II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 28 July 1999
on state aid granted by the Federal Republic of Germany to Brockhausen Holze GmbH

(notified under document number C(1999) 2914)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/21/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] and having regard to their comments,

Whereas:

1. **PROCEDURE**

(1) By a complaint dated 2 September 1996 (registered as received on 6 September 1996), the Commission was informed that the *Land* of Saxony had granted state aid to Brockhausen Holze GmbH (BHC), Chemnitz. In response to Commission requests for information dated 16 September 1996 and 22 November 1997, the German authorities sent formal replies on 15 October 1996 and 7 February 1997. On the basis of the information contained in the last of those letters, the aid was registered as non-notified aid on 8 April 1997. On 18 April 1997 BHC filed for insolvency (*Gesamtvollstreckung*: special insolvency procedure for firms in the new *Länder*). In letters dated 21 April, 12 June and 18 July 1997 the Commission asked the German authorities to notify the aid. In letters dated 26 June and l5 August 1997, the German authorities refused on the ground that notification no longer served any purpose because the firm had filed for insolvency.

(2) By letter dated 18 February 1998, the Commission informed Germany of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty. In addition, it formally requested Germany [2] to provide it, within one month of receiving the request, with all necessary documentation and information for assessing the compatibility of the aid already granted with Article 87 of the EC Treaty. Germany replied by letter dated 4 May.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. In its decision, the Commission invited all interested parties to submit their comments on the aid. On 9 June 1998 the Commission received a set of comments which it forwarded to the German authorities on 25 January 1999. After the deadline had been extended several times, Germany was given the opportunity to comment by 31 March 1999. It did not comply with this deadline. After receiving a reminder from the Commission, Germany finally submitted its comments on 11 May 1999.

[1] OJ C 144, 9.5.1998, p. 15.

[2] In accordance with the judgment of the European Court of Justice given on 13 April 1994 in Joined Cases C-324/90 and C-342/90 *Federal Republic of Germany and Pleuger-Worthington V Commission* [1994] ECR I-1173.

[3] See footnote 1.

2. DETAILED DESCRIPTION OF THE AID

2.1 Grounds for initiating the procedure

(4) The aid to BHC came to the Commission's attention through a complaint lodged by an Austrian engineering works which alleged that the *Land* of Saxony had granted the firm aid amounting to DEM 4,7 million. In the complainant's opinion, the aid enabled the firm to increase its exports by reducing prices.

(5) By letter dated 15 October 1996, Germany confirmed that the firm had received a dormant equity holding of DEM 2,5 million from the Saxony Consolidation Fund (*Konsolidierungsfonds*) ([4]) and an 80 % deficiency guarantee (*Ausfallbürgschaft*) on a DEM 2,3 million loan provided under Saxony's Guarantee Directive ([5]).

(6) These aid measures presented the following difficulties.

(a) Aid scheme N 117/95 was approved on the basis of the undertaking given by Germany that there would be no combination of aid. However, the aid from the Consolidation Fund was granted in addition to the guarantee provided under scheme N 73/93, thereby infringing the prohibition on combining aid. The aid should therefore have been notified as *ad hoc* restructuring aid.

(b) Scheme N 73/93 allows guarantees to be provided to cover loans of DEM 5 million or more only.

(7) Germany was again asked to notify the aid formally and to provide all the necessary information for an assessment of its compatibility with the common market. The German authorities refused to do so in letters dated 26 June and 15 August 1997 on the grounds that:

(a) notification no longer served any purpose since the firm had filed for insolvency, and

(b) the aid measures were not to be seen as separate measures but as a single restructuring aid measure, with the result that there was no infringement of the prohibition on combining aid. Using both schemes had made it possible to reduce the overall intensity of the aid because a guarantee has a lesser aid intensity than a loan. In this way it had been possible to restrict the amount of aid to an absolute minimum and to comply more fully with the guidelines on state aid for rescuing and restructuring firms in difficulty ([6]).

(8) In order to secure a formal notification and to be able to assess the compatibility of the aid granted to the firm with the common market, the Commission decided to initiate the Article 88(2) procedure.

2.2 The recipient firm

(9) As at 31 December 1995 BHC had 243 employees and an annual turnover of DEM 32 million; no one firm falling outside the definition of a small or medium-sized enterprise (SME) owned 25 % or more of its capital. BHC was therefore an SME within the meaning of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([7]).

