II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 28 July 1999
on State aid granted by the Federal Republic of Germany to Kranbau Eberswalde GmbH

(notified under document number C(1999) 2915)

(Text with EEA relevance)

(Only the German version is authentic)

(1999/840/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) By letter dated 25 June 1997, received by the Commission on 27 June 1997 and registered under number N 433/97, the German authorities notified the Commission of aid from the Federal Office for Special Unification-related Tasks (BvS) and the *Land* of Brandenburg for Kranbau Eberswalde GmbH ('Kranbau Eberswalde'). By letter dated 28. July 1997, the Commission requested further information. Germany replied by letter dated 10 September 1997, received by the Commission on 11 September 1997. By letter dated 25 November 1997, received by the Commission on 26 November 1997, Germany notified further possible aid measures which were being pressed for by the private investor. On 21 January 1998, the case was reclassified under the number NN 9/98. The formal investigation procedure was initiated in March 1998, and a letter stating the reasons for this was sent to the German authorities on 16 April 1998. The contents of this letter were published in the *Official Journal of the European Communities* on 19 November 1998 [3]. By letter dated 20 August 1998, received on 24 August 1998, Germany stated its position on the initiation of the formal investigation procedure. A meeting with the investor and the recipient took place on 11 October 1998, and the German authorities confirmed the information provided at the meeting by letter dated 23 December 1998. The comments of interested parties were sent to Germany on 1 March 1999, to which Germany replied by letter dated 12 April 1999. Further information was provided by Germany by letter dated 12 July 1999, received on 13 July 1999, and by letter dated 23 July 1999, received on the same day.

II. THE UNDERTAKINGS

(2) The aid recipient is Kranbau Eberswalde, based in Ebers tilde (Brandenburg) [4], which produces special cranes for loading in ports, in combined road-rail transport and for other purposes. In 1998, it had a workforce of 160 and an annual turnover of DEM 75 million. As it is part of the Koehne Group (see below), it is not a small or medium-sized enterprise (SME) within the meaning of the Community guidelines on State aid for small and medium-sized enterprises [5].

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 353, 19.11.1998, p. 3.
[3] See footnote 2.
[4] The unemployment rate in the relevant region is 22,1 %. If secondary employment is also taken into account, the figure is increased by a further 6,9 %.
[5] OJ C 213, 27.7.1996, p. 4.

(3) The investor, the Koehne Group, comprises a number of companies previously held by Koehne Verwaltungs GmbH & Co. Holding KG. The Group is active in the manufacture and supply of building materials and in the manufacture of cranes and special vehicles. It has 800 employees and achieved an annual turnover of DEM 224 million in 1997. The Kirow group is the subdivision of the Koehne Group responsible for the manufacture of cranes and special vehicles. It has 400 employees and achieved a turnover of DEM 118,286 million. Apart from Kranbau Eberswalde, the Kirow Group also includes the company Kocks Krane International GmbH ('KKI'), which on completion of the restructuring is to form a single operational unit with Kranbau Eberswalde (see Section IV). KKI is based in Bremen and designs postpanamax cranes, container bridges, ship unloaders and giant cranes. It has a workforce of 72 and a turnover of [...] (*). It is based on the assets bought from the administrator in bankruptcy of the Bremen-based Vulkan Kocks GmbH ('Vulkan Kocks') — a member of the Bremer Vulkan Verbund ('BVV') — which went bankrupt in 1997 (no aid was involved in the acquisition of the assets by the Kirow Group).

III. **PRIVATISATION**

(4) Kranbau Eberswalde was originally privatised by sale to the BVV in November 1993. his was by open public tender with sale to what was described as the best bid. Because of the BVV Group's difficulties, Kranbau Eberswalde was taken back into State ownership in October 1996 and a new private investor sought. Following an open and unconditional invitation to submit tenders, negotiations took place between the BvS and at least seven companies. The Koehne Group was selected as the best offer.

(5) According to the information provided, neither Kranbau Eberswalde nor Vulkan Kocks was integrated into the BVV cash management system.

(6) The contract on the acquisition of Kranbau Eberswalde by the current private investor and owner of the company was concluded in December 1996. The final transfer of all the shares to Kirow-Leipzig Rail & Port AG took place in March 1997. [...] *, and the investor paid DEM 2 million by way of capital contribution. (Other contributions to Kranbau Eberswalde made by the investor are described in Section V.)

