COMMISSION DECISION

of 20 July 1999

on State aid implemented by the Federal Republic of Germany for Lautex GmbH Weberei und Veredlung

(notified under document number C(1999) 3026)

(Only the German version is authentic)

(Text with EEA relevance)

(2000/129/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) By letter dated 27 January 1997, registered as received on the same day, Germany informed the Commission that it had implemented aid measures for Lautex GmbH Weberei und Veredlung ('Lautex'). The case was registered as N 90/97. By letter dated 15 April, the Commission informed Germany that it had decided to initiate an investigation procedure in respect of this state aid. The case was re-registered as C 23/97. Germany replied by letter of 20 May, which was received by the Commission on 21 May. On 2 June Germany asked for certain passages to be deleted from the Commission's letter of 15 April before it was published in the *Official Journal of the European Communities*. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid measures.

(2) The Commission received comments from interested parties. It forwarded them by letter dated 14 August 1997 to Germany, which was given the opportunity to react. Its comments were received on 10 September. The matter was discussed by Commission representatives and the German authorities at a meeting in Berlin in December. Further comments were submitted on 27 January 1998. By letter dated 6 March, Germany submitted details of the amended aid package to be granted in connection with the privatisation of Lautex. By letter dated 17 August, the Commission informed Germany of its decision to extend the procedure to the new aid package and in an official letter called upon it to provide information.

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

(4) The Commission received comments from the Maron Group (see recital 11) by letter dated 1 March 1999, registered as received on 2 March. During a meeting in Brussels on 2 March, at which the case was discussed with the Commission, these comments were presented to the German representatives. Comments were also received from the Daun Group (see recital 10) by letter dated 18 March, registered as received on 22 March. These comments were forwarded to the German authorities by letter of 14 April, to which they did not react.

(5) The German authorites submitted further particulars by letters of 25 September, 27 November and 9 December 1998, and 19 March and 12 April 1999, registered as received respectively on 28 September, 30 November and 10 December 1998, and 23 March and 13 April 1999.

(6) The Commission also received a letter from the German authorities on 23 June 1999 indicating that an investor had dropped out. By fax dated 15 July, the withdrawal of an investor (the Daun Group) was confirmed and it was announced that a new restructuring plan was being developed for Lautex and that information on this plan

[1] OJ C 192, 24.6.1997, p. 11.
[2] OJ C 192, 24.6.1997, p. 11.
[3] OJ C 387, 12.12.1998, p. 4.

would be provided. The letter and the fax reached the Commission after 7 May 1999, the final deadline (following several extensions) for replying to the official letter requesting information.

II. RELEVANT UNDERTAKINGS

Lautex

(7) The aid recipient, Lautex, is a textile firm with its registered office in Saxony, Germany [4]. Lautex has weaving and warehousing facilities at its Neugersdorf site and finishing facilities at Leutersdorf. It employed some 360 people in 1998, and the projected turnover for 1998 was some DEM 56,9 million (the most recent outturn figure of DEM 57,029 million is for 1997). The 1997 balance-sheet figures show assets of DEM 89,921 million. Lautex does not therefore satisfy the Commission's criteria for small- and medium-sized enterprises (SME) laid down in the Community guidelines on State aid for SMEs [5].

(8) Lautex succeeded Lautex AG, a holding company set up in 1990 to incorporate Oberlausitzer Textil GmbH, Neugersdorf, Ostsächsische Textil GmbH, Zittau, and Spreetextilien GmbH, Neusalza-Spremberg. In 1990 Lautex AG had 10 200 employees, nine spinning mills, 32 weaving mills, six finishing plants, seven industrial power plants, three fleece processing plants and printing works. In 1991 the number of weaving mills was reduced by two. In 1992 Lautex AG was split into Lautex (610 employees) and TGO Textil GmbH (808 employees).

(9) On 6 November 1997 Lautex was privatised by sale to the Daun Group. On 22 April 1998 another investor, the Maron Group, acquired half the share capital in Lautex.

Daun Group

(10) The first investor, the Daun Group, is a conglomerate based in Germany in which Mr Claus E. Daun, a businessman, has interests. It operates in several geographic and product markets, including textiles. The Group has some 11 600 employees and an annual turnover of DEM 1,4 billion. Its subsidiaries include Lauffenmühle GmbH (with which, according to one version of the restructuring plan, Lautex was to cooperate). This firm is based in Baden-Württemberg, has some 450 employees, achieved a turnover of some DEM 125 million in 1998 and is engaged in spinning, weaving and finishing.

Maron Group

(11) The second investor, the Maron Group, is a group of companies in which Mr Elard Maron, a businessman, has a controlling interest. It operates in the textile sector and includes the former Erba GmbH, a producer of shirt and blouse fabrics based in Forchheim, western Germany. Erba GmbH succeeded the failed Erba AG (insolvency proceedings were started in 1992), a large spinning and weaving firm which employed some 3 000 people. Erba GmbH was declared insolvent in 1996. The Maron Group acquired the weaving mill and incorporated it into Mileta AS, another member of the Maron Group with its registered office in the Czech Republic. In 1997 it took over the production of shirt and blouse fabrics from the former Erba GmbH. It also owns a dye works in the Czech Republic, Milerba SRO, where the Erba Lautex fabrics are dyed. It is not known what further interests the Maron Group has. No data have been provided on the numbers employed by the Maron Group or on its turnover or assets. It is not known whether and to what extent the Maron Group is active in other product or geographic markets.

III. PRIVATISATION

(12) The Daun Group was selected as an investor by management consultants KPMG acting on behalf of the German authorities. According to the German authorities, KPMG conducted an extensive research for potential investors. Four bids were submitted for the entire Lautex company and two for selected assets. No quantitative comparison of the bids was provided by Germany.

(13) On 6 November 1997, the company was privatised by sale at a price of DEM 434 783, with Beteiligungs-Management-Gesellschaft Berlin GmbH ('BMGB'), a successor organisation to the Treuhandanstalt, transferring 90 % of the shares to Daun & Cie AG and the remaining 10 % to Mr Claus E. Daun. The Daun Group agreed to increase the Lautex share capital of DEM 50 000 by DEM 6 million, of which DEM 2 million was actually paid in. When the privatisation and the sale to the Daun Group was notified, Germany made no reference to another investor.

(14) On 22 April 1998, the Maron Group, through Mr Elard Maron, acquired DEM 3 million of the Lautex share capital, of which DEM 2 million was paid in. In addition, assets of Erba GmbH, part of the Maron Group, were transferred to Lautex. Lautex then changed its name to Erba Lautex GmbH Weberei und Veredlung but retained its legal personality (hereinafter the term

[4] The unemployment rate in the region concerned is 22,1 %. If the secondary employment market is also included, this figure is 6,1 % higher.

[5] OJ C 213, 27.7.1996, p. 4.

'Lautex' also includes the name Erba Lautex GmbH Weberei und Veredlung). Mr Elard Maron and Mr Hans-Jürgen Hyrenbach were appointed joint managing directors of Lautex; Mr Hyrenbach is also the managing director of Laufenmühle GmbH, a member of the Daun Group. The German authorities provided no reasons for the involvement of another investor or information as to how the Maron Group was selected to be the second investor in Lautex.