(10) BHC traded in the three areas of make-to-order casting (25 %), services (25 %) and replacement parts (50 %), producing mainly steel balls for the cement industry and linings for furnaces.

(11) The firm is located in Chemnitz and thus in a structurally weak area of Saxony.

2.3 History of the firm

(12) BHC succeeded Eisen- and Stahlgießerei Chemnitz GmbH (ESC GmbH), which was acquired at the beginning of 1992 from the *Treuhandanstalt* by PE GmbH. The privatisation was conducted according to an open, unconditional and transparent tendering procedure with the highest bidder acquiring the firm. In September 1992 the two firms created CPC GmbH, which was to operate an iron and steel foundry. In 1993 the *Land* of North Rhine-Westphalia produced a financing plan for CPC GmbH which had as a condition the establishment of a plant in North Rhine Westphalia. The CP Gießerei KG (CPG KG) was therefore set up in Beckum. Subsequently, CPC GmbH and CPG KG were renamed BHC Brockhausen & Holze Gießerei GmbH & Co KG (BHC KG) and Brockhausen & Holze Gießerei GmbH (BHC GmbH). On 29 August 1995 BHC GmbH and BHC KG were merged to become BHC.

([4]) Directive on grants from the Saxony Consolidation Fund for the restructuring of small and medium-sized industrial enterprises under the agreement between the *Land* of Saxony and the *Treuhandanstalt* (THA)/*Bundesanstalt für vereinigungsbedingte Sonderaufgaben* (BvS) of 5 December 1994; state aid scheme N 117/95; Commission approval given by letter dated 5 May 1995 (SG(95) D/5782).

([5]) Directive on guarantees for industry and the liberal professions and for agriculture and forestry of 1 September 1993; state aid scheme N 73/93; Commission approval given by letter dated 7 June 1993 (SG(93) D/9273).

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

([7]) OJ L 107, 30.4.1996, p. 4.

(13) During 1995 BHC faced enormous liquidity problems owing to delays in investment and to heavy start-up losses. These start-up losses were principally due to the firm's unproductive old equipment and to the end of cooperation with a west German partner. In a report by the management consultancy firm LOGOS-Consult, the firm's financing requirements in January 1996 were put at DEM 6 million. A restructuring plan was drawn up and various public bodies provided financial assistance. However, this did not resolve the firm's liquidity problems. In February 1997 further assistance of the order of DEM 1,243 million was provided. Since this was not sufficient, BHC filed for insolvency (*Gesamtvollstreckung*) on 18 April 1997.

(14) Insolvency proceedings began on 20 May 1997. The sequestrator/administrator concluded a takeover and lease agreement with Guß and Verschleißtechnik GmbH (GVT). On 23 June BHC's business activities were discontinued and taken over by GVT. The present decision concerns the old firm only.

2.4 **Financial assistance**

(15) According to the notification which Germany submitted on 4 May 1998 after the state aid procedure had been initiated, BHC benefited between 1994 and 1997 from various aid measures amounting to over DEM 42 million. The private investor's share in the restructuring would appear to have amounted to some DEM 750 000 ([8]). However, the information supplied to the Commission is not explicit regarding this share.

(16) In 1993 the first comprehensive financing plan for BHC was drawn up.

(a) On 27 May 1994 the *Land* of North Rhine-Westphalia, under its programme of guarantee assistance for projects in Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Thuringia and Berlin/East, provided a 90 % deficiency guarantee on a DEM 20 million investment loan and a DEM 10 million operating loan ([9]). The aid thus came to DEM 27 million.

(b) On 28 October 1994, under the joint Federal Government/*Länder* scheme for improving regional economic structures ([10]), the *Land* of Saxony approved a grant of DEM 7,406 million, of which only DEM 6,94 million was paid out.

(c) Under the 1993 Investment Allowance Act (*Investitionszulagengesetz*/InvZulG), the Chemnitz tax office provided the firm with investment allowances amounting to DEM 91 268 and DEM 1 056 153 for the years 1994 and 1995.