IV. **THE CURRENT RESTRUCTURING**

(7) Apart from the measures to rationalise operations within Kranbau Eberswalde, the current restructuring of the company involves two aspects. The first is the completion of the restructuring begun in 1993 on the basis of the approach pursued at that time, which involved the full economic merger of the operations of Kranbau Eberswalde with those of the economic predecessor of KKI. The second is the integration of Kranbau Eberswalde into the Koehne Group.

(8) The restructuring of Kranbau Eberswalde started in 1993. The objective was the merger of the operations of two companies based in different geographic locations, Kranbau Eberswalde in Eberswalde and Vulkan Kocks in Bremen; into a single economic entity. Vulkan Kocks became entirely responsible for the management, distribution and tinancial control functions of Kranbau Eberswalde; the engineering design offices for Kranbau Eberswalde were with Vulkan Kocks; the two companies shared a common assembly and construction team; Kranbau Eberswalde's future business strategy was dependent on the industrial property of Vulkan Kocks; technological improvements made by Kranbau Eberswalde could be exploited only through access to Vulkan Kocks' intellectual property, and in many areas there was shared personnel.

(9) The restructuring of Kranbau Eberswalde within the BVV Group was accompanied by growing losses. The BVV Group as a whole was facing difficulties. As a result of this, Kranbau Eberswalde, as an East German operation, was extracted from the BVV Group by the BvS prior to the BVV Group's bankruptcy, so that Kranbau Eberswalde itself was not involved in the bankruptcy proceedings. (By contrast, Vulkan Kocks, based in West Germany, went bankrupt.) When the BVV Group ran into difficulties, the integration of Kranbau Eberswalde and Vulkan Kocks was at an advanced stage. Vulkan Kocks had become responsible for the management and distribution functions of Kranbau Eberswalde, and the future of Kranbau Eberswalde had also become dependent on the industrial property of Vulkan Kocks. It was because of the degree of integration between Kranbau Eberswalde and Vulkan Kocks that the assets of Vulkan Kocks were acquired by the Kirow Group from the administrator in April 1997 and used to form KKI. Without these assets, the restructuring of Kranbau Eberswalde could not have been completed without drawing up an entirely new restructuring plan. According to the German authorities, these assets were acquired at arm's length and no aid was otherwise involved.

(10) The integration of Kranbau Eberswalde into the Koehne Group will help it to become a profitable undertaking. In particular, Kranbau Eberswalde will draw benefit from its relationship with its immediate parent company, Kirow-Leipzig Rall & Port AG; since they operate in adjoining markets, this should mean that each has access to the other's customers and can offer a broad range of products. The two companies could also reduce costs by sharing certain internal services and using common parts. In addition, they could exploit cost savings through common purchase strategies in respect of components. Internal rationalisation measures such as the contracting-out of certain production stages, the introduction of computer-assisted design technology and the drawing-up of a new marketing approach should enable Kranbau Eberswalde to develop new products and enter new markets.

(*) Business secret.

(11) Another aspect of the current organisational restructuring of Kranbau Eberswalde is the permanent reduction in its production capacity in terms of plant, premises and equipment and in terms of skilled personnel. Since the beginning of 1997, it has sold off production equipment, including cutting and welding equipment, presses and lathes to a variety of different purchasers. Since these machines cannot be used separately to make cranes, but have to work as an ensemble, the sales to purchasers in different markets mean a permanent reduction in crane production capacity. The workforce has also been reduced from 239 in 1997 to 159 in 1998. As a result of this, production capacity expressed in hours has been reduced from 255 000 hours in 1990 to 52 000 in 1998. At the beginning of the current restructuring phase in 1997, it amounted to 73 500 hours.

(12) It should be pointed out that, although the KKI engineering operation is not the aid recipient and is not therefore required to make a capacity reduction, it has effectively done so in the process of its emergence from Vulkan Kocks. An indicator of an engineering company's capacity is the number of employees. Between 1997 and 1999, KKI's workforce fell from 184 to 73.

(13) It should be noted that, in addition to its obligation under the privatisation contract to ensure that aid is used only for the purposes of the contract, Kranbau Eberswalde has its own account separate from the others, and it keeps its own profit and loss accounts and balance sheet; furthermore, the use of State-financial resources is checked by an independent party.