IV. **RESTRUCTURING**

(15) The information concerning the restructuring of Lautex after privatisation has been amended by Germany on several occasions, in particular in May 1997, March, September, November and December 1998 and even subsequently. The changes to the restructuring plan and the resulting altered information are presented in stages below.

(16) The German authorities state that the problems faced by Lautex were due to the transition from a centrally planned to a social market economy, the loss of markets in the former Comecon States, the need to find new markets, general neglect and the need to meet new environmental standards. Additional inefficiencies resulted from the fact that Lautex operated at several sites. These circumstances are cited as reasons for Lautex never having made a profit.

(17) It is unclear from the information submitted by the German authorities when the current restructuring of Lautex began. A restructuring plan was allegedly drafted in 1993, but the plan which was to form the basis of the restructuring was radically changed in 1995. Germany has neither justified the changes nor indicated their extent. A few measures were implemented between 1993 and 1995, when the current plan took effect. Since the German authorities have not provided more precise information and in view of the supposedly radical changes made that year, the Commission assumes that the current restructuring began in 1995.

(18) By 1994 the following changes had been made at Lautex on the basis of the 1993 restructuring plan:

(a) at company management level, computer systems were introduced to plan production. In addition, the acquisition of an independent sales department in Berlin led to the building up of a marketing network, and the creation of a network of sales representatives was planned for the markets in Europe, North America and Asia;

(b) the physical manufacturing base was improved in particular by the expansion of the dyeing facilities and the replacement of obsolete plant in the weaving mills. The weaving preparation facility was extended, while yarn feed controls and energy-saving systems were introduced. Improvements were made to the finishing operation, production bottlenecks were removed and new technologies were introduced.

(19) In January 1997, Germany presented the restructuring plans for Lautex as modified in 1995. They involved expansion of the sales network, simplification of the product range and extension of the dyeing and processing facilities for viscose fibres such as Polynosic and Tencel. The purpose of additional investment was to improve flexibility and quality in both the weaving and finishing operations. At the same time, unspecified improvements would be made to meet environmental and work safety requirements. Supplementary information in March 1998 confirmed that in 1996 substantial investment had been undertaken to restructure the finished products warehouses, expand the hank-dyeing facilities, acquire new finishing machines and build a new finishing hall in Leutersdorf.

(20) In addition, the future market strategy was outlined. At that time Lautex was concentrating on the production of shirt and blouse fabrics, outer fabrics, workwear fabrics and raw fabrics. It was hoping for profits from the growth in non-iron shirt and blouse fabrics, where it intended to concentrate on producing mid- to high-priced fashion products for the European market. According to the German authorities, the new capacity for processing viscose fibres would give Lautex access to new markets. A strategic alliance was sought to consolidate the outward processing operation.

(21) In May 1997, in response to the opening of the procedure, the German authorities provided the following information:

(a) at management level, new works managers were to be recruited for the weaving and finishing plants. At the distribution level, part of the Berlin sales operation had been sold off. The original plan to use sales representatives in Germany was abandoned in favour of a sales team directly employed by the company;

(b) at production level, improvements to the internal logistics had resulted in increased throughput times in the weaving and finishing plants. These measures,

together with the replacement of the obsolete weaving machines and the lengthening of the working week to 144 hours, meant that productivity could be increased by 45 % ([6]);

(c) as regards market strategy, a reduction in raw fabric production capacities and in outward finishing capacities was announced. The production of outer fabrics was also to be reduced.

(22) Further information was submitted in March 1998 in connection with the privatisation. The modifications to the restructuring plan included steps to incorporate Lautex into the Daun Group and other changes which were intended to put an end to the failure of previous plans (projected sales and cost levels had not been attained):

(a) at management level, the administrative functions of Lautex and Lauffenmühle GmbH would be merged. As regards sales, Lautex would use the Daun Group's sales network, in particular that of Lauffenmühle GmbH. The intention was that part of the Lautex sales team would be taken over by Lauffenmühle GmbH;

(b) at production level, a new cutting machine would eliminate bottlenecks in weaving preparations. The existing outdated looms were to be replaced by modern ones. The introduction of a new quality control system and unspecified investment in the finishing sector were also mentioned. Air-conditioning was also to be installed in the weaving mill in order to avoid production stoppages and improve quality;

(c) as regards market strategy, Lauffenmühle GmbH would concentrate on the production of homogeneous mass-produced fabrics, whereas Lautex would primarily produce fashionable short-run products. The main market for Lautex would be the shirt and blouse sector, and the finishing of outer fabrics and workwear would be discontinued. Outward processing capacity would also be reduced.

(23) The modified plan also envisaged unspecified cooperation with an unnamed east European partner and cooperation at management level with a competing firm, Erba GmbH, which at that time had no connection with Lautex. The intention was for the finishing capacities of Erba GmbH to be concentrated at Lautex.

(24) In September 1998 the German authorities provided information of further changes to the Lautex restructuring plan which were attributable to the involvement of the Maron Group:

(a) at management level, Mr Elard Maron, the former managing director of Erba GmbH, would join Mr Hans-Jürgen Hyrenbach, managing director of Lauffenmühle GmbH, as joint managing director of Lautex. The employment of a new expert in the production area was expected to lead to cost reductions. As regards purchasing operations, the proven bargaining power of the Daun Group should result in further cost savings;

(b) at production level, unspecified plant and machinery from the failed Erba GmbH would be transferred to Lautex. It also appeared that the Erba GmbH design team would also be transferred to Lautex (although this is not clear from the employee figures cited). Unspecified synergies with the Daun Group would take up unused finishing capacity. The yarn dyeing operation would be transferred to Milerba SRO;

(c) as regards market strategy, the reputation of Erba GmbH in the relevant markets is said to justify the expected increase in Lautex sales in the area of high-quality shirt and blouse fabrics. The German authorities note that the number of other firms operating in this sector in the Community has been reduced from 10 to three within eight years. This sector is described as a market niche in which Lautex can escape the competitive pressure of low-cost foreign suppliers. The market for high-quality products is also said to justify the significant price increases by Lautex.

(25) In November 1998 further substantial investment of over DEM 22 million up to 2002 was announced. This information was, however, only to be gleaned from table headings: a fuller description of the type of measures and the need for them was not provided.

(26) The Commission finds that the latest information from Germany does not make it clear whether there will be further additions to the present restructuring plan or whether a new restructuring plan will be developed after the withdrawal of the Daun Group.

(27) No precise information is provided as to the impact of the restructuring on Lautex production capacity.

([6]) The information received in November 1998 contradicts this, referring to a reduction of the working week from 168 hours to 144 hours.

According to the information provided by the German authorities in September 1997, weaving mill capacity had already been reduced in the period 1990 to 96 (from 100 million running metres in 1990 to nine million running metres in 1996). Finishing capacity is also said to have been reduced, but it is not stated by how much. No details were given as to when and how the capacity reductions had occurred. It was asserted that no further reduction in capacity was possible.