(17) In January 1996 restructuring measures had to be taken in view of the difficulties faced by the firm. These were financed by:

(a) an operating loan from the bank affiliated to the firm (initially limited to DEM 1,8 million) that was secured on 3 April 1996 by an 80 % guarantee under Saxony's guarantee scheme (N 73/93). The guarantee amounted to DEM 1,44 million;

(b) a dormant equity holding of DEM 2,5 million from the Saxony Consolidation Fund ([11]) granted on 24 June 1996;

(c) a repayment deferral of DEM 1,167 million granted by Chemnitz's Department of Public Works.

(18) Lastly, in order to meet the firm's liquidity requirements, three further measures were taken in February 1997.

(a) The guarantee provided by the *Land* of Saxony was increased to cover a further DEM 500 000, bringing the loan to DEM 2,3 million, with the guarantee covering DEM 1,8 million.

(b) The BvS granted a loan of DEM 500 000, with interest at 3 percentage points over the discount rate.

(c) The shareholders helped to bridge the liquidity gap with DEM 250 000.

(19) All the aid measures were registered as claims in the insolvency proceedings.

2.5 **Restructuring plan**

(20) The notification made on 4 May 1998 contained a brief description of the restructuring plan. By letter dated 11 May 1999, Germany sent the Commission the report by LOGOS-Consult, in which an assessment was made of the plan drawn up by BHC's management.

([8]) This would appear to have consisted of the following: 20 % of the DEM 2,3 million loan, i.e. DEM 500 000, and DEM 250 000 in the form of a shareholder loan.
([9]) N 155/88.
([10]) 22nd framework plan of the joint Federal Government/*Länder* scheme for improving regional economic structures.
([11]) See footnote 4.

(21) The 1996 restructuring plan was designed to increase BHC's productivity, to make it more competitive and to improve the relatively tight financial situation.

(22) It essentially comprised six measures:

(a) completing the reconstruction of essential plant with a view to improving the quality of production, cutting back on the use of material, energy and human resources, and ultimately producing at more competitive costs;

(b) shutting down unprofitable old equipment;

(c) reducing the workforce by 30;

(d) intensifying marketing activities by, among other things, setting up a network of sales offices abroad, the management assumption being that sales volumes would expand in 1996 and in subsequent years;

(e) moving into a higher-quality product area, i.e. from casting to cement. BHC was no longer to be a foundry in the traditional sense.

(23) Under the financing plan, unnecessary land was to be disposed of so that equity capital could be used to help reduce the firm's indebtedness and thus open up possibilities for additional financing from credit institutions.

(24) Losses were still forecast for the financial year 1996, but from 1997 onwards the firm was expected to move into the black.

(25) LOGOS-Consult considered the management's plan to be optimistic and ambitious, but not unrealistic. Since it was not based on the worst-case scenario, some elements of risk remained. For example, the firm's share in the restructuring costs was to be financed from the sale of unnecessary land. However, at the time of the report by LOGOS-Consult, this sale had not yet taken place and was still uncertain.

2.6 **Products and markets**

(26) BHC's main activities were in the areas of casting, replacement parts and services. As regards casting (25 % of turnover), the firm principally produced parts for the automotive and mechanical engineering industries, where competitive pressures were enormous. Replacement parts (50 % of turnover) were produced mainly for the cement industry. According to the notification, however, there was no overcapacity here since the firm occupied a customer-oriented product niche. Lastly, services made up 25 % of turnover.

(27) With an annual output of some EUR 20 billion, the Community is among the world's largest producers of castings. The industry manufactures parts mostly for the automative and mechanical engineering sectors and is made up of small and medium-sized enterprises.

(28) Foundries supply industrial firms and are thus dependent to a large degree on cyclical business trends and on the demand patterns of customers. Owing to the economic downturn, the number of people employed in the foundry sector throughout the Community has fallen since 1989 by 50 000, or some 20 % of the workforce.

(29) By comparison with other sectors, foreign trade is virtually insignificant in the foundry products industry.

(30) The sector cannot really be considered to be a growth industry. Discounting the differences caused by fluctuations in the business cycle, production has remained almost constant over the last 10 years. The increase in value over this period merely reflects the trend towards higher-quality castings.

