II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 14 July 1999
on aid granted by Germany to Weida Leder GmbH (Weida), Thuringia

(notified under document number C(1999) 3441)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/194/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 the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) By letter dated 12 March 1996, registered as received on 21 March, Germany informed the Commission of a DEM 5 million loan to Weida Leder GmbH (Weida), Thuringia, which was intended to finance restructuring measures. By letters dated 11 April, 28 May, 3 July and 26 August 1996 and 6 March 1997, the Commission requested further information, which Germany provided by letters dated 25 July, 30 October and 7 November 1996 and 20 January and 26 May 1997. Further information was supplied in September 1997 at a meeting between the Commission and the German authorities.

(2) The aid was first registered under N 242/96. However, it emerged from the information provided by Germany that Thuringia had already made aid available to the firm in 1995/1996 before notifying the Commission thereof, in breach of Article 88(3) of the EC Treaty. The case was therefore registered on 4 March 1997 under NN 30/97.

(3) By letter dated 2 March 1998, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. 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. It received no such comments from interested parties.

(4) By letter dated 26 June 1998, Germany informed the Commission that the firm had filed for bankruptcy on 28 May 1998.

II. DETAILED DESCRIPTION OF THE AID

(5) Weida Leder GmbH (Weida) was formed from the former VEB Lederwerke Weida, which had been transformed into Lederwerke Weida GmbH in 1990. The main activity of the firm, located in the municipality of Weida (Thuringia), was to produce leather for the furniture industry. The region has high unemployment (17 %), and was classified as an Objective 1 area for the purposes of Community regional policy (areas which are underdeveloped by Community standards), so that it is

[1] OJ C 256, 14.8.1998, p. 7.

[2] See footnote 1.

eligible for regional aid under Article 87(3)(a) of the EC Treaty [1]. Until recently, the firm employed 97 people.

(6) A first attempt at privatising the firm failed in 1993, after which the firm's shares were returned to the portfolio of the Treuhandanstalt. On 1 October 1993, bankruptcy proceedings were initiated.

(7) In order, nevertheless, to establish the firm on the market and to find a suitable buyer in the meantime, the *Land* of Thuringia launched a rescue that it supported on a sustained basis for reasons of structural and labour-market policy as a means of ensuring the continued existence in the extremely structurally weak area of eastern Thuringia of the only fully integrated tannery in the new *Länder*. On 19 October 1993, Weida Leder GmbH was established: it took over the assets of the firm in respect of which bankruptcy proceedings had been initiated. The firm's shares were wholly owned by Elster Management GmbH & Co. Investitions- and Beteiligungs KG (Elster KG). Because of the interrelationship between the companies involved, in particular the liabilities situation between Elster KG and the Thuringer Aufbaubank (TAB), a credit institution governed by public law and owned by the *Land* of Thuringia, it cannot be considered that a privatisation has as yet taken place. Because of the specific nature of the market, the Thuringian authorities' search for investors has so far proved unsuccessful. In order to remain in business and to carry out the restructuring measures planned for the period leading up to privatisation, the firm has, in recent years, carried out an investment programme and has received substantial aid for this purpose. However, despite all its financial efforts, Weida has been unable to consolidate its position. The planned turnover targets have not been met. The firm's results have also been unsatisfactory as far as its planned profits are concerned. Despite further aid intended to secure its liquidity and allow it to remain in business, the firm filed for bankruptcy on 28 May 1998.

(8) For the purpose of disposing of Weida's waste water and that of the other firms located on the site, the firm Abwasserreinigungsanlage Schlossmühlenweg Weida GmbH was set up, with 98 % of its shares being owned by Weida and the remaining 2 % by the municipality of Weida.

(9) This plant serves exclusively to treat the waste water of Weida and the other firms renting sites on the business park. Since the firms concerned are all service firms, they only produce urban waste water. Consequently, Weida is almost the sole user of the plant in terms of the volumes of waste it feeds into it.

(10) Between 1993 and 1997, Weida benefited from a variety of aid measures with the aim of stabilising the rescue carried out at the end of 1993 and improving its business structure in the context of negotiations with potential investors.

(11) On 21 October 1993 the *Land* of Thuringia provided an outright grant of DEM 4,5 million under the SME investment safeguard programme, which was approved by the Commission on 26 November 1993 (N 408/93) [2], by way of initial funding to support the asset deal resulting from the bankruptcy proceedings.

(12) On 7 March 1994, Thuringia took on a 90 % guarantee for a DEM 8 million loan (amount of aid: DEM 7,2 million) which the firm needed to consolidate its operations. On 16 September 1994, the *Land* entered into a further 90 % guarantee in respect of a DEM 4 million loan (amount of aid: DEM 3,6 million). Both guarantees were underwritten by Bayerische Landesanstalt für Aufbaufinanzierung (LfA) on the basis of the Guarantee Regulation of the *Land* of Thuringia. The lenders were Dresdner Bank AG and Thüringer Aufbaubank (TAB), a public credit institution owned by the *Land* of Thuringia. The guaranteed loans were subsequently reallocated to other purposes on several occasions. In the end, DEM 6,5 million was used for investment and DEM 5,5 million for operating expenditure. Because of the time-limit placed on the guarantee for the TAB loan, the life of both loans was provisionally limited to 31 December 1997. The reason for this short life was the fact that efforts were being made to obtain refinancing from a commercial bank and, given the state of the firm even at the time when funds were provided for the loan, it could already be foreseen that it would not be possible to obtain such refinancing within a reasonable period, so that it would be necessary to extend the life of the loans and the guarantees.

(13) In addition to these investment and operating loans, the firm was provided with a further DEM 2 million loan from the consolidation fund (case NN 74/95) at the end of 1995 to cover the liquidity shortfalls which had arisen as a result of the firm's entry onto the market.

(14) Further liquidity support was granted between February 1996 and July 1997 under a credit mandate of the Thuringia Ministry of Finance in the form of a DEM 5 million loan and a letter of subordination covering DEM 4 million in claims. The loan was granted up to 31 December 2000 at an interest rate of 8 % per annum.

[1] Commission Decision 94/266/EC, OJ L 114, 5.5.1994, p. 21.

[2] By its Decision of 7 April 1998 (NN 142/97; letter SG(98) D/4313 of 2 June 1998), the Commission approved the prolongation of the said aid scheme for the years 1997 to 2001; however, because of considerable doubt concerning the compatibility of how this aid scheme was being implemented, the Commission on 4 December 1998 initiated the procedure laid down in Article 88(2) of the EC Treaty; Commission Decision C 69/98; Commission letter SG(98) D/11285 of 4 December 1998.

(15) Nevertheless, despite this considerable government support, a further DEM 1,5 million loan from TAB was needed at the end of 1997 to secure the firm's liquidity and enable it to remain in business. Moreover, the *Land* of Thuringia, as preferential creditor, issued a further letter of subordination covering another DEM 2 million in claims in order to avert bankruptcy proceedings in respect of the company's assets.

(16) By administrative decisions of 19 January 1995 and 21 October 1996, Weida was awarded investment grants of DEM 1,84 million and DEM 0,34 million out of the funds of the Commission-approved joint Federal Government/*Länder* scheme for improving regional economic structures. The DEM 0,34 million grant was not paid out because of the initiation of the Article 88(2) procedure.

(17) The following table gives a complete list of the state aid granted to Weida up to the end of 1997:

State aid	Date granted	Amount of aid (DEM million)
SME grant, C 69/98 (ex NN 118/98, ex ex 408/93 and ex ex N 480/94)	21.10.1993	4,5
90 % guarantee for a DEM 8 million loan	7.3.1994	7,2
90 % guarantee for a DEM 4 million loan	16.9.1994	3,6
Investment grants under the joint Federal Government/*Länder* scheme, 1005/1006/N div.	15.12.1995, 10.7.1996, 17.9.1996	1,84
Loan, NN 74/95	12/1995	2,0
TAB loan	2.1.1996	5,0
TAB loan	11/1997	1,5
	Total	25,64

(18) Of the approximately DEM 12,9 million investment by Weida's subsidiary in a waste water treatment plant, DEM 11,22 million, i.e. 87 %, was financed with public money.

(19) Since this plant was urgently needed for the firm's future operations, the Treuhandanstalt decided on 4 February 1994 to contribute 40 % of the funds needed for its construction. This contribution took the form of a non-repayable grant of DEM 4,84 million.

(20) In addition, the *Land* of Thuringia provided an investment grant of DEM 6,38 million under the joint scheme for improving regional economic structures.

(21) The remaining 13 % (DEM 1,344 million) was provided by Weida as a shareholder's loan. This loan was secured by a 90 % guarantee from LfA. The loan's due date was initially fixed, in accordance with the loan agreement and in line with the duration of the guarantee, at 31 December 1997, but subsequently had to be extended owing to the firm's situation (see above). However, because of the insufficient information provided, the Commission does not have up-to-date figures on the amended terms of the loan or the guarantee.

(22) The following table shows the composition of the aid received by Weida's subsidiary for the waste-water treatment plant:

State aid	Date granted	Amount of aid (DEM million)
Investment grant under the joint Federal Government/*Länder* scheme	28.11.1994, 17.8.1995, 19.10.1995	5,95
Investment grant under the joint Federal Government/*Länder* scheme	30.4.1997	0,43
Grant from the Treuhandanstalt (THA)/Bundesanstalt für Vereinigungsbedingte Sonderaufgaben (BvS)	9/1994 to 11/1995	4,84
90 % guarantee in respect of a DEM 1,344 million shareholder's loan from Weida		1,21
	Total	12,43

(23) The aid granted to Weida and its subsidiary Abwasserreinigungsanlage Schlossmühlenweg Weida GmbH totals some DEM 38 million. As opposed to this, the contribution of its shareholder Elster KG to the financing of Weida's restructuring was limited to the nominal capital of DEM 50 000, a DEM 300 000 guarantee taken over from Mr Jessen, a partner in Elster KG, issued under the *Land* guarantee procedure, and a statement of co-obligation — limited in time — in respect of the investment grants paid out to Weida under the joint Federal Government/*Länder* scheme.

(24) When it initiated the procedure, the Commission expressed doubts as to the applicability of the guidelines on State aid for rescuing and restructuring firms in difficulty (the guidelines) [1] to firms which are newly formed with the assets from a bankruptcy. Up to the time when the proceedings were initiated, no viable restructuring plan had been presented. Since Weida's financial situation had apparently worsened despite the massive injection of public funds, serious doubts concerning its viability could not be dispelled. In addition, because the privatisation had still not taken place, the financing for Weida was still provisional. Also, since no private investor could be found, it was not possible to determine whether the proposed amount of aid was appropriate to the restructuring efforts.

(25) The Commission also complained of the lack of relevant information which would have enabled it to assess the compatibility of the aid with Article 87 of the EC Treaty.

(26) The relevant market for Weida Leder GmbH is the market for tanning products [2]. The main product of the tanning sector is leather, which is made into shoes, clothing, leather goods and furniture.

(27) While the leather industry is showing considerable growth in some countries of Asia, America and above all in eastern Europe and these countries have become important players internationally, in western Europe capacity and output have declined steadily. The EU tanning industry has lost a quarter of its industrial base and a third of its workers and has shrunk by over 1 000 production units and some 30 000 workers since the beginning of the 1980s. The greatest loss of production units has occurred in northern Europe. Germany has suffered a particularly sharp decline in the number of tanneries. On the other hand, the turnover of the remaining tanneries in the Community has almost doubled (from some EUR 4 000 million to nearly EUR 8 000 million). EU tanners are adjusting their production to meet higher quality standards and improve the fashion content of leather.

(28) Companies have generally been owned by the same family for generations, and only 8,5 % fall within the same size category as Weida (21 to 100 employees).

