.3.4 of the privatization contract. These reports shall be submitted in the first semester of the year following the reporting period.

2. Germany shall also submit to the Commission the annual investment reports referred to in Article 8 of the privatization contract, the audits referred to in Article 14.2.4 of the privatization contract and the final report referred to in Article 8.3.3 of the privatization contract within one month of their respective conclusions.

Article 5

Germany shall refrain from granting any further aid to Buna GmbH, Sächsische Olefinwerke GmbH, Leuna-Werke GmbH, Leuna-Polyolefine GmbH or BSL Polyolefinverbund GmbH in support of the restructuring plan which is subject of this Decision.

Article 6

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

Article 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 May 1996.

For the Commission
Karel VAN MIERT
Member of the Commission