(31) The most recent economic downturn in 1990 to 1993 hit the foundry sector hard. However, there was an improvement in 1994 and the market did not suffer from overcapacity. Since drastic manpower cuts have been made in recent years and numerous manufacturing processes are being increasingly rationalised, there is now quiet optimism in the sector once again. Evidence that these rationalisation measures were what was needed is found in the spectacular production volumes achieved in 1995 with 20 % fewer employees than in 1989 ([12]).

3. **COMMENTS FROM INTERESTED PARTIES**

(32) By letter dated 9 June 1998, the Commission received a statement made on behalf of the engineering works Liezen and Gießerei GmbH, which had lodged the complaint on 2 September 1996.

(33) It welcomed the Commission's decision to initiate proceedings against BHC and repeated the argument that there had been overcapacity in the foundry sector for several years. Public support for firms in this sector distorted competition and should be avoided since it enabled such firms to benefit from additional resources, making it possible for them to sell their products at below market price.

([12]) See *Panorama of EU Industry 1997*, pages 10-41.

(34) Furthermore, the fact that insolvency proceedings had been initiated in respect of BHC on 18 April 1996 could not prevent an examination being made of the aid granted previously, which had already distorted competition.

(35) According to the statement, the new firm founded by Mr Schulze-Brockhausen in the wake of the insolvency proceedings had applied to the *Land* of Saxony for further aid. If approved, public funding of the rescue arrangements (*Auffanglösung*), under which BHC's activities were to continue under the same management, would result in circumvention of the relevant state aid rules and further undue distortion of competition.

(36) The statement went on to say that, if the previous and the new aid turned out to be restructuring aid, the question would arise as to whether the conditions set out in the guidelines were met. If the new firm received aid, this would run counter to the principle according to which restructuring aid can be granted only once.

4. COMMENTS FROM GERMANY

(37) Germany responded to the Commission's request by letter dated 4 May 1998, which, in practice, constitutes notification of all the aid granted to BHC.

(38) As regards the question of whether aid was granted to the new firm set up under the rescue arrangements, the German authorities informed the Commission in a letter dated 4 December 1998 that BHG Guß- and Verschleißtechnik GmbH and GVT Guß- and Verschleißtechnik GmbH Chemnitz had applied for regional aid totalling DEM 2,149 million under the joint Federal Government/*Länder* scheme for improving regional economic structures.

(39) Germany confirmed this information in a letter dated 11 May 1999 and again explained why it considered the aid granted to BHC to be compatible with the guidelines.

5. ASSESSMENT OF THE AID

5.1 Aid within the meaning of Article 87(1) of the EC Treaty

(40) The possibility that the aid described distorted trade between Member States on the market referred to at the outset cannot be ruled out. For this reason, each aid measure must be assessed in the light of Article 87(1) of the EC Treaty.

(41) The 90 % deficiency guarantee on an investment loan of DEM 20 million and an operating loan of DEM 10 million, i.e. a guarantee worth DEM 27 million in total, was provided under a notified scheme already approved by the Commission. The criteria laid down for implementing the scheme were adhered to.

(42) The grant of DEM 7,406 million was made under the joint Federal Government/*Länder* scheme for improving regional economic structures, which had been notified to and approved by the Commission.

(43) The investment allowance of DEM 1,147 million was provided under schemes notified to and approved by the Commission.

(44) The 80 % guarantee on an operating loan of DEM 2,3 million, i.e. a guarantee worth DEM 1,8 million, was provided under the guarantee scheme of the *Land* of Saxony (N 73/93). Generally speaking, this scheme permits guarantees to be provided only for loans of DEM 5 million or more. In exceptional circumstances, however, the Sächsische Aufbaubank (Saxony Bank for Reconstruction) or the Bürgschaftsbank Sachsen GmbH (Saxony Guarantee Bank) can guarantee loans of under DEM 5 million if, for example, the loan is to be used to finance restructuring projects and the guarantee is thus designed to contribute to the success of the restructuring plan. This scheme was approved on condition that a restructuring plan for restoring the viability of the firm was drawn up. If such a plan were drawn up, the Commission would have to examine whether it could restore the viability of the firm.