(28) In November 1998 the German authorities stated that between 1996 and 1998 capacity had been reduced from 9,14 million running metres a year to 7,2 million running metres a year. This had been achieved despite the acquisition of new machines, the complete technological overhaul of the firm, the elimination of bottlenecks and the reorganisation of the lower capacity. The German authorities stated that there were methodological difficulties in quantifying finishing capacity.

(29) According to the information submitted in April 1999, Lautex also reduced capacity in 1998. By scrapping 20 looms, capacity was reduced from 7,67 million running metres in 1996 to 7,618 million running metres in 1999. The looms were said to have been 'irreversibly scrapped'. However, the Lautex publicity material presented at the March 1999 meeting with the German authorities and the investor states that Lautex has an annual output of 9 million running metres ([7]).

Restructuring costs

(30) In its letter announcing the opening of the procedure and in that announcing its extension, the Commission referred to the lack of information on the overall restructuring costs.

(31) The letter of 27 November 1998 contained tables listing the overall costs of restructuring Lautex ([8]) and information as to how those costs were to be financed. However, the tables were produced in 1992, when the current restructuring process had not yet begun. The following table summarises those submitted by the German authorities, but only for the relevant period 1995 to 2002 ([9]):

RESTRUCTURING COSTS

1995 to 2002

(in DEM million)

Investment	34,406
Loss cover	75,433
Debt servicing	28,097
Total current assets	28,341
Total current account	9,850
Increase in reserves	32,093
Total	208,220

(32) The need for the individual items in the table was not explained (except for investment, which was shown as the only company cost). No more detailed information was provided as to how these items were calculated or as to how the organisational restructuring of the firm was taken into account. The figure for loss cover does not tally with earlier information, which shows losses of DEM 59,672 million for 1995 to 2002 ([10]). As regards debt servicing, the German authorities stated that Lautex's external liabilities were taken over by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) and that on privatisation the latter waived repayment of all the financial assistance it had granted. However, debt servicing is envisaged for 1995 to 98 and 2001-2, with no explanation given as to the origin or the size of the liabilities involved. The remaining headings relate to financial restructuring measures but no information has been provided as to how they arose or how the amounts were calculated.

V. **FINANCING THE RESTRUCTURING**

(33) The intention is that the restructuring of Lautex will be financed from both public and private sources. The subsidisation from public funds relates to the restructuring aid originally notified in January 1997 and subsequently modified.

([7]) The company's publicity material contained in the brochure 'Innovation TEXTIL Oberlausitz' gives an annual output of 9 million metres. It should also be noted that the Lautex website at http://www.erba-lautex.de/engFrame.htm gives a capacity of 10 million metres.

([8]) At a meeting in Brussels on 2 March 1999, the German representatives were made aware of the lack of precise information concerning the overall costs of the restructuring and were informed that the Commission would be calculating them on the basis of the tables contained in the letter of 27 November 1998. The information subsequently submitted referred on this point to the letter of 9 December 1998; however, that letter contained no information on this subject.

([9]) Assuming that the present restructuring of Lautex started in 1995.

([10]) See below: 'Restoration of long-term viability'.

State aid measures specified in the original notification

(34) The January 1997 notification covered the following measures to assist the restructuring of Lautex:

(a) a DEM 5,202 million interest-free shareholder loan from the BMGB, to run until 31 March 1998;

(b) a DEM 8,7 million shareholder loan from the BMGB, with interest payable at 7,33%, to run until 31 March 1998;

(c) a DEM 6,5 million BMGB guarantee, at a charge of 0,5%, to run until 31 March 1999;

(d) the extension to 31 March 1999 of a DEM 3,5 million guarantee granted in 1992, at a charge of 0,5%.

(35) The total aid amounts to DEM 24 million. In its March 1998 letter, Germany conceded that part of the aid had been disbursed in 1997 without Commission approval and that repayment was waived on privatisation. However, no indication was given as to the value that was put on these aid measures in the context of privatisation.

Amended measures, details of which were provided in March 1998

(36) Upon privatisation, the measures notified in 1997 were amended as follows:

(a) the granting of an additional sum of DEM 30,9 million to cover losses from 1997 to 2000;

(b) a discharge from bank liabilities of DEM 22,389 million;

(c) a repayment waiver in respect of DEM 159,27 million;

(d) a repayment waiver in respect of the guarantee charge of DEM 0,312 million.

(37) According to Germany's letter of March 1998, total aid for Lautex amounted to DEM 212,871 million. However, it is unclear whether or not this figure includes any or all of the aid granted in 1997.

(38) A final analysis of all the documentation submitted to the Commission by Germany shows that Lautex was granted the following aid in 1996 and 1997:

(in DEM million)

1996		1997		Privatisation	
Form	Amount	Form	Amount	Form	Amount
Loans	0,531	Loans	0,217	Loans	12,700
Grants	0,969	Guarantee (extension)	(3,500) [1]	Grants	30,900
Loans	0,117			Discharge from bank liabilities	22,389
Total	1,617	*Total*	0,217	*Total*	65,989
				Grand total	67,823

[1] This amount must be disregarded because it represents the prolongation of a measure deemed to have been awarded at 100% intensity under an approved aid scheme.

(39) In detail, the measures specified in the above table for 1996 consist of the following aid from BMGB to Lautex:

(a) loans of DEM 0,531 million in support of the redundancy programme;

(b) loans of DEM 0,117 million to promote vocational training;

(c) grants of DEM 0,969 million to promote employment (measures under the Employment Promotion Law).

(40) For 1997 the following aid measures are involved:

(a) loans of DEM 0,217 million to promote vocational training;

(b) extension of an existing guarantee of DEM 3,5 million, at a charge of 0,5%.

(41) In the privatisation contract the BvS agreed to the following measures:

(a) loans of DEM 12,7 million to cover losses for 1997 ([11]), of which DEM 3,988 million was interest-free and DEM 8,712 million carried interest at 5,54%. These loans were disbursed in instalments;

(b) grants of DEM 30,9 million, paid in instalments (DEM 8,9 million on 31 December 1997, two instalments of DEM 8 million each on 30 June 1998 and 31 December 1998, and DEM 6 million on 30 June 1999);

(c) a discharge from bank liabilities of DEM 22,389 million ([12]).

(42) In the period 1996-97 Lautex received an investment allowance (Investitionszulage) of DEM 0,226 million from the *Land* of Saxony. For the period 1998 to 2000 further investment allowances totalling DEM 5,693 million are being made available by the *Land* of Saxony.

(43) The privatisation contract waived the obligation to repay several of the abovementioned aid measures. The following waivers totalling DEM 159,583 million were agreed by the BvS:

(a) loans of DEM 110,636 million (DEM 75,176 million from 1991, DEM 16,527 million from 1994 and DEM 3,24 million and DEM 15,693 million from 1995);

(b) loans of DEM 46,13 million (DEM 22,872 million and DEM 10,558 million from 1995 and DEM 12,7 million from 1997);

(c) loans of DEM 0,334 million (DEM 0,117 million from 1996 and DEM 0,217 million from 1997) to promote vocational training;

(d) loans of DEM 2,171 million for the 1996 redundancy programme (DEM 1,64 million from 1992 and DEM 0,531 million from 1996);

(e) waiver of claims from a guarantee of DEM 0,312 million.