(14) The restructuring costs amount to some DEM 99,7 million and are made up as follows (in DEM million):

(in million DEM)

Investment		
[...] *		[...] *
[...] *		[...] *
[...] *		[...] *
[...] *		[...] *
[...] *		[...] *
[...] *		[...] *
	Total	16,8
Financing of orders		
For Kranbau Eberswalde		30,0
For KKI		11,0
	Total	41,0
Offsetting of losses 1996/1997		41,9
Total restructuring costs		99,7

(15) The loss cover of DEM 41,9 million relates to losses from the period prior privatisation (1996) and from the new investor's run-in phase (1997). These losses were incurred as a result of the collapse of the BVV Group, which affected both customer contidence and the ability of Kranbau Eberswalde to obtain commercial loans. The Koehne Group is unable to obtain the full amount necessary for restoring Kranbau Eberswalde to profitability.

(16) Under the restructuring plan, profitability is to be re-established in 1999. The following table [6] contains the key data for the projected return to profitability. The figures for 1999 and 2000 are based on the projections drawn up at the time of privatisation (in DEM million).

	1997 actual	1998 actual	1999 plan	2000 plan
Turnover	[...] *	[...] *	[...] *	[...] *
Material costs	[...] *	[...] *	[...] *	[...] *
Personnel costs	[...] *	[...] *	[...] *	[...] *
Profit/loss	[...] *	[...] *	[...] *	[...] *

(17) Turnover increases from [...] * in 1997 to [...] * in 2000. As from 1999, positive operating results are expected, thus covering losses and achieving [...] * profit. The increase in turnover between 1998 and 1999 reflects an improved order book due to the impact of privatisation and to the development of new products. The reduction in personnel costs between 1997 and 1998 reflects a further decrease in the workforce after privatisation and the impact of a collective agreement to reduce wages.

[6] This table contains only a selection of key data, and the columns are not arithmetically complete.

V. CURRENT AID MEASURES AND INVESTOR CONTRIBUTION

(18) The current restructuring phase of Kranbau Eberswalde, costing some DEM 99,7 million, is being financed from public and private sources. Kranbau Eberswalde has received or will receive from the BvS and from the *Land* of Brandenburg finance amounting in total to DEM 60,64 million, [7] comprising the following:

(a) a DEM 5 million loan granted by the BvS in 1996 and its subsequent waiver, together with DEM 95 000 in interest;

(b) a DEM 5 million loan granted by the *Land* of Brandenburg in 1996 and its subsequent waiver, together with DEM 76 000 in interest;

(c) a DEM 15 million loan from the BvS at an annual interest rate of 5 %, and its subsequent waiver in the event of a positive Commission decision;

(d) a DEM 5 million investment by the Brandenburg consolidation fund [8];

(e) a guarantee by the Federal and *Land* authorities of up to 80 % (i.e. DEM 24 million) of credit facilities of DEM 30 million (this guarantee will be called upon only if a DEM 6 million guarantee provided by the investors has been used up);

(f) a DEM 2,5 million grant from the BvS in the event of a positive Commission decision;

(g) a DEM 4,14 million grant under the approved aid scheme known as the joint Federal Government/*Land*er scheme for improving regional economic structures [9] (GA resources).

(19) From private sources, Kranbau Eberswalde (including KKI) will receive DEM 39,06 million from the Koehne Group. This amount comprises the following privately financed measures totalling DEM 25,06 million directly in favour of Kranbau Eberswalde:

(a) the provision of capital (including purchase price) of DEM 2 million;

(b) the provision of a guarantee of DEM 6 million;

(c) the provision of a loan of DEM 10 million from a private bank [10];

(d) other non-cash capital contributions amounting to DEM 300 000 (expert's report costs, audit costs);

(e) other cash payments amounting to DEM 350 000;

(f) funds from outside sources amounting to DEM 6,41 million.

(20) In addition, apart from the purchase price of [...] * for the shares, the investor has invested DEM 14 million in the setting up of KKI in order to complete the restructuring of Kranbau Eberswalde (see Section IV). This amount consists of the following:

(a) the provision of capital (fully paid) of DEM 3 million;

(b) the provision of guarantees of up to DEM 11 million.

(The German authorities have confirmed that no aid was granted in connection with KKI.)

(21) The following table shows the origin of the various financing measures (in DEM million):

(DEM million)

Public	Waiver of loan by the BvS (incuding interest of DEM 0,095 million)	5,00
	Waiver of loan by the *Land* (including interest of DEM 0,076 million	5,00
	Loan from the BvS	15,00
	Brandenburg consolidation fund	5,00
	Federal Government/*Land* guarantee (up to 80 % of the DEM 30 million in credit facilities)	24,00
	Grant	2,50
	GA resources	4,14
	Total public funds	60,64

[7] This figure does not include loan interest.
[8] SG(95) D/9074.
[9] 27th framework programme.
[10] This loan is covered by a guarantee provided by Kirow-Leipzig Rail & Port AG amounting to DEM 3 million and by a guarantee provided by Koehem Beteiligungsgesellschaft GmbH & Co. Holding KG amounting to DEM 3 million. The German authorities confirm that neither the Federal Government nor the *Land* of Brandenburg is involved in these.