(45) The dormant equity holding of DEM 2,5 million came from the Saxony Consolidation Fund (N 117/95). This scheme was approved, *inter alia* on condition that no firm should receive aid if it had already received restructuring aid for firms in difficulty. This prohibition on combining aid was not adhered to, since the aid was granted in addition to the 80 % guarantee on a loan of DEM 2,3 million from the Sächsische Aufbaubank. The German authorities argued that there was no combination of aid in this case since the two measures were not to be seen as separate but as a single restructuring aid measure. They explained that using two aid schemes had enabled them to reduce the overall aid intensity since the intensity for guarantees is lower than for loans. This argument cannot be accepted. If the Commission were to accept it, prohibitions on combining aid would become meaningless and compliance arbitrary. Furthermore, the aid intensity of a guarantee or loan provided by the State to a firm in difficulty is considered to be 100 % and the aid is therefore equivalent to a grant ([13]).

([13]) Commission communication to the Member States on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ L 307, 13.11.1993, p. 3).

Since the conditions of the scheme were not met, the measure should have been notified individually under Article 88(3) of the EC Treaty. Germany did not fulfil this obligation, with the result that the aid was granted unlawfully and must be seen as *ad hoc* restructuring aid.

(46) The repayment deferral of DEM 1,167 million granted by the Chemnitz Department of Public Works also constitutes state aid within the meaning of Article 87(1) of the EC Treaty and should have been notified under Article 88(3). In purely formal terms, it is therefore unlawful. It secures additional liquidity and is therefore equivalent to a loan.

(47) The DEM 500 000 loan from the BvS was granted to a firm in difficulty and is to be considered to constitute aid within the meaning of Article 87(1) of the EC Treaty. Since it was not notified, it is also unlawful from a formal point of view. This amount should be increased by the interest on the loan of DEM 5 800.

5.2 **Exemption under Article 87(3) of the EC Treaty**

(48) The Commission must examine whether the aid is eligible for exemption under Article 87(3) of the EC Treaty.

(49) In BHC's case, the Commission based itself on the special rule laid down in Article 87(3)(c) of the EC Treaty with regard to 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. The primary objective of the aid in question is not the promotion of regional development, but the restructuring of a firm in difficulty. Such aid can be judged to be compatible with the common market if the criteria set out in the guidelines are met.

(50) The 80 % guarantee from the *Land* of Saxony to cover an operating loan of DEM 2,3 million, the dormant equity holding from the Consolidation Fund, the repayment deferral of DEM 1,167 million granted by the Chemnitz Department of Public Works and the BvS loan of DEM 500 000 can be considered to be restructuring aid. The assistance measures provided in 1997 in view of the renewed liquidity problems can be considered to be additional measures necessary for the restructuring.

(51) For the aid to be approved by the Commission, the restructuring plan would have to meet all the following criteria:

(a) the restructuring must restore the long-term viability of the firm;

(b) undue distortions of competition must be avoided;

(c) the amount and intensity of the aid must be limited to the strict minimum needed for the restructuring, and the restructuring costs must not exceed the anticipated benefits;

(d) the restructuring plan must be implemented in full, and all the conditions set by the Commission observed;

(e) the implementation of the restructuring plan must be monitored on the basis of detailed annual reports.

(52) The *sine qua non* of any restructuring plan is that it must restore the long-term viability of the firm within a reasonable timescale and must be based on realistic assumptions as to the firm's future operating conditions.

(53) The restructuring plan assumed the following financial development of the firm:

(DEM)

	1995 outturn	1996 forecast	1997 forecast	1998 forecast
Sales revenues	18 394 000	30 779 000	34 550 000	37 600 000
Expenditure on raw materials, auxiliary materials and operating supplies	10 384 000	9 833 000	10 450 000	11 400 000
Manpower costs	6 689 000	7 900 000	8 327 000	8 327 000
Depreciation	361 000	2 405 000	2 800 000	2 800 000
Annual profit (loss)	—	– 1 546 000	247 000	2 163 000

(54) In the Commission's view, the restructuring plan is not based on realistic assumptions. Specifically, it assumes an increase in sales from 1996 and a corresponding significant increase in turnover; it also predicts the financial recovery of the firm following the sale of unnecessary land. This increase in turnover depends basically on the firm's productive capacity in the cement market segment, into which it wishes to move. The plan thus predicts an increase in turnover of more than 60 % between 1995 and 1996. In the Commission's view, the increases in turnover were overestimated in the plan. It is unlikely that BHC could have redirected its activities towards a new market so quickly. This requires the acquisition of specialist expertise and the technical adaptation of machinery. Furthermore, the financial recovery of BHC, which was in an extremely tight financial situation, depends on the sale of unnecessary land for a price of at least DEM 5 million. However, in the new *Länder* there is an oversupply of industrial land. The minimum price set by BHC's management has to be seen as uncertain. In the report by LOGOS-Consult it was classed as risky since in the short term only between DEM 3 million and DEM 4 million could be raised. Under the circumstances, the Commission considers that the viability of the firm could not be restored within a reasonable timescale.