(44) After 1995 the firm was granted aid totalling DEM 73,742 million. (This amount does not include the repayment waiver of DEM 159,583 million ([13]).

Aid measures falling under Treuhand schemes

(45) According to the notification of 27 January 1997, aid measures falling under Treuhand schemes totalled DEM 174,4 million. Of this amount DEM 124,9 million had allegedly been granted up to 1994 and, according to information received, a further DEM 49,5 million was approved in 1995 and disbursed in 1995 and 1996. According to the information from Germany, i.e. after the procedure was initiated in May 1997, financial aid granted to Lautex between 1990 and the end of 1995 and falling under Treuhand schemes totalled DEM 173,658 million:

(a) loans of DEM 33,43 million;

(b) guarantees totalling DEM 26,335 million;

(c) various grants and loans totalling DEM 113,893 million.

(46) At a meeting in Brussels on 2 March 1999, the representatives of the German authorities admitted that they would have to check which of the aid measures disbursed in 1996 actually fell under the relevant Treuhand schemes, the last of which expired on 31 December 1995. According to the information submitted in April 1999, an amount of DEM 177,794 million was involved. This also includes the aid granted in 1996 ([14]). Since no explanation was given as to why the aid measures granted after 1995 are included in this sum, the Commission will take them into account for the period 1996 to 2002.

(47) An analysis of the information provided by the German authorities shows that Lautex was granted the following aid by the THA/BvS/BMGB in the period 1991 to 1995:

([11]) According to the letter of 27 November 1998, losses amount to DEM 5,202 million. No explanation has been given as to why this loan exceeds losses by DEM 7,498 million.

([12]) No information was provided on these bank liabilities. It is not clear whether the discharge relates to private or public bank liabilities.

([13]) These waivers relate to measures implemented since 1991.

([14]) In particular grants of DEM 0,531 million for the 1996 redundancy programme.

(in DEM million)

1991		1992		1994		1995	
Form	Amount	Form	Amount	Form	Amount	Form	Amount
Loans	75,176	Loans	1,640	Loans	16,527	Loans	15,693
		Guarantee	18,295			Loans	10,558
		Guarantee	4,875			Loans	22,872
		Guarantee	4,887			Loans	3,240
		Guarantee	3,500				
Total	75,176	*Total*	33,197	*Total*	16,527	*Total*	52,363
						Grand total	177,263

(a) On 17 December 1991, Lautex AG was granted a loan of DEM 75,176 million.

(b) On 1 July 1992 Lautex received loans totalling DEM 1,64 million for the redundancy programme. Also in 1992, several guarantees were taken over for the firm:

(i) on 8 April 1992 two guarantees of DEM 18,295 million and DEM 4,875 million were taken over to secure investments;

(ii) another guarantee of DEM 4,887 million, also to secure investments, was taken over on 15 December 1992;

(iii) a guarantee of DEM 3,5 million was taken over on 10 December 1992.

(c) In 1994 the firm received loans of DEM 16,527 million to cover losses in 1995.

(d) In 1995 Lautex was granted four different types of loans totalling DEM 52,363 million:

(i) a loan of DEM 15,693 million on 3 July 1995 to cover losses in 1995;

(ii) a loan of DEM 10,558 million on 3 July 1995 to cover losses in 1996;

(iii) a loan of DEM 22,872 million on 3 July 1995 for restructuring measures in 1996 ([15]);

(iv) a loan of DEM 3,24 million on 8 September 1995 to cover losses in 1994.

(e) In the period 1992 to 1995 the firm also received investment allowances (Investitionszulagen) of DEM 1,018 million from the *Land* of Saxony ([16]).

(48) Consequently, between 1991 and 1995 Lautex received aid totalling DEM 178,281 million.

Private financing

(49) The first private financing operation for Lautex took place at the time of privatisation. According to the letter of March 1998, the investor acquired Lautex for DEM 0,435 million, waived various claims totalling DEM 0,26 million and was to make a cash injection of DEM 6 million. After the merger of Erba and Lautex, this capital sum was divided between the investor groups, so that each would contribute DEM 3 million. In fact, the investors have paid in DEM 2 million each. The remaining DEM 2 million will become due if the Commission takes a positive decision. This has been confirmed several times by Germany. Therefore, the investor contribution might total DEM 6,695 million.

(50) The Commission would point out that, at a meeting on 2 March 1999, Mr Elard Maron stated that the assets of Erba GmbH, amounting to DEM 9,686 million, should also be considered as a capital contribution by the investor. This statement is confirmed by the German authorities in their latest letter of 12 April 1999. A table contained in the same letter presents for the first time two more amounts as investor contributions: one of DEM 3,465 million to cover bank liabilities in

([15]) These loans were paid in instalments throughout 1996.

([16]) DEM 0,313 million in 1992, DEM 0,175 million in 1993, DEM 0,82 million in 1994 and DEM 0,448 million in 1995.

accordance with the privatisation contract, and one of DEM 8,795 million, which is described as investment. The letter gives no further details about the two amounts. It is not known whether these additional contributions will be made by only one investor or both of them, and in what proportions.

VI. **RELEVANT MARKET**

(51) Lautex operates in the textile industry. It weaves and finishes outer fabrics, shirt and blouse fabrics, and workwear. The Daun Group, through its production facilities in Lauffenmühle and subsidiaries in South Africa and Zimbabwe, also operates in the textile industry. The Maron Group has production facilities in the Czech Republic. Because of the lack of information from Germany as regards the investor groups, nothing is known about their interests in other textile firms. The Commission notes that at the beginning of 1998 Lautex exported 4,6% of its output to third countries and 17,7% to other EU Member States, with the rest being sold within Germany.

(52) Markets for woven and finished fabrics are to be found throughout the Community. When it initiated the procedure, the Commission found that the textile industry was suffering from recession and overcapacity. Germany also indicated that overcapacity existed in the sector in which Lautex operated ([17]). This view was also held by third parties who submitted comments in response to the notice announcing the opening of the procedure. In December 1998 Germany revised its statement concerning overcapacity, maintaining that as from 1997 there was no longer any overcapacity on the Community textile market.

(53) By nature, the textile industry is capital intensive. Nevertheless, keen competition exists from low-wage countries with less stringent rules on environmental protection. Forecasts for Community manufacturers were and still are pessimistic ([18]). Since the procedure was initiated, there have been signs that in the period 1994 to 1995 the situation had generally improved on the textile market. However, it is unclear whether this positive trend is continuing. One report suggests that the improvement may have been short-lived, with growth decelerating in 1996 to well below the longer-term trend value before registering some improvement in 1997. Further capacity rationalisation is expected in the German textile industry in particular. The industry is continuing to restructure in the face of lacklustre global demand and intense price competition ([19]). In addition, several firms have left the market in which Lautex operates.