(DEM million)

Private (Koehne Group)		
To Kranbau Eberswalde	Provision of capital	2,00
	Garantee	6,00
	Bridging loan	10,00
	Other cash payments	0,30
	Other non-cash capital payments	0,35
	Funds from external sources	6,41
	Total	25,06
Via KKI (to Kranbau Eberswalde)	Provision of capital	3,0
	Garantee	11,0
	Total	14,0
	Restructuring measures: Total	99,7

VI. **MARKET**

(22) The business activities of Kranbau Eberswalde comprise the construction and assembly of various types of special cranes, including container cranes, bridge cranes harbour cranes. The company has specialised in particular the manufacture of double-lever level-luffing jib cranes. The immediate owner of Kranbau Eberswalde, Kirow-Leipzig Rail & Port AG, operates in neighbouring areas, producing railway cranes, port equipment, reach stackers, transport systems and railway engineering equipment. There is no overlap between the two companies in terms of specific types of products. In its restructured form, the company will also operate on the market for the development of postpanamax cranes, container bridges, ship unloaders and giant cranes (KKI's activities).

(23) Since the relevant market is worldwide, trade between Member States is affected (Kranbau Eberswalde exports 2,5 % of its output to other Member States, 46,6 % outside the Community and the remaining 50,9 % within Germany). The general market for cranes and lifting equipment is very competitive and, according to the information available to the Commission, there are grounds for believing that there is overcapacity in this sector generally. There is also lively cross-border trade within the Community in this sector ([11]).

(24) However, Kranbau Eberswalde operates in a specialised market in which there appears to be no overcapacity.

(25) As far as the new activity brought in by KKI is concerned, KKI as an engineering firm operates on an upstream market. Since there is no indication that the downstream market in which Kranbau Eberswalde operates is suffering from overcapacity, there is little reason to believe that the upstream market for crane design is affected by overcapacity.

VII. **GROUNDS FOR INITIATING THE INFORMAL INVESTIGATION PROCEDURE**

(26) The information provided by Germany in the notification was unsatisfactory on several points and gave rise to doubts as to the compatibility of the measures with the guidelines on rescue and restructuring aid for firms in difficulties ([12]) These included:

(a) an unclear restructuring plan with divergences from the projected performance;

(b) apparent structural overcapacity on the relevant market, plus lack of clarity on capacity development, and, in any event, no obvious capacity reduction by Kranbau Eberswalde;

(c) an apparently low investor contribution.

([11]) See pages 57 and 60 of *Statistiches Handbuch für den Maschinenbau*, 1997 edition, published by the Verband Deutscher Maschinen- und Anlagenbau e.V.

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

VIII. COMMENTS FROM INTERESTED PARTIES AND GERMANY

(27) The initiation of the investigation procedure elicited comments from two competitors, Caillard (a subsidiary of the Rolls Royce Group) and Kranservice Rheinberg GmbH ('KSR') (a subsidiary of the Mannesman Dematic Group). Germany provided detailed and closely argued replies on both sets of comments.

(28) In a letter received on 4 January 1999, Caillard claimed that there was overcapacity and that the Kirow-Leipzig Rail & Port AG (another member of the Kirow Group) had received aid which had been used for predatory pricing. Germany argued in response that Caillard's claims did not relate to the current aid recipient and were chronologically inconsistent. It argued that any flow of aid from Kranbau Eberswalde to Kirow-Leipzig Rail & Port AG was not possible; both companies had an arm's length relationship, as confirmed by an auditor's report.

(29) KSR claimed that there was overcapacity and predatory pricing. As an example, it cited an invitation to tender by Deutsche Bahn for two container cranes. Kranbau Eberswalde's tender was 15 % lower than KSR's, even though KSR had submitted a tender in which it did not expect to make any profit and had cut the administration, distribution and material costs by 40 %. Germany rejected KSR's assertions: Kranbau Eberswalde's tender covered costs and was not even selected as the best bid. As far as capacity was concerned, Germany reiterated that Kranbau Eberswalde was operating on an expanding niche market.