(29) The shoe industry, taking 50 % of EU tannery products, is the tanning industry's most important market. The clothing industry accounts for some 20 %, the furniture industry for some 17 % and leather goods for 13 %.

(30) The EU leather industry has to cope with difficult economic conditions in Europe and growing competition from third countries. There is no prospect of a marked increase in demand for leather in the

[1] OJ C 368, 23.12.1994, p. 12.

[2] See Panorama of EU industry 1997, 4-25.

Community. Since tanners have been faced with further difficulties as a result of the most recent scandals (e.g. BSE), which have affected the supply of hides and skins and pushed up prices rapidly, many small firms with narrow profit margins will in future have difficulties in procuring raw materials.

III. COMMENTS FROM GERMANY

(31) After being informed of the initiation of proceedings, Germany argued that the measures taken by the *Land* of Thuringia supported an asset deal resulting from the firm's bankruptcy which should be rated as a privatisation. At the same time, it conceded that the role of Elster KG should be seen as that of a transitional administrator, and that it must therefore be concluded that the actual privatisation of the firm had not yet taken place. Germany also stated that, although there was a rescue plan for the firm, there was no long-term restructuring plan because of the lack of a private investor willing to take over the firm. Since the firm's future direction would necessarily depend on such an investor, no such detailed planning could be presented. To that extent, the rescue plan supporting the takeover of assets would have to suffice to prove the existence of a restructuring plan. The Commission's assessment that neither the expected overall turnover figures nor the profit figures could be achieved was also rejected by Germany. Nevertheless, the latter did concede that, on the basis of the firm's actual results, the originally planned turnover targets had to be corrected. The original target of 1996 for the firm to break even would therefore have to be changed to 1998. However, this would depend on achieving a reduction in interest payments to the firm's banks, something which has not been done.

(32) With regard to the legal bases for the aid granted, Germany explained that the state guarantees had been granted on the basis of the Commission-approved guarantee scheme administered by LfA and the *Land* of Thuringia. The THA/BvS financial measures associated with the setting-up of the waste water treatment plant were, it was claimed, tantamount to a grant covered by the THA scheme.

(33) In conclusion, Germany informed the Commission that the firm had filed for bankruptcy on 28 May 1998.

IV. ASSESSMENT OF THE AID

(34) Germany's aid to Weida and its subsidiary Abwasserreinigungsanlage Schlossmühlenweg Weida GmbH was granted out of public funds. It distorts competition in the single market because it enables the assisted firms to finance a necessary operating investment almost entirely from the public purse. Since such preferential treatment distorts trade between Member States, these measures fall within the scope of Article 87(1) of the EC Treaty.

(35) Since Abwasserreinigungsanlage Schlossmühlenweg Weida GmbH was 98 % owned by, and predominantly serves the needs of, Weida, the aid granted to it is examined together with the aid granted to Weida.

(36) The aid provided by Thuringia and THA/BvS was, for the most part, granted before being notified to the Commission, in breach of Article 88(3) of the EC Treaty.

(37) Consequently, except where it can be said to have been granted under an aid scheme approved by the Commission, it must be examined as ad hoc aid in accordance with the general rules governing the granting of State aid.

SME investment safeguard programme of the *Land* of Thuringia (C 69/98)

(38) On 21 October 1993, Thuringia made a grant of DEM 4,5 million under the abovementioned programme, which was approved by the Commission on 26 November 1993. In its communication of 26 August 1993 to the Commission, Germany had expressly stated that the purpose of this aid programme was not to grant rescue and restructuring aid. However, Weida Leder GmbH was always to be regarded as a company in difficulty. Moreover, the aid was granted before the programme had been approved by the Commission. It is not, therefore, covered by an approved aid scheme.

Thuringian fund for the consolidation of firms in difficulty (NN 74/95)

(39) In December 1995, the *Land* of Thuringia granted a DEM 2 million loan, citing this scheme as the legal basis. Although the fund is designed to assist in the rescue and restructuring of SMEs, it is not necessary to examine in detail whether the conditions of this scheme were met because it was not approved by the Commission until 6 February 1996. The aid was therefore granted without Commission approval and is not covered by an approved scheme.

Guarantee scheme administered by LfA and the *Land* of Thuringia

(40) Germany stated that the 90 % guarantees in respect of loans of DEM 8 million and DEM 4 million granted on 7 March and 16 September 1994 respectively were

made under the guarantee scheme administered by LfA and the *Land* of Thuringia. It claimed that the guarantee scheme had contained no indication that the arrangements had not been notified at that time. In response to its request for information made when initiating the procedure, the Commission was not fully enough informed to be able to assess the compatibility of this aid.

Joint Federal Government/*Länder* scheme for improving regional economic structures

(41) The investment grants of DEM 1,84 million and DEM 0,34 million were awarded under the joint Federal Government/*Länder* scheme for improving regional economic structures. The DEM 0,34 million grant was not paid out owing to the initiation of the procedure under Article 88(2) of the EC Treaty.

(42) Weida's subsidiary was awarded investment grants totalling DEM 6,38 million for the waste water treatment plant. These funds were paid out from November 1994 to April 1997. Under the joint scheme, assistance may also be granted in respect of investment to improve infrastructure directly serving industry.

(43) Although the aid granted under the joint scheme falls within the scope of Article 87(1) of the EC Treaty, it ranks as regional investment aid and is therefore exempt from the general prohibition on aid under Article 87(3)(a).

Second THA scheme [1]

(44) The DEM 4,84 million in aid granted by THA/BvS for setting up the waste water treatment plant was a non-repayable grant, which is not covered by the THA scheme.

(45) It follows from the above comments that only the DEM 8,22 million granted under the joint scheme is covered by an approved scheme. The remaining aid of DEM 29,85 million was not granted under an approved scheme. If aid has been granted which is in no way related to a programme approved by the Commission, the derogation under Article 87(3)(c) of the EC Treaty ('aid to facilitate the development of certain economic activities ..., where such aid does not affect trading conditions to an extent contrary to the common interest') may be applicable where the main purpose of the aid in question is the restructuring of a firm in difficulty.

(46) Such aid may be considered compatible with the common market if the criteria laid down in the guidelines are met.

(47) When applying the guidelines, it should be borne in mind that they are not generally applicable to newly formed firms (in the context of a rescue) which take over the assets of the firm which is the subject of bankruptcy proceedings. However, this principle is not applied to aid for firms in the new *Länder* because the transition from a planned to a market economy gives rise to particular problems. Low levels of equity capitalisation are typical of firms in the new *Länder*. It can therefore be justified to regard a newly formed company as a firm in difficulty if it organises its business activity as a continuation of the firm being taken over. Given the special conversion-related problems, aid to firms growing out of a company whose assets are the subject of bankruptcy proceedings may be regarded as restructuring aid in certain cases. In such cases, the private investors involved in the newly formed firm must make a significant contribution to restructuring from their own funds.

(48) In the present case it must be stated that the financing of the company is still provisional, since Weida Leder GmbH has so far not been privatised. Consequently there is no private participation.

(49) Immediately before the bankruptcy, the tanning firm Weida Leder GmbH produced mainly leather for the furniture industry. Although the firm was unable to become firmly established on the market and there were no prospects of an improvement, the position of this sector of the leather industry was regarded as satisfactory in view of the seemingly sufficient level of capacity utilisation. However, it was not possible to find a private investor and the firm was financed solely on a transitional basis in order to keep it in business.

(50) The purpose of restructuring aid is to return the assisted firm to viability in the long term. This demands a restructuring plan which, on the basis of both physical and financial restructuring measures (e.g. capital injections, debt reduction), ensures that the firm becomes competitive again and is able to survive without State aid. In the absence of such a plan, the Commission regards aid merely as operating aid designed to offset losses. Such aid is not admissible unless a realistic restructuring plan is submitted subsequently [2]. The firm's viability must be restored without there being any undue adverse effects on competition within the Community. The restructuring plan must therefore be far-reaching and sound, and it must indicate precisely which comprehensive measures will restore the firm's long-term profitability so that it will be in a position to cover all its costs and to generate a minimum return on capital. The information at the Commission's disposal

[1] Commission Decision E 15/92; this provides solely for guarantees and loans.

[2] See the Commission notice concerning Iritecna (OJ C 328, 25.11.1994, p. 2), the Commission Decision of 27 July 1994 concerning Air France/CDC-P (OJ L 258, 6.10.1994, p. 26), the judgment of the Court of Justice in Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission*, [1994] ECR I-4103 (paragraph 67), and Article 6, point 6.1(b) of the GATT Subsidies Agreement (OJ L 336, 23.12.1994, p. 156).

does not demonstrate beyond any doubt that the aid was granted under a viable restructuring plan with concrete operational measures which would enable the Commission to identify the positive financial results of those measures. Germany actually conceded this in its reply of 26 June 1998 to the Commission letter on the initiation of the procedure, stating that in the present phase it could not present any detailed planning since the firm's future direction necessarily depended on the investor.

(51) Nor, consequently, was it possible to demonstrate how the long-term viability and health of the firm can be guaranteed within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. It was also unclear whether and how the firm intended to bring its cost structure and high financial charges under control.

(52) Since the Commission, in its Decision to initiate the procedure under Article 88(2) of the EC Treaty, had explicitly asked Germany to provide all necessary information, in particular with regard to a restructuring plan, it must now take a decision on the basis of the information available to it [1].

(53) All forecasts concerning the firm's development have turned out to be incorrect. Even before the Article 88(2) procedure was initiated, it was highly unlikely that the firm would be able in the medium term to repay its loans totalling DEM 20,5 million on the basis of a positive cash flow. The forecasts assumed that it would make a loss of DEM 1,7 million in 1998. In addition, because of the letters of subordination, part of these loans effectively constituted equity capital so that any repayment of these loans would have been possible only if an equivalent amount of equity capital or shareholder's loans had been forthcoming. Because of its declining profitability, mounting losses, falling turnover, and soaring debt and interest payments, the firm was eventually forced on 28 May 1998 to file for bankruptcy.

(54) Accordingly, the Commission concludes that the conditions set out in the guidelines are not met. The restructuring aid for Weida cannot therefore be approved.

[1] Case C-47/91 *Italian Republic* v *Commission* [1994] ECR I-4635 and Case C-301/87 *French Republic* v *Commission* [1990] ECR I-0307 confirmed by Joined Cases C-324/90 and C-342/90 *Federal Republic of Germany and Pleuger Worthington* v *Commission* [1994] ECR I-1173.

V. **CONCLUSION**

(55) The Commission finds that Germany has unlawfully implemented the aid in breach of Article 88(3) of the EC Treaty.

(56) The deciding factor in the Commission's assessment was the fact that there was no investor prepared to take over the firm and that Germany failed to submit a realistic restructuring plan which would have enabled the restoration of the firm's long-term viability. Nor is there a private contribution, so that it cannot be established whether the aid granted is in proportion to the restructuring efforts.

(57) The condition set out in the guidelines that the long-term viability and health of the firm must be restored within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions cannot therefore be considered to have been fulfilled, so that the aid granted to Weida Leder GmbH and its subsidiary cannot be approved.

(58) The derogation provided for in Article 87(3)(c) of the EC Treaty cannot therefore apply to the DEM 29,85 million in aid granted to Weida Leder GmbH and its subsidiary,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany has granted to Weida Leder GmbH, amounting to DEM 23,8 million, and to Abwasserreinigungsanlage Schlossmühlenweg Weida GmbH, amounting to DEM 6,05 million, is incompatible with the common market pursuant to Article 87(1) of the EC Treaty.

Article 2

1. Germany shall take all the necessary measures to recover from the recipients the aid referred to in Article 1 and unlawfully made available to the recipients.

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 made available to the recipients 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, 14 July 1999.

For the Commission

Mario MONTI

Member of the Commission