(54) It is noted that Lautex is geared exclusively to producing for the clothing market. Its market strategy, despite the numerous changes it has undergone, is directed solely at this area. The assessment of this downstream market is important for determining competitive pressures in that part of the upstream textile market geared to supplying it. According to information available to the Commission, the downstream market is characterised by intense competition; in addition, in the near future employment is expected to decrease and growth is expected to be slight. Demand has declined annually by 2% since 1990. The clothing industry will continue to face difficult economic conditions in Europe and consumption is not expected to improve significantly ([20]). The impact of overproduction on textile markets is potentially catastrophic for both textile and clothing producers throughout the world ([21]).

VII. **INITIATION AND EXTENSION OF THE PROCEDURE**

(55) When initiating the procedure, the Commission found that the measures notified constituted aid within the meaning of Article 87(1) of the EC Treaty. Since the aid was intended as restructuring aid, it had to be assessed on the basis of Article 87(3)(c) and the Community guidelines on state aid for rescuing and restructuring firms in difficulty ('the guidelines') ([22]).

(56) In its letter of 15 April 1997, the Commission expressed doubts as to the cogency of the proposed restructuring measures and the correctness of the assumptions made. It also doubted whether undue distortion of competition by the proposed aid measures could be avoided since, despite the structural overcapacity in the industry, no permanent capacity reduction was proposed. In view of the misgivings as to whether the restructuring measures were appropriate, the Commission was unable to take a view on proportionality. Finally, there was doubt as to whether the rescue plan was being fully implemented. Given the lack of conclusiveness of the restructuring plan and the

([17]) See letter of September 1997.

([18]) See 'Business trends survey', August 1996, European Observatory for Textiles and Clothing; 'Textile Outlook International: Asian crisis — the impacts spread far and wide', Economist Intelligence Unit (1 July 1998).

([19]) See 'World Textile Fibers to 2001', Freedonia Industry and Business Research Studies, The Freedonia Group Inc., Ohio, USA.

([20]) See 'Panorama of EU Industry 97', European Commission, report prepared by the European Observatory for Textiles and Clothing. NACE (Revision 1) 17, Vol. I, 4-17 to 4-23.

([21]) See 'Textile Outlook International: World', Economist Intelligence Unit, 1 July 1998.

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

absence of a private investor, the Commission was concerned that a privatisation carried out in the course of the restructuring plan might result in it being amended.

(57) Privatisation involved new aid measures for Lautex, and the information subsequently submitted did not allay the abovementioned concerns. The restructuring plan was amended but the individual steps in the restructuring process were not described and no analysis of the firm's difficulties was provided. The 1997 targets proved to have been overoptimistic and the achievement of an operating profit was postponed from 1998 until 2000. A capacity reduction was now also supposed to be carried out, although no explanation was given as to how this was suddenly possible, and the issue of permanence was not addressed. Since overall restructuring costs were not known, the Commission could not assess the proportionality of the measures. Lastly, the privatisation of the firm did not dispel the doubts concerning full implementation of the recovery plan. The procedure was therefore extended.

VIII. **COMMENTS FROM INTERESTED PARTIES**

(58) The publication of the letter to the German Government in the *Official Journal of the European Communities* ([23]) elicited complaints from a European trade association and a British trade association. An unsolicited letter from a western German competitor was sent in April 1997 alleging predatory pricing. Reference was also made to overcapacity on the market. Copies of these letters were forwarded to the German authorities for comment. They replied in September 1997, denying that predatory pricing had occurred.

(59) After it was announced that the procedure was being extended, the Daun Group and the Maron Group submitted comments to the Commission. The Maron Group letter contained information on the merger between Erba and Lautex and on Erba's activities. In its letter the Daun Group expressed its dissatisfaction with the privatisation process, described the firm's unsatisfactory situation and stated that it was withdrawing from the privatisation contract. These comments were also forwarded to Germany, which was given the opportunity to react. By letter of 22 April, registered as received by the Commission on 29 April, the Germany authorities asked for the deadline by which they had to submit their comments to be extended until 7 May. The Commission agreed by letter dated 3 May, but there was no reaction from Germany.

IX. **ASSESSMENT ON THE BASIS OF THE INFORMATION AVAILABLE**

(60) On 17 August 1998 Germany was required by the Commission to furnish it within one month with sufficient information to enable it to assess the measures under investigation. At Germany's request, this deadline was extended. In spite of several requests the information submitted as a reaction to the official letter was misleading, often contradicted previous statements and was insufficient to dispel the doubts expressed by the Commission when initiating and extending the procedure. In accordance with Article 13(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty ([24]), the Commission therefore bases the following assessment on the information available.

X. **AID MEASURES TO BE ASSESSED**

(61) The Commission also finds that Germany's most recent letter, which refers to information to be communicated in the future, arrived after expiry on 7 May 1999 of the final extension of the deadline stipulated in the official letter requesting information. Should a new restructuring plan be notified in the future, the Commission reserves the right to assess this separately. The announcement that at a later date information will be communicated on a future, as yet undeveloped, blueprint or plan in no way affects the assessment of the present situation.

(62) The financial assistance for Lautex constitutes aid within the meaning of Article 87(1) of the EC Treaty since it is paid out of public funds and entails advantages for Lautex which a firm in difficulty would not have received from a private investor. Furthermore, in the sector concerned it may affect trade between Member States and therefore distort competition in the common market. Some of these measures constitute new aid, which has to be assessed by the Commission. Lautex has not yet made a profit and is a firm in difficulty.

([23]) See footnote 2.

([24]) OJ L 83, 27.3.1999, p. 1.

Aid covered by Treuhand schemes

(63) According to Germany's latest letter, aid totalling DEM 177,794 million is covered by Treuhand schemes. An analysis of the information provided showed that Lautex received aid totalling DEM 178,281 million from 1991 to 1995. On the basis of the information provided, the Commission made the following assessment:

(a) Loans totalling DEM 75,176 million and made to Lautex in 1991 are covered by an approved aid scheme, Treuhand scheme NN 108/91 ([25]), and meet its conditions ([26]).

(b) As regards the loans of DEM 1,64 million for the redundancy programme granted on 1 July 1992, the Commission takes the view that the obligations which a firm has under employment legislation or collective agreements to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. This being so, any contribution by the State to these costs must be counted as aid. However, these loans are covered by Treuhand scheme E 15/92 ([27]) and therefore do not need to be assessed here. The same scheme covers both the guarantees of DEM 31,557 million granted in 1992 and the loans of DEM 16,527 million granted in 1994 to cover losses in 1995. These measures meet the conditions of this scheme ([28]).

(c) The loans of DEM 52,363 million granted in 1995, allegedly in accordance with Treuhand scheme N 768/94 ([29]), which had been approved by the Commission, exceed the threshold laid down by DEM 2,363 million. This aid should have been notified to the Commission ([30]) and therefore has to be assessed as ad hoc aid.