IX. ASSESSMENT

(30) The financial measures for Kranbau Eberswalde constitute aid within the meaning of Article 87(1) of the EC Treaty, since they are granted through State resources and confer on Kranbau Eberswalde a free benefit which a company in difficulty would not have received from a private investor; as such, they threaten to distort competition and, given the nature of the relevant market, affect trade between Member States. The following aid packages must be regarded as new aid to be assessed by the Commission:

(a) a DEM 5 million loan granted by the BvS in 1996 and its subsequent waiver together with interest of DEM 95 000;

(b) a DEM 5 million loan granted by the *Land* of Brandenburg in 1996 and its subsequent waiver together with interest of DEM 76 000;

(c) a DEM 15 million loan from the BvS at an annual interest rate of 5 % and its subsequent waiver in the event of a positive Commission decision;

(d) a DEM 5 million contribution from the Brandenburg consolidation fund ([13]);

(e) a guarantee by the Federal Government and the *Land* of up to 80 % (DEM 24 million) of the DEM 30 million credit facilities (this guarantee will be called upon only if a DEM 6 million guarantee provided by the investors has been used);

(f) a DEM 2,5 million grant from the BvS in the event of a positive Commission decision.

(31) Although the DEM 4,14 million grant stems from the approved aid scheme known as the joint Federal Government/*Land* scheme for the improvement of regional economic structures ([14]) (GA resources) and is not therefore a new measure, it will be taken into account in assessing the proportionality of the aid.

(32) Under Article 87(1) of the EC Treaty, aid for certain undertakings is incompatible with the common market if it affects trade between Member States and distorts or threatens to distort competition in the common market. Given the nature of the aid in question and the particular features of the crane manufacturing industry, the current aid package clearly falls within the scope of Article 87(1) of the EC Treaty. Such aid is in principle incompatible with the common market unless it is eligible for one of the derogations provided for in Article 87(2) or (3) of the EC Treaty. Article 87(3) is relevant in this instance. It gives the Commission discretionary power to authorise State aid in certain specified circumstances. These include, under Article 87(3)(c), aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The geuidelines set out the conditions to be met for the Commission to be able to exercise its discretionary power.

(33) Under Article 87(3)(a) of the EC Treaty, the Commission also has the power to authorise State aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The new German *Länder* fall within the scope of this provision ([15]). The fact that the aid is to be granted to a single firm in difficulty does not

([13]) See footnote 8.
([14]) 27th framework programme.
([15]) See Commission Decision in aid case N 464/93.

preclude it from being deemed to be regional aid falling within the scope of Article 87(3)(a) ([16]). In this case, however, the main purpose of the aid is to restructure a company in difficulty rather than to promote the economic development of an area. Even if a successfully restructured company may contribute to the development of an area, the aid should be assessed under Article 87(3)(c) rather than under Article 87(3)(a).

(34) The notification submitted by Germany in June 1997 was intended to be in respect of restructuring aid. The notified measures must therefore fulfil the conditions laid down in point 3.2 of the guidelines if they are to be regarded as restructuring aid that is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

X. **RESTORING LONG-TERM VIABILITY**

(35) The restructuring plan must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions. In order to be able to assess the cogency of the plan, the Commission requires information as to the reasons for the current difficulties of the undertaking concerned, the proposed internal measures and their expected effect.

(36) The Commission notes that, in response to its letter announcing the initiation of the formal investigation procedure, Germany provided additional information on the restructuring measures. The problems facing Kranbau Eberswalde and the measures required to address them were outlined above. The measures are appropriate for addressing these problems. Furthermore, the economic performance of Kranbau Eberswalde is in line with what was projected at the time of privatisation.

(37) It follows from the financial analysis that Kranbau Eberswalde should be able to reduce its losses considerably and to solve its problems in the next few years. Its financial situation has improved steadily (see Section IV), and the steady improvement in the figures and in the qualitative aspects of the restructuring mean that the financial outlook is credible.

(38) Thus, the restructuring following privatisation show allow Kranbau Eberswalde to return to profitability within the four-year restructuring period, which can be regarded as a reasonable timescale.

([16]) See Joined Cases C-278/92 and C-279/92 Spain v Commission (Hytasa/Imepiel) [1994] ECR 1-4103.

XI. **NO UNDUE DISTORTIONS OF COMPETITION**

(39) A further condition for restructuring aid set out in the guidelines is that measures are taken to offset as far as possible adverse effects on competitors. Otherwise aid would be contrary to the common interest. Generally speaking, restructuring aid will result in undue distortions of competition if it is used to increase production capacity. In the event of structural overcapacity in the relevant market, the aid recipient must contribute to a reduction of the excess capacity by irreversibly reducing its own capacity by an amount proportionate to the aid received.

(40) It is to be noted that Kranbau Eberswalde has in any event carried out a reduction in its capacity as part of the current restructuring and that there is no evidence that overcapacity exists on the niche market on which it operates. (It is also noted that the KKI engineering operation, although not the aid recipient, has also reduced its capacity.)

(41) In assessing the reduction in capacity, account must also be taken of the fact that Kranbau Eberswalde is based in an area covered by Article 87(3)(a) of the EC Treaty. Thus, in accordance with the guidelines, the Commission can show greater flexibility in applying this criterion in cases involving markets with structural overcapacity. In this instance, therefore, no further capacity reduction by Kranbau Eberswalde is necessary.

(42) Accordingly, the Commission considers that, since the aid recipient has substantially reduced capacity and since Kranbau Eberswalde operates on an expanding niche market, the impact on competitors must be regarded as minimal. There will therefore be no undue distortions of competition.

XII. **AID IN PROPORTION TO THE RESTRUCTURING COSTS AND BENEFITS**

(43) A further requirement in the guidelines is that the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Aid recipients will therefore be expected to make a significant contribution to the restructuring plan from their own resources. To limit the distortive effect, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for market-distorting activities.

(44) In this case, the total aid package from the BvS and the *Land* amounts to DEM 60,64 million. This amount is made up of the waiver of a loan of DEM 5 million together with interest of DEM 95 000, the waiver of a loan of DEM 5 million together with interest of DEM 76 000, a loan of DEM 15 million and a contribution of DEM 5 million from the Brandenburg consolidation fund. A Further component of the aid package consists of a guarantee of up to DEM 24 million provided by the BvS and the *Land*. The DEM 4,14 million granted under the GA resources programme has to be added to the amount of new aid for the purpose of assessing proportionality.

(45) In addition to the purchase price of [...] *, the investors have committed themselves to investing DEM 25,06 million ([17]) in the restructuring of Kranbau Eberswalde. The restructuring costs directly related to Kranbau Eberswalde amount to DEM 85,7 million, of which the private investor is contributing some 29 %. If one also includes the investor's costs incurred in respect of KKI (DEM 14 million) ([17]), the investor contribution amounts to over 39 % of the total restructuring costs of DEM 99,7 million. The investor's contribution may therefore in either case be regarded as appropriate.

(46) In view of the foregoing, the Commission concludes that its concerns expressed when the proceedings were initiated have been addressed and that the criterion of proportionality of the aid is met.

XIII. **FULL IMPLEMENTATION OF THE PLAN**

(47) A company receiving restructuring aid must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations laid down by the Commission Decision. Otherwise, unless the original Decision is amended following a new notification from the Member State, the Commission will take steps to require the recovery of the aid. Germany has given an assurance that all possible measures will be taken to ensure that the restructuring plan is carried out. The Commission therefore concludes that this part of the guidelines is also complied with.

XIV. **CONCLUSIONS**

(48) The Commission finds that Germany has unlawfully implemented the aid measures described above in breach of Article 88(3) of the EC Treaty. However, in view of the considerations set out above, the Commission concludes that, since they comply with the guidelines on restructuring aid, the measures are compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid amounting to DEM 60 640 000 (EUR 30 004 739) plus interest which Germany has granted and is to grant to Kranbau Eberswalde is compatible with the common market.

According to the information available, the aid consists of the following measures:

(a) a DEM 5 million loan granted by the Federal Office for Special Unification-related Tasks (BvS) and its subsequent waiver together with DEM 95 000 in interest;

(b) a DEM 5 million loan granted by the *Land* of Brandenburg and its subsequent waiver together with DEM 76 000 in interest;

(c) a DEM 15 million loan from the BvS at an annual interest rate of 5 % and its subsequent waiver in the event of a positive Commission decision;

(d) a DEM 5 million contribution from the Brandenburg consolidation fund;

(e) a DEM 24 million guarantee provided by the Federal Government and the *Land*;

(f) a DEM 2,5 million grant from the BvS.

Article 2

In accordance with the guidelines on State aid for rescuing and restructuring firms in difficulty, Germany shall submit detailed annual reports on the implementation of the restructuring plan.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 28 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

([17]) For details of the investor contribution, see Section V.