COMMISSION

COMMISSION DECISION

of 15 July 1997

ordering Germany to provide all documentation, information and data on the restructuring of SHB Stahl- und Hartgußwerke Bösdorf AG, Saxony, and on the aid granted to it

(C 9/97 ex NN 2/97 and N 645/96)

(Only the German text is authentic)

(Text with EEA relevance)

(97/793/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 5, 92 and 93 thereof, and to the Agreement establishing the European Economic Area, and in particular Articles 61 and 62 thereof,

Whereas:

On 12 June 1996 the Commission decided not to raise any objection to the aid notified in connection with the restructuring of the company Stahl- und Hartgußwerke Bösdorf AG ('SHB')(1). The aid is restructuring aid amounting to DM 5 million provided by the Consolidation Fund of Saxony in the form of a five-year equity holding.

On 19 August 1996 Germany notified further restructuring aid for SHB. The new notification related to the following two measures taken by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben ('BvS') for SHB: a non-repayable grant amounting to DM 4,5 million for 1996 and a deferral of redemption payments on a DM 1,5 million loan. By letter D/52537 of 11 September 1996 the Commission requested additional information. By letter dated 14 November 1996 (registered under A/38134) Germany informed the Commission that the insolvency proceedings requested by SHB on 18 October 1996 had been initiated and confirmed that the relevant aid had already been granted in the first quarter of 1996. The aid had therefore been granted without the Commission having been informed of the fact and at a time when it was still examining the aid approved under the decision of 12 June 1996. The Commission therefore entered the aid in the register of unnotified aid (NN 2/97), and the aid must be regarded as unlawful.

On 5 February 1997 the Commission decided to initiate Article 93 (2) proceedings in respect of all the restructuring measures for SHB. On 31 May 1997 the initiation of proceedings was published in the *Official Journal of the European Communities*(2).

In the letter informing Germany of the initiation of the proceedings (letter D/1420 of 25 February 1997), Germany was called upon by the Commission to take forthwith the necessary steps to enter the BvS's claim on the list of creditors in the insolvency proceedings. This was done in respect of the second aid instalment granted by the BvS. The equity participation by the Saxon Consolidation Fund initially scheduled for five years was withdrawn on 22 October 1996.

Germany answered by letter dated 7 April 1997. The Commission had, in connection with the initiation of proceedings, requested more detailed information on the restructuring plan, which was a precondition for the second grant of aid, and on the implementation of the plan on which the Commission's first decision was based. The answers are still not complete and do not contain the details requested.

On 29 April 1997 Germany sent the Commission an annual report on the implementation of the restructuring plan for the first grant of aid. The report is incomplete and does not contain any information on the implementation of the original plan.

(1) State aid No N 743/95, letter D/5958 of 28 June 1996.

(2) OJ C 165, 31. 5. 1997, p. 10.

In view of the above considerations and by virtue of the judgment of the Court of Justice of the European Communities of 14 February 1990 in Case C-301/87 (Boussac) [1], upheld in its judgment of 13 April 1994 in Joined Cases C-324/90 and C-342/90 (Pleuger Worthington) [2] in respect of an infringement of Article 93 (3) of the EC Treaty, the Commission has the power to require the relevant Member State, in this instance Germany, to provide all such information and data as are necessary in order that it may examine the compatibility of the aid with the common market. This also applies where the Commission has already approved aid, but, because of doubts as to the data on which the Commission's decision was based, has initiated proceedings,

HAS ADOPTED THIS DECISION:

Article 1

Germany shall, within two weeks of notification of this Decision, provide all the documents, information and data which are necessary to enable the Commission to assess the compatibility of all the restructuring aid for Stahl- und Hartgußwerke Bösdorf AG with Article 92 of the EC Treaty. This information shall include in particular the following details:

— the state of progress in the implementation of the original restructuring plan relating to the first grant of aid, which was the subject of the Commission decision of 12 June 1996,

— the reasons and the economic circumstances which prompted the BvS to grant additional aid,

— the restructuring plan which, because of the difficulties which had led to the additional aid, had been adjusted, and the state of progress of implementation of this second plan,

— the situation regarding the insolvency proceedings.

Germany may provide any other information it considers relevant to the assessment of the matter.

Should Germany not reply or should the information provided be incomplete, the Commission will take a final decision on the basis of the information currently available to it.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 15 July 1997.

For the Commission

Emma BONINO

Member of the Commission

[1] [1990] ECR, p. I-307.
[2] [1994] ECR, p. I-1173.