([25]) SG(91) D/175825, 26 September 1991.

([26]) Treuhand scheme NN 108/91 covers loans and guarantees granted by the Treuhand to firms undergoing privatisation.

([27]) SG(92) D/17613, 8 December 1992.

([28]) See point 3 of Treuhand scheme E 15/92, which provides that the granting of loans and guarantees has to be notified if the firm employs more than 1 500 workers and the total commitment (Gesamtobligo) exceeds DEM 150 million. The aid measures fall within the limits laid down in the scheme and were thus covered by it.

([29]) SG(95) D/1062, 1 February 1995.

([30]) Treuhand scheme N 768/94 states that all loans in excess of DEM 50 million which are granted to firms with over 250 employees must be notified to the Commission.

(d) The investment allowances of DEM 1,018 million granted in the period 1992 to 1995 are based on the Investment Allowance Law (Investitionszulagengesetz) ([31]), an approved aid scheme, and therefore do not need to be assessed by the Commission. If it is assumed that the firm's restructuring began in 1995, an allowance of DEM 0,57 million had already been granted. Consequently, the amount of DEM 0,448 million granted in 1995 has to be taken into account when proportionality is assessed.

(64) The list shows that aid measures totalling DEM 124,9 million are covered by Treuhand schemes. A further sum of DEM 1,018 million is based on an approved aid scheme. This leaves an amount of DEM 52,363 million that has to be assessed as ad hoc aid.

Aid granted after 1 January 1996

(65) The information set out shows that since 1996 Lautex has received aid totalling DEM 73,742 million. The Commission's assessment of this aid is as follows:

(a) According to point 3.2.5 of the guidelines, the loans of DEM 0,531 million granted for the redundancy programme are to be regarded as aid, and an examination must therefore be made of whether they satisfy the criteria laid down in the guidelines.

(b) With regard to the loans of DEM 0,117 million for vocational training granted in 1996, the Commission notes the absence of information on their purpose and use. They are not therefore to be regarded as general measures paid direct to employees without the company being involved. Such a measure, which assists a firm by reducing the costs it normally has to bear if it wishes to train its employees in a way which is relevant to its work or if it wishes to give its employees the opportunity of undergoing training themselves must be regarded as aid.

(c) The grants of DEM 0,969 million to promote employment (AFG-Maßnahmen) are based on the Employment Promotion Law (Arbeitsförderungsgesetz), which is an approved aid scheme and therefore does not need to be assessed by the

([31]) Measures under this Law qualify as regional investment aid in accordance with Article 87(1) of the EC Treaty and were approved by the Commission as a derogation from Article 87(3)(a) of the EC Treaty (approved aid scheme N 494/A/95).

Commission. Nevertheless, they will be taken into account when proportionality is assessed.

(d) Of the measures taken in 1997 to assist Lautex, the vocational training loans of DEM 0,217 million count as aid which has to be examined by reference to the criteria laid down in the guidelines. The extension of the guarantee of DEM 3,5 million relates to a 1992 guarantee covered by Treuhand scheme E 15/92. Since this measure forms part of an approved scheme and was considered to have an intensity of 100 % of the amount guaranteed, the Commission does not consider the extension to be additional aid. As a result, that amount can be disregarded.

(e) The measures taken from 7 November 1997 onwards, to which the BvS agreed under the privatisation contract and which comprised loans of DEM 12,7 million, grants of DEM 30,9 million and a discharge from bank liabilities of DEM 22,389 million ([32]), are considered to be new aid measures. In this case an examination has to be made of whether a derogation under Article 87(3)(c) of the EC Treaty is applicable.

(f) The investment allowances of DEM 5,919 million made available by the *Land* of Saxony are based on an approved aid scheme and do not therefore need to be assessed by the Commission; however, they must be taken into account when proportionality is assessed.

(g) Part of the waiver of DEM 159,583 million agreed on privatisation, namely DEM 93,665 million ([33]), relates to aid covered by Treuhand schemes. The waiver of DEM 65,928 million relates to measures not covered by approved aid schemes and repayment of which had never been intended, given the firm's difficult situation. Since aid for the rescue and restructuring for firms in difficulty has an intensity of 100 %, the waiver of repayment in respect of these measures does not constitute additional aid.

(66) This list shows that since 1992 Lautex has clearly received aid totalling DEM 252,023 million ([34]). Of this total, DEM 123,26 million is covered by Treuhand schemes. This aid and the investment allowances totalling DEM 0,57 million were granted in 1995 before the current restructuring started, so that they will be disregarded by the Commission when proportionality is assessed. This means that the aid of DEM 126,553 million granted since 1995 needs to be evaluated. Of this, DEM 7,336 million was granted under approved aid schemes and do not therefore need to be assessed by the Commission. However, these sums are to be taken into account when proportionality is assessed. Measures totalling DEM 119,217 million count as new aid measures and have to be assessed by the Commission.

(67) The Commission also notes the lack of precise information on the circumstances in which the investors were selected and therefore reserves the right to comment on additional, as yet unquantified aid elements which may have been granted during the privatisation process.

XI. **ASSESSMENT OF THE RESTRUCTURING AID**

(68) According to Article 87(1) of the EC Treaty, State aid granted to certain undertakings which distorts or threatens to distort competition is, in so far as it affects trade between Member States, incompatible with the common market. In view of the nature of the aid in question and the condition of the textile industry, it is clear that the aid package in question falls within the scope of Article 87(1). Such aid is generally incompatible with the common market unless it qualifies for one of the derogations in Article 87(2) or (3). In this case, Article 87(3) is relevant because it allows the Commission to approve State aid in certain circumstances. These include, according to Article

([32]) No information was presented as to whether these were private or public funds or as to what purpose was served by the liabilities discharged on privatisation.

([33]) The loans of DEM 75,176 million granted in 1991 and of DEM 16,527 million granted in 1994 are covered by Treuhand schemes. Since the Commission has no knowledge of guarantees granted outside the Treuhand schemes, the waiver of claims from a guarantee clearly relates to the guarantee assumed under Treuhand scheme E 15/92.

([34]) The Commission notes that the financial measures designed to cover overall restructuring costs, which are contained in a table submitted on 27 November 1998, exceed the total amount of aid indicated as having been granted to Lautex plus the investors' contribution, which is given as DEM 6 million in the table. Since no explanation was provided on whether these measures were financed from public or private sources, the Commission cannot discount the possibility that Lautex may have benefited from additional aid.

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 guidelines lay down the preconditions for a positive exercise of discretion by the Commission.

(69) On the basis of Article 87(3)(a), the Commission may approve aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. This provision is applicable to the new German *Länder* ([35]). In the present case, however, the main purpose of the aid is to restructure a company in difficulty and not to promote the economic development of an area. Even if a successfully restructured company may contribute to the development of the area, the aid should be assessed under Article 87(3)(c) and not under Article 87(3)(a).

(70) The notification made by Germany in January 1997 was concerned with restructuring aid. If the measures notified are to be considered compatible with the common market, they must meet the conditions laid down in point 3.2 of the guidelines. The Commission doubts whether the aid meets all those conditions.

XII. **RESTORATION OF LONG-TERM VIABILITY**

(71) 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 assess the soundness of the plan, the Commission needs information on the firm's present difficulties, the proposed internal measures and their expected effect.

(72) The Commission notes that, in response to its letter announcing the opening of the procedure, Germany provided additional information concerning the restructuring measures. However, there was no indication as to how these measures could resolve the as yet unidentified problems of the firm, how much they would cost, when they were likely to be implemented and whether they were necessary.

([35]) See Commission decision on Case N 464/93.

(73) The main explanation given for the problems which eventually led to the difficulties indicated by Germany in November 1998 is the firm's transition from a centrally planned economy to a market economy. Lautex was originally a bulk producer whose traditional markets were in the eastern bloc countries. When those markets collapsed, the firm was compelled in 1992 to change its strategy and make substantial job cuts. This gave rise to costs for the redundancy programme, the firm's restructuring and the necessary investment.

(74) The November 1998 letter contained information on the restructuring measures, although they were described only in vague terms. The information related mainly to objectives without explaining the individual steps to be taken in order to achieve them. Hardly any reference was made to the expected financial impact and no timetable was provided.

(75) The restructuring plan for Lautex has undergone several fundamental changes. In addition, Germany has constantly modified information previously supplied, and this has simply given rise to further questions ([36]).

(76) The Commission notes that the original 1993 plan for Lautex, which was amended in mid-1995, envisaged an operating profit by 1998. In the letter of May 1997, this was postponed until 1999. According to the amended version submitted in March 1998, an operating profit could not be expected until 2000. According to more recent information, the firm will achieve an extremely modest operating profit only in 2001. It must also be noted that targets set by the firm for particular product areas were frequently not achieved.

(77) These constant amendments make the plan seem unreliable. The firm is going through a continuous restructuring process for which apparently large sums of aid are being used, without the firm ever having made a profit. The aid seems to be keeping the firm artificially alive, in breach of the 'one time, last time' principle. The steadily deteriorating results achieved by the firm throughout the restructuring process raise serious doubts as to its long-term viability.

([36]) For example, the information on the development of capacity, the transfer of plant and machinery to Lautex from Erba GmbH and the description of Lautex as an outward processor has been changed on several occasions.

Overview ([37])

(in DEM million)

	1995	1996	1997 ([1])	1998	1999	2000	2001	2002
Turnover	61,571	64,998	57,029	70,787	71,943	80,688	81,554	82,379
Cost of materials	40,987	50,767	45,583	53,972	50,389	53,803	53,132	52,142
Manpower costs	14,983	18,857	17,446	17,213	16,795	16,692	17,022	17,362
Depreciation expenditures	5,464	3,083	2,338	2,832	3,402	4,004	3,927	3,950
Other operating costs	10,221	10,759	7,620	6,550	6,265	6,663	6,790	6,946
Operating result	−10,084	−18,468	−15,958	−9,780	−4,908	−0,474	0,683	1,979

([1]) Final figures.

(78) The supporting figures submitted are also being constantly changed. The figures for both turnover and operating results have been constantly revised downwards in the above period. The latest information anticipates a turnover of DEM 56,7 million and losses of DEM 11,3 million for 1998 ([38]), which are respectively much lower and much higher than the original figures.

(79) Accordingly, the Commission has doubts as to the credibility of both the original and the amended information. It also notes that the restructuring period has been gradually lengthened.

XIII. UNDUE DISTORTION OF COMPETITION

(80) Under the guidelines, a further condition of restructuring aid is that measures are to be taken to offset as far as possible adverse effects on competitors. Otherwise, the aid would be 'contrary to the common interest'.

(81) As far as the production capacity of an aid recipient is concerned, this means that aid may generally not be used to increase capacity as part of a restructuring process. Furthermore, where there is a structural excess of production capacity in a relevant market in the Community served by the recipient, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry by irreversibly reducing capacity. A genuine contribution is made when, as part of reduction of capacity, assets leave the sector concerned; this may also mean that they are physically destroyed. Should further restructuring aid be granted, an appropriately modified restructuring plan must meet the same conditions.

(82) The segment of the textile market on which Lautex operates seems to be in difficulties and to be on the brink of excess capacity ([39]). The Commission notes that the view expressed by Germany in December 1998 is clearly based on the methodology set out in the multisectoral framework on regional aid for large investment projects ([40]). Point 1.4 of that framework explicitly states that it does not apply to restructuring aid cases. For this reason, the Commission does not accept Germany's revised view that there is no excess capacity in the segment of the textile market on which Lautex operates. This means that Lautex should reduce capacity in proportion to the aid granted, although this condition may be less strictly applied in an Article 88(3)(a) area, or should at least demonstrate that capacity is not being or has not been increased.

(83) The Commission notes the many contradictory statements by the German authorities concerning capacity at Lautex. The fullest details regarding capacity

([37]) The figures are taken from the letter of 6 March 1998, which gives the latest figures for 1995 and 1996, and from the letter of 27 November 1998, which contains the last amended version and an overview.

([38]) The most recent consolidated figures relate to 1997.

([39]) The Commission notes that in two recent decisions (Rawe GmbH & Co., N 394/98, and Palla Creativ Textiltechnik GmbH, NN 57/98) it reached the negative conclusion that it did not have evidence that the textile market was in overcapacity. However, in those cases both firms had carried out capacity reductions, so that it was not necessary to make a positive evaluation of the state of the market.

([40]) OJ C 107, 7.4.1998, p. 7.

were given in the letter of November 1998. However, the calculations purporting to show a capacity reduction are misleading and relate solely to organisational changes. Furthermore, capacity reductions which predate the restructuring are irrelevant.

(84) The increase in productivity achieved by the removal of bottlenecks and the implementation of modernisation measures suggests that weaving capacity may have been increased. The Commission notes the comments about the difficulties of calculating finishing capacity. However, the thoroughgoing modernisation programmme and the installation of additional finishing facilities strongly suggest that productivity has been increased in this area as well. Similar comments apply to the warehousing facilities.

(85) The information about the investors does not reveal whether they are competitors. If they are, their cooperation in a joint venture could also lead to problems under Article 81 of the EC Treaty.

(86) The Commission cannot conclude that the aid will not result in an undue distortion of competition.

XIV. **PROPORTIONALITY OF AID**

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

Inadequacy of the restructuring finance

(88) When both initiating the procedure and extending it, the Commission referred to the lack of information regarding the overall costs of the restructuring. Without an exact description of the problems faced by Lautex, without more detail on the specific restructuring steps and the associated costs and without clear indications as to how these measures will help to improve performance, it was impossible for the Commission to determine whether the aid was limited to the strict minimum needed to restore the firm to long-term viability.

(89) The additional details subsequently provided did not remedy the lack of information either. Although a general explanation of the problems which gave rise to the difficulties was finally provided, the overall costs of the restructuring remain unclear. There is no indication of how the costs listed in the table contained in the letter of 27 November 1998 relate to the restructuring measures notified. Several particulars contradict the information submitted to the Commission on an earlier occasion ([41]). In addition, no information has been provided on the need for the measures or on the calculation of the amounts.

(90) The Commission notes the lack of clarity as to how the restructuring was financed. If the overall costs of restructuring Lautex since 1995 do indeed amount to DEM 208,22 million as stated in the table submitted by Germany, then according to the information submitted to the Commission the firm has been granted aid totalling DEM 126,553 million since that year and the remaining costs are to be borne by the investors.

(91) In view of the above, the information submitted is insufficient to ascertain whether the aid was limited to the strict minimum needed to undertake the restructuring.

Investors' contribution

(92) According to the letter of March 1998, the investors' contribution amounts to DEM 6,695 million. However, if, as stated in the letter of November 1998, the overall restructuring costs amount to DEM 208,22 million, the investors would bear only some 3,2 % of those costs. If this were so, the total amount of aid plus the investors' contribution would not cover those costs. Furthermore, the fact that payment of part of the investors' contribution is made conditional on a positive decision by the Commission calls into question the significant role of the investors in restructuring the firm.

([41]) The information on Lautex's losses does not tally with the figures contained in the table submitted on 27 November 1998. A further discrepancy exists between the debt-servicing data and the statement that Lautex's financial liabilities were either taken over by the BvS or waived upon privatisation.

(93) As regards the Erba GmbH assets of DEM 9,686 million, which were listed as a further contribution on the part of the investors, the Commission does not accept it as such for the following reasons:

(a) There is no description of the assets of Erba GmbH or any indication of how the stated value was determined.

(b) Since Erba GmbH was a going concern, with Mr Elard Maron as its managing director, and bearing in mind not only that Mr Elard Maron became a major Lautex shareholder and, together with one other managing director, assumed managerial control of the firm, but also that the financial risk of trading by the legal person of Lautex under another name is eliminated as a result of sufficient aid, the economic reality of the situation is that the transfer of assets to Lautex cannot be seen as such but as a partial takeover by the Maron Group with no additional injection by investors. Accordingly, this transfer does not rank as a contribution by the investors.

(94) Even if this amount were admissible, the investors' share in the overall restructuring costs would amount to DEM 16,318 million, i.e. 7,8% of the costs shown in the table submitted in November 1998. In view of the size of the investors, even this share cannot be considered significant.

(95) As regards the other two new amounts included in the last letter dated 12 April 1999 (DEM 3,465 million for the assumption of bank liabilities and DEM 8,795 million as investments), it is noted that neither amount had been mentioned previously by Germany. The first amount quite clearly contradicts the information provided to date on the liabilities under the privatisation contract. No further explanation of either amount is given in the letter. It is thus unclear whether the additional amounts indicated are from just one investor or from both of them and in what proportion. According to information from Germany, the Daun Group has withdrawn from the privatisation contract. It is, therefore, unlikely that it will make any further contribution to the restructuring costs. This could also mean a reduction in the investors' contribution, although no information in this respect has been provided.

(96) In view of the official letter requesting information, meetings with the German authorities and the extensions of the deadlines for presenting information, the Commission cannot take account of the vague information concerning the contributions indicated and of unexplained data. For this reason, the Commission cannot consider the investor contribution to the overall restructuring costs to be significant within the meaning of the guidelines.

Form of the aid

(97) The form in which the aid is granted must be such that it cannot easily be used for market-distorting activities. The modified aid package includes a loan of DEM 12,7 million that was disbursed in instalments in 1997 and a grant of DEM 30,9 million. This grant was converted into a loan which is being disbursed in several instalments ([42]). This fact is relevant in view of the comments submitted by one of the interested parties after the opening of the procedure to the effect that Lautex had engaged in predatory pricing.

(98) If 1995 is assumed to be the start of the current restructuring measures, the firm has since received aid totalling DEM 104,164 million ([43]). The fact remains that the total costs of the restructuring are not known, that the restructuring plan has been repeatedly amended and that there are serious doubts as to whether the rescue plan is being implemented in full. Although some of the aid was paid out in instalments, the possibility still exists that Lautex may have been provided with surplus cash that was used for market-distorting activities.

(99) The Commission cannot therefore establish that the condition of proportionality laid down in the guidelines has been met.

XV. FULL IMPLEMENTATION OF RESTRUCTURING PLAN

(100) The firm in receipt of restructuring aid must fully implement the restructuring plan that was submitted to and accepted by the Commission. Although the doubts concerning the full implementation of the plan originally submitted were in part based on the absence of a private investor at the time, the changes in the restructuring plans cannot dispel those doubts even

([42]) According to the letter dated 27 November 1998, the loan is payable in four instalments: DEM 8,9 million on 31 December 1997, DEM 8 million by 30 June 1998, DEM 8 million by 31 December 1998 and DEM 6 million by 30 June 1999.

([43]) The discharge of bank liabilities totalling DEM 22,389 million has no effect on liquidity.

today. Because of the vagueness of the plan, the repeated amendments, the absence of a timetable for the individual steps in the restructuring and the repeated extensions of the restructuring period, it is that much harder to ascertain whether the plan is being fully implemented. Furthermore, the letter to the Commission from one of the investors, Daun & Cie AG, stating its intention to withdraw from the privatisation contract has given rise to very serious doubts about the full implementation of the restructuring plan. The clear conclusion to be drawn from the information of 14 July 1999, which confirms the withdrawal of the Daun Group and announces further additions to the restructuring plan or the elaboration of a new restructuring plan for Lautex, is that the present plan will not be fully implemented in its amended form.

XVI. **CONCLUSIONS**

(101) The Commission finds that Germany has unlawfully granted aid to Lautex in breach of Article 88(3) of the EC Treaty and that the aid is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Erba Lautex GmbH Weberei und Veredlung, Neugersdorf, amounting to at least DEM 119,217 million (EUR 60 954 684) plus interest, is incompatible with the common market. According to the information available, the aid consists of the following measures:

(a) loans of DEM 15,693 million to cover losses for 1995, granted on 3 July 1995;

(b) loans of DEM 10,558 million to cover losses for 1996, granted on 3 July 1995;

(c) loans of DEM 22,872 million for restructuring measures in 1996, granted on 3 July 1995;

(d) loans of DEM 3,24 million to cover losses for 1994, granted on 8 September 1995;

(e) loans of DEM 0,531 million in 1996 for the redundancy programme;

(f) loans of DEM 0,117 million in 1996 for vocational training;

(g) loans of DEM 0,217 million in 1997 for vocational training;

(h) loans of DEM 12,7 million to cover losses for 1997, agreed on privatisation;

(i) grants of DEM 30,9 million, agreed on privatisation;

(j) discharge from bank liabilities of DEM 22,389 million, agreed on privatisation.

Article 2

1. Germany shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient as well as all other aid for Lautex which cannot be specified because of missing or unclear information.

2. Recovery shall be effected in accordance with the procedures of national law. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 July 1999.

For the Commission

Mario MONTI

Member of the Commission