(55) The subsequent development of the firm bears out this assessment. At the end of 1996 BHC again faced enormous liquidity problems, with turnover remaining below expected levels. It recorded losses of more than DEM 7 million that year [14].

(56) There are several reasons for this:

(a) the land could not be sold;

(b) a number of claims could not be recovered;

(c) the firm faced major technical problems which prevented it from achieving its planned turnover.

(57) Despite renewed financial assistance in February 1997, BHC's viability was not restored; between January and April the firm recorded losses of more than DEM 5 million [15]. On 18 April 1997 it filed for insolvency. All of this confirms the Commission's assessment that the restructuring plan was not based on realistic assumptions and could not restore the firm's viability. Since the first condition laid down in the guidelines is not met, the aid cannot be considered to be compatible with the common market.

(58) The effect of the aid on competition on the market for foundry products must also be examined. According to the information in the Commission's possession, there is no overcapacity in this industry. Since BHC is an SME located in an area covered by Article 87(2)(a) of the EC Treaty and since there is no overcapacity in the sector, the Commission takes the view that competitors were not adversely affected by the restructuring.

(59) Since one of the conditions set out in the guidelines has not been met, the restructuring aid to BHC cannot be approved and so it is not necessary to assess the firm's own share in the restructuring costs.

6. **CONCLUSION**

(60) Germany did not meet the conditions for the application of the Saxony Guarantee Directive (N 73/93) because the restructuring plan could not restore the viability of the firm. The aid must therefore be viewed as ad hoc restructuring aid. The criteria laid down in the guidelines are not met. The 80 % guarantee covering DEM 1,8 million of the operating loan of DEM 2,3 million is therefore not compatible with the common market.

(61) The conditions for the application of scheme N 117/95 (compliance with the prohibition on combining aid) were not met. The DEM 2,5 million dormant equity holding from the Consolidation Fund was therefore classed by the Commission as *ad hoc* restructuring aid. Since the criteria set out in the guidelines were not met, it is therefore not compatible with the common market.

(62) The repayment deferral of DEM 1,167 million allowed by the Chemnitz Public Works Department constitutes restructuring aid. Since, here too, the criteria set out in the guidelines were not met, this measure is also incompatible with the common market.

[14] The BHC balance sheet and profit and loss account for 1996 are not available.

[15] This figure comes from the list of assets and liabilities drawn up by the sequestrator on 18 April 1997. The accounts for 1997 are incomplete.

(63) The BvS loan of DEM 500 000 is not compatible with the criteria for the granting of restructuring aid and cannot be approved either on the basis of the exemptions provided for in the guidelines.

(64) The Commission finds that Germany granted the above aid in breach of Article 88(3) of the EC Treaty. The guarantee of DEM 1,8 million from the *Land* of Saxony, the dormant equity holding of DEM 2,5 million from the Consolidation Fund, the repayment deferral of DEM 1,167 million and the DEM 500 000 loan from the BvS, together with interest of DEM 5 800, are to be recovered by Germany in accordance with its relevant legislation and procedures,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Germany has granted to Brockhausen Holze GmbH, Chemnitz, amounting to DEM 5,9728 million, is incompatible with the common market.

The aid consists of the following:

(a) a DEM 1,8 million guarantee from the *Land* of Saxony,

(b) a dormant equity holding of DEM 2,5 million from the Saxony Consolidation Fund,

(c) a loan of DEM 500 000, together with interest of DEM 5 800, and

(d) a repayment deferral of DEM 1,167 million.

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.

2. Recovery shall be effected in accordance with the provisions and procedures of German law. The aid to be recovered shall include interest from the date on which the unlawful aid was made available to 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, 28 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission