II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 March 2001

on State aid implemented by Germany for EFBE Verwaltungs GmbH & Co. Management KG (now Lintra Beteiligungsholding GmbH, together with Zeitzer Maschinen, Anlagen Geräte GmbH; Land-Technik Schlüter GmbH; ILKA MAFA Kältetechnik GmbH; SKL Motoren- und Systembautechnik GmbH; SKL Spezialapparatebau GmbH; Magdeburger Eisengießerei GmbH; Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH)

(notified under document number C(2001) 1028)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/673/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 9 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [2],

Whereas:

I. PROCEDURE

(1) By letter dated 19 January 1995 Germany notified aid for the privatisation of eight companies: Zeitzer Maschinen, Anlagen Geräte GmbH, LandTechnik Schlüter GmbH, ILKA MAFA Kältetechnik GmbH, SKL Motoren- und Systembautechnik GmbH, SKL Spezialapparatebau GmbH, Magdeburger Eisengießerei GmbH, Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH (hereinafter called 'the Lintra subsidiaries') which had been brought together into a single holding owned by the Treuhandanstalt and which, together with the holding company EFBE Verwaltungs GmbH & Co. Management KG, now Lintra Beteiligungsholding GmbH, became the Lintra group on privatisation.

(2) The privatisation and the associated restructuring project contained aid measures and the case was registered under aid N 49/95. The Commission sent questions to Germany by letters dated 7 February 1995, 31 July 1995 and 13 December 1995. Germany submitted responses dated 28 April 1995, 12 July 1995, 24 August 1995 and 5 January 1996. By letter dated 23 April 1996 [3] the Commission informed Germany that it had approved restructuring aid in the context of the privatisation of Lintra Beteiligungsholding GmbH (hereinafter called 'the decision of 13 March 1996').

(3) On the basis of information received in the course of notifications of new restructuring aid to subsidiary companies of the Lintra group in 1998, the Commission sent a letter dated 25 June 1998 to Germany with questions. Germany replied by letter dated 8 December 1998 and the annexes thereto were submitted on 14 December 1998. The case was then discussed at various meetings with the German authorities.

(4) By letter dated 22 June 1999 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* [4]. The Commission called on interested parties to submit their comments.

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 238, 21.8.1999, p. 4.
[3] Letter to Germany dated 23 April 1996 (SG(96) D/4218), a brief summary of which was published in OJ C 168, 12.6.1996, p. 10.
[4] See footnote 1.

(5) The Commission received no comments from interested parties.

(6) On 18 October 1999 Germany submitted answers to the questions in the annex to the decision to initiate the procedure. A meeting between the German authorities and the Commission took place on 19 November 1999. After a reminder from the Commission dated 16 December 1999 and a German request for an extension of the answer deadline dated 2 February 2000, to which the Commission agreed by letter dated 9 February 2000, Germany submitted comments on the initiation of the procedure by letters dated 10 and 29 March 2000.

(7) On 1 August 2000 the Commission sent Germany a request to provide all relevant information necessary to determine how the holding company's expenditure had been apportioned among the individual subsidiaries and whether the amount of aid which had remained within the holding company had been suitably allocated. After a German request for an extension of the answer deadline, the Commission received the German reply on 4 October 2000. After a meeting with the Commission on 12 October 2000, Germany sent additional information on 31 October 2000.

II. BACKGROUND AND DEVELOPMENT OF THE LINTRA GROUP

(8) The privatisation of the State industries of the former GDR was largely completed by 1993. However, it had not been possible to find an investor for all undertakings. Especially in the case of a number of enterprises which were very much geared to the economy of the former Comecon and which needed a complete change of direction, no industrial investor showed serious interest. Eight of these undertakings were brought together to form a single grouping for joint restructuring and privatisation.

(9) In 1994 the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) decided to sell these companies as a whole to a private partnership. The aim was that the new owners of the Lintra group should partly reorganise and restructure the separate entities in such a way as to secure their further development either as independent competitive companies by means of cooperation with experienced industrial partners, or to make them attractive for further privatisation to an industrial investor.

(10) A public tender procedure was organised and Emans & Partner GbR, a partnership under German law, was selected as investor. The partners were: Dr Hartmut Emans, Dr Andreas Weise, Dr Hellmut Kirchner, Friedrich-Carl Graup and Jörg Gehrhardt. A privatisation contract was concluded on 25 November 1994. Subsequently, the new Lintra Beteiligungsholding GmbH acted as a financial holding company. In essence, it carried out the central cash management of the group and members of the partnership took over managerial responsibilities within Lintra Beteiligungsholding GmbH and within the Lintra subsidiaries.

(11) At the time of the Commission's approval in 1996, the Lintra group of companies consisted of a holding company, Lintra Beteiligungsholding GmbH, and the following eight industrial subsidiaries:

Company	Main activity
Zeitzer Maschinen, Anlagen Geräte Gmbh (ZEMAG)	Machinery for lignite mining
Land Technik Schlüter Gmbh (LTS)	Tractors and agricultural machines
ILKA MAFA Kältetechnik GMBH	Industrial cooling and refrigerating
SKL Motoren- und Systembautechnik GMBH (SKL-M)	Engines and other machinery
SKL Spezialapparatbau GMBH	Special equipment
Magdeburger Eisengießerei GmbH (formerly SKL Gießerei GmbH)	Foundry products
Saxonia Edelmetalle GmbH	Minting/coinage
Gothaer Fahrzeugwerk GmbH	Vehicles, especially trailers; mechanical engineering

(12) As the privatisation related to the sale of a cluster of historically unrelated companies with more than 1 000 employees in all, it had to be notified individually and the Commission assessed the project under the rescue and restructuring guidelines. It was expected that the restructuring period would come to an end by the end of 1997.

(13) The Commission approved the following measures for the Lintra subsidiaries in March 1996:

(million DEM)

Measure by the BvS	
Loss cover for 1994 by way of a grant	186,0
Waiver of the obligation to repay loans provided	314,3
Provision of capital by award of grants	68,9
Ensuring an approved share capital of DEM 130 million	
Loss cover between 1995 and 1997 (by waiver of claim)	175,0
Grants for financing the restructuring	40,0
Guarantees for financing the restructuring	40,0
Total aid	824,2

(14) The Commission approved the granting of aid to the extent necessary to provide the Lintra subsidiaries with an equity capital of DEM 130 million by 31 December 1994. For the financial assistance of the companies during the restructuring phase, the BvS was allowed to cover the annual deficits of the companies during the period 1995 to 1997 up to a maximum amount of DEM 175 million, whereby the loss cover could amount to up to 100 % in 1995, up to 95 % in 1996 and up to 90 % in 1997. Beyond that the Commission authorised the BvS until the end of 1997 to award up to DEM 40 million in the form of grants together with tied guarantees of up to DEM 40 million for the financing of investments for the restructuring of the Lintra subsidiaries.

(15) The Lintra subsidiaries were originally expected to become profitable by 1998 at the latest. However, from the outset expected and actual performance widely differed. It would appear that, on presentation in June 1996 of the annual report for 1995, the BvS recognised relatively shortly after the Commission approval of the aid that there was a considerable risk of failure of the privatisation plan. By the end of 1996 the financial situation of the Lintra group had become so critical due to higher losses than originally expected that the group was faced with an imminent threat of insolvency.

(16) The process of jointly privatising and restructuring a cluster of eight economically unrelated companies via a private partnership proved unsuccessful. One of the main reasons for the failure of the original plan was that the companies' production programme was unsuited to the requirements of Western markets while the traditional central and east European and CIS markets weakened rapidly. It was inevitable given the considerable cost of developing new products and introducing them on to new markets that the companies would run into financial difficulties unless they could find a stronger industrial partner. In addition, the Lintra group, which was an uncoordinated assembly of widely diversified activities, suffered from a lack of proper management capabilities and financial control. Lintra Beteiligungsholding itself consumed a relatively large part of the resources.

(17) At the beginning of 1997 the BvS stepped in and assumed financial responsibility in order to prevent the entire group from becoming insolvent. An agreement reached between the BvS and the investors on 6 January 1997 released the departing investors from any liability under the privatisation contract in return for payment of DEM 1,5 million. Under the agreement, Lintra Beteiligungsholding was to continue with the administration and management of the remaining subsidiaries. The BvS was granted full auditing powers and the right to acquire, at any time, any Lintra subsidiary for the purchase price of DEM 1,00. A further element of the agreement of 6 January 1997 was that the principal objective of Lintra Beteiligungsholding GmbH was now to be the resale of the Lintra subsidiaries or of parts thereof to new investors.

(18) Once it had taken over control, the BvS assessed each subsidiary's chances of becoming viable through continued restructuring. It subsequently decided:

(a) to close entities that were clearly not economically viable (Magdeburger Eisengießerei GmbH and SKL-A);

(b) to sell the profitable Saxonia Edelmetalle GmbH directly without granting further aid;

(c) to continue with the restructuring of ZEMAG, ELKA MAFA, SKL-M, LTS and Gothaer Fahrzeugwerke in cooperation with Lintra with a view to preparing these potentially viable entities for resale to industrial partners as soon as possible.

(19) Under a purchase contract concluded between the BvS, Lintra Beteiligungsholding GmbH and the remaining investors in September 1999, the BvS acquired Lintra Beteiligungsholding GmbH for DEM 1. The company has been in liquidation since 1 January 2000.

(20) By letter dated 22 June 1999 the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty. It expressed doubts about the following points: (a) whether it had been provided by Germany with complete and correct information prior to its decision of 13 March 1996; (b) the extent to which the aid was used within the scope of the decision of 13 March 1996; and (c) whether any further aid had been granted to the Lintra group.

III. **COMMENTS FROM INTERESTED PARTIES**

(21) The Commission received no comments from interested parties.

IV. **COMMENTS FROM GERMANY**

(22) The Commission's decision to initiate the Article 88(2) procedure contained in an annex additional questions to which Germany answered by letter dated 10 October 1999. By letter dated 10 March 2000, Germany submitted comments on the points raised by the Commission in the decision to initiate the procedure. In its comments Germany described the main elements of the continued restructuring of the Lintra group, provided information on the aid granted by the BvS and its further use within the Lintra group and presented its arguments on the doubts raised in the decision to initiate the procedure. In its reply to the information request sent to it on 1 August 2000, Germany argued that the use of aid within Lintra Beteiligungsholding GmbH was covered by the decision of 13 March 1996. The aid approved by the Commission in 1996 for the restructuring of the Lintra group amounted to DEM 824,2 million, whereas only DEM 658,202 million had actually been granted to the group. The sole aim of the holding company, which did not pursue any separate business activity, was to facilitate the restructuring of the subsidiaries. The holding company centrally provided services in exchange for fees from the subsidiaries and the aid used by the subsidiaries to refinance these fees was spent on facilitating the restructuring. The services provided by the Lintra holding company to the subsidiaries would otherwise have had to be contracted for by the latter externally. Both the notified plan for the restructuring of the Lintra subsidiaries and the decision of 13 March 1996 expressly referred to the holding structure.

V. **ASSESSMENT**

A. **Complete/correct information**

(23) The doubts expressed in the decision initiating the procedure as to whether Germany had provided the Commission with complete and correct information related to the following two aspects.

(a) The privatisation of the Lintra subsidiaries was the subject of an investigation by the German Federal Court of Auditors about which the Commission was not informed at the time of its decision. As such, an investigation could have been relevant for the Commission's assessment of the compatibility of the aid. The Commission therefore doubted whether, when initiating the procedure, it was provided with complete information prior to its decision of 13 March 1996.

(b) The Commission expressed doubts in the decision initiating the procedure whether the German authorities might have already known, during the Commission's assessment of the aid, that the Lintra group had run into serious difficulties and therefore failed to provide the Commission with correct information.

(24) Regarding the question whether the Commission was provided with complete information prior to its decision of 13 March 1996, the Commission notes that the privatisation of the Lintra subsidiaries was in fact the subject of an investigation by the German Federal Court of Auditors which started in September 1995 and was concluded by a report on 16 September 1996. Following the initiation of the procedure, Germany submitted the complete correspondence between the BvS and the Court of Auditors as well as the final report. The correspondence between September 1995 and March 1996 shows that during this period the Court of Auditors only raised concerns about one of the contractual provisions, namely on the potential sharing of the BvS in future profits of the subsidiaries. A knowledge of the correspondence between the Court of Auditors and the BvS up until March 1996 would not have been a determining factor in the decision. The results of the final report were presented by the Court of Auditors only in September 1996, i.e. some six months after the decision of 13 March 1996, and could therefore not have been taken into account by the Commission at the time it was judging the compatibility of the aid.

(25) With respect to the question whether the Commission was supplied with correct information at the time of its decision, the Commission notes that the aid measures were notified to it in January 1995 and that in January 1996 Germany provided it with an estimate of the losses for 1995 (DEM 65 million). The BvS had received this estimate from the Lintra group in December 1995. In June 1996 the accountants presented to the BvS the annual accounts for 1995 (in accordance with an obligation in the privatisation contract to submit the accounts on that date), revealing that, instead of the DEM 65 million of losses estimated by the Lintra holding company in December 1995, the actual losses in 1995 had in fact been DEM 115 million. In view of the very high volume of the aid package approved by the Commission and the amount of the approved loss cover, it seems plausible that the Commission in its decision accepted a limited viability of the companies during the first few years of restructuring and would not have taken a different decision had it had more precise figures on the actual losses incurred in 1995. Therefore, even though the Commission had partially incorrect information at the time of its decision, the information would not have been a determining factor in the decision.

B. **Use of authorised aid and further aid measures**

(26) Following the initiation of the Article 88(2) procedure, Germany provided an overview of the use made of the granted aid. The results are shown in the following table, which indicates that, of the total aid of DEM 824,2 million authorised by the Commission in 1996, only part (DEM 658,202 million) was granted to the Lintra group. According to the information provided by Germany, of the amount of DEM 658,202 million granted to the Lintra group, DEM 623,224 million was granted to the subsidiaries and DEM 34,978 million remained within Lintra Beteiligungsholding (until 31 December 1997).

(million DEM)

Measure	Commission approval of 23 April 1996	Aid granted by THA/BvS
Total aid to ensure an approved equity capital of DEM 130 million on 31 December 1994	569,2	415,437
Loss cover between 1995 and 1997	175,0	175,002
Liquidity loans 1997		12,0
Grants for financing the restructuring	40,0	40,010
Guarantees for financing the restructuring	40,0	7,042
Investment loan		*8,711*
Total aid	824,2	658,202

(27) With respect to the provision of equity capital, the Commission, in its decision of 13 March 1996, approved the provision to the Lintra subsidiaries of an equity capital of DEM 130 million by 31 December 1994. This was to have been achieved by waiving claims to shareholders' loans of DEM 314,3 million and by grants of DEM 68,9 million. Furthermore, the BvS was authorised to cover losses in 1994 up to a maximum of DEM 186 million by awarding grants. The total aid approved by the Commission to ensure an equity capital of DEM 130 million therefore amounted to DEM 569,2 million. The Commission concludes that the provision of the equity capital of DEM 130 million by the BvS to the Lintra group was in accordance with the decision of 13 March 1996, taking account of modifications due to financial clearing within the Lintra group and the delayed provision of equity capital by the BvS. The total necessary aid required to achieve an authorised equity capital of DEM 130 million for the Lintra group amounted to only DEM 415,437 million, instead of the approved DEM 569,2 million.

(28) With respect to the loss participation, the Commission, in its decision of 13 March 1996, approved aid to cover annual deficits during the period 1995 to 1997 of up to DEM 175 million in the form of waivers of existing claims and up to a maximum of DEM 175 million in total, assuming up to 100 % of the losses in 1995, 95 % in 1996 and 90 % in 1997. The losses were to be covered in the form of waivers of existing claims. The losses incurred by the Lintra group in 1995 were fully covered (DEM 115,1 million). The losses for 1996 were only partially offset (DEM 30,9 million out of a total of DEM 123,8 million) and, in the absence of shareholder loans to the originally assumed extent, the BvS granted the remaining DEM 29 million from the loss cover obligations to the Lintra subsidiaries in order to cover annual deficits in 1996.

(29) The amount of DEM 12 million was granted after the known failure of the first restructuring operation in the form of liquidity loans to the Lintra subsidiaries in preparation for further restructuring. Although the first attempt at restructuring the Lintra group had to be regarded as having failed in December 1996, the BvS decided at that time to continue the restructuring of potentially viable entities for resale to industrial partners as soon as possible. In this situation, a liquidity loan of DEM 12 million from the budget that was still available from the first restructuring of the Lintra group was granted to a number of subsidiaries. It was used to repay overdue bills and was granted between April and June 1997 to those subsidiaries for which a second restructuring seemed feasible. As this aid was granted by the BvS after the known failure of the first restructuring of the Lintra group and in preparation for the second restructuring, it cannot be regarded as being covered by the decision of 13 March 1996.

(30) For the financing of the restructuring of the Lintra subsidiaries up until the end of 1997, the Commission, in its decision of 13 March 1996, approved a grant of DEM 40 million and the award of guarantees amounting to DEM 40 million. The approved grants of DEM 40 million were paid out in full. The guarantees of DEM 40 million were granted up to an amount of DEM 7,042 million and supplemented by an investment loan of DEM 8,711 million.

(31) In answer to the question whether any aid measure approved under the decision of 13 March 1996 was used for purposes other than those of the approved restructuring plan, Germany in its letters of 18 October 1999 and 10 March 2000 submitted detailed information on the restructuring measures. With respect to the development of the individual companies up to the failure of the original privatisation plan in December 1996, the Commission has noted the following.

(32) Gothaer Fahrzeugwerk GmbH: a comparison between the investments carried out between 1994 and 1997 and the original investment plan of Emans & Partners GbR does not lead to the conclusion that the originally planned investment projects were not carried out. Although the originally planned level of capital expenditure was almost achieved, it is at the same time observable that the investments were undertaken later than planned. According to the information provided by Germany, this was due to technically induced preparation and completion times and to the fact that the final positioning of the company on the market was for a fairly long period insufficiently clear.

(33) ILKA MAFA: regarding ILKA MAFA, the Commission notes that the original investment plan of Emans & Partners GbR was the least detailed of all the investment plans and, at DEM 6,6 million, involved the second lowest planned volume of investments. This planned amount for the years 1994 to 1997 exceeded the actual level of investments of DEM 4,5 million. The relatively low investment was due to the uncertainty which from the outset surrounded the positioning of the company on the market.

(34) LandTechnik Schönebeck GmbH: until the failure of the first restructuring operation, the implemented investments were essentially carried out within the framework of the original investment plans. Regarding the investment amount, the originally planned investment volume exceeded the actual volume of investments during the period 1994 to 1997. This disproportion between planned and realised investment reflects the problems the company had in repositioning itself on the market, which it was unable to resolve satisfactorily. For want of sufficient success with the development of marketable products, much less of the originally planned investment reached the final decision stage.

(35) Magdeburger Eisengießerei GmbH (MEG): although the original investment plans of Emans & Partners GbR provided for a total volume of investments during the period 1994 to 1997 of DEM 5,9 million, the company had until the end of 1996 already carried out investments of up to DEM 6,8 million. The Commission notes that this relatively high investment did not result in any form of market success. One of the major strategic goals of the reorganisation of MEG was to achieve less dependency on orders from the SKL companies. The planned repositioning on the market was not achieved as it was not possible to attract a new customer base. Following the loss of SKL-A as a customer due to its liquidation and decreasing demand from SKL-M, MEG increasingly came under pressure and, in November 1997, had to file for insolvency. According to the information provided by Germany, neither MEG nor the hive-off vehicle set up to continue business operations, Eisengießerei Magdeburg GmbH (EGM), received any State aid following the initiation of the insolvency proceedings.

(36) Saxonia Edelmetalle GmbH: the overview of the investments carried out between 1994 and 1997 shows that the original investment plan was implemented in a modified form, the planned investment volume for this period of DEM 24,0 million being exceeded by the realised investments of DEM 26,0 million. The investments implemented resulted in a successful reorientation of the company on the market. Apart from investments for the improvement of the production of semi-finished precious metal products, the core investments were carried out in the areas of reinforcement of wet chemistry for the production of precious metal products, precious metal recycling and a considerable extension of galvanising technologies. These investment priorities created the preconditions for the acquisition of the company by a stronger industrial partner, Vereinigte Deutsche Nickelwerke. The plan of the new shareholders of Saxonia contains, according to the information provided by Germany, investments totalling DEM 10 million until the end of 2000 without any participation by the BvS.

(37) SKL-A: during the entire period, the planned investment volume exceeded the actual investment and it is observable that no more investments of any magnitude were carried out after 1995. As it was not possible to reorient the company towards market requirements with the help of a stronger industrial partner, the decision was taken in June 1996 to liquidate it.

(38) SKL-M: according to the original investment plans of Emans & Partners GbR, SKL-M had the most extensive investment programme of all the Lintra subsidiaries, with a total planned volume of DEM 45,2 million. Although the actual investments during the period 1994 to 1997 clearly exceeded original expectations, the planned market orientation of the company was not achieved satisfactorily. The most extensive capital expenditure was required by the establishment of new engine test stands. According to the information provided by Germany, the investments into the construction of four universal test stands, an additional test stand serving research and development purposes for single-cylinder engines and a research and development test stand were fully implemented. The Commission considers that up until the failure of the first restructuring operation the original investment plan was implemented to a substantial degree.

(39) ZEMAG GmbH: a comparison between the investments originally planned by Emans & Partners GbR and the actual investments carried out between 1994 and 1997 shows that the planned investment volume exceeds the actual volume of investments by approximately DEM 1,7 million. According to the information provided by Germany, this decrease in the volume of investments was due mainly to the uncertainties surrounding the development of the company's crane-building division, where no strategies or measures for a successful positioning on the market were implemented. At the end of 1997 the company was sold to the investors Jacobi & Lobeck, who stopped the building of cranes and sold this company division.

(40) In conclusion, as regards the use made of the aid within the Lintra subsidiaries, the Commission considers that, up until the failure of the restructuring operation in December 1996, the aid was essentially used in accordance with the requirements of the restructuring plans approved by the Commission. In this respect the Commission has taken into account the fact that the restructuring plans on which the decision of 13 March 1996 was based were at that time not drawn up in a particularly detailed form. On the basis of the information submitted by Germany following the initiation of the procedure and in consideration of the above, the Commission considers that the following aid amounts, granted to the subsidiaries in the context of the first restructuring operation, were granted in conformity with the decision of 13 March 1996:

(million DEM)

Company	Total aid
SKL-M	128,439
SKL-A	25,470
ZEMAG	65,617
ILKA MAFA (DIPA)	37,635
LTS	168,478
GFW	103,086
Saxonia	86,672
MEG	7,827
Total	623,224

(41) In the decision initiating the procedure the Commission also expressed doubts regarding the question whether any new aid had been awarded to the Lintra group. The Commission notes that, following the failure of the original restructuring operation, the restructuring process was interrupted at the beginning of 1997 and the restructuring plans were substantially modified due to circumstances that were at least partly unforeseeable when the restructuring was approved. From the date on which it became clear to it that the original restructuring operation had failed, Germany could no longer rely on the Commission's original approval to justify the granting of aid to the Lintra subsidiaries *inter alia*, in preparation for a second restructuring operation. There were clearly difficulties in the monitoring of the Lintra privatisation programme by the BvS, and these seem to have been behind the delayed notification of further aid to the Lintra subsidiaries, granted in anticipation of and in preparation for a second round of restructuring. The additional information received from Germany has helped remove the doubts raised in the decision initiating the procedure with respect to an assumed award of DEM 73,6 million in December 1996, a supplementary investment loan of DEM 8,711 million and an assumed award of DEM 29 million in December 1998. Germany has confirmed that all new aid has now been fully declared in the new notifications by former Lintra subsidiaries. All new aid in the context of the continued restructuring of the subsidiaries will be assessed separately in the context of the assessment of the second restructuring of former Lintra subsidiaries.

(42) In so far as aid granted to the Lintra group was not used for the purposes envisaged under the approved restructuring plan, it falls outside the scope of the decision of 13 March 1996. It follows from that decision that all aid should have been used directly for the purpose of restructuring the Lintra subsidiaries. Neither the notified restructuring plan nor the decision explicitly provides for any use of aid in Lintra Beteiligungsholding GmbH, which, moreover, would not even have been eligible for restructuring aid as it was not a company in difficulty. Nor was any use of aid by the subsidiaries for the purpose of purchasing services from Lintra Beteiligungsholding GmbH expressly provided for in the restructuring plan or the decision of 13 March 1996. Germany has confirmed that it cannot rule out that aid may in fact have been used by the subsidiaries to pay for services provided by that

company. In addition, in reply to the information request Germany provided only a very rough set of figures on the overall expenses of Lintra Beteiligungsholding GmbH (personnel costs, legal costs, office rents, etc.) without demonstrating exactly what services the company provided at what time to which subsidiaries in return for payment. As Germany has been unable to provide enough evidence in this respect, the Commission must consider that the amount of DEM 34,978 million which remained within Lintra Beteiligungsholding is not covered by its decision of 13 March 1996.

(43) The part of the granted aid that remained in Lintra Beteiligungsholding, namely DEM 34,978 million, has not been used in accordance with the provisions of the approved restructuring plan. It was therefore used by the recipient in contravention of the decision of 13 March 1996 and constitutes misuse of aid within the meaning of Article 88(2) of the EC Treaty, read in conjunction with Article 1(g) of Regulation (EC) No 659/1999. The Commission concludes that the amount of DEM 34,978 million, which remained within Lintra Beteiligungsholding, has been misused.

(44) Germany must recover the misused aid amounting to DEM 34,978 million from Lintra Beteiligungsholding GmbH and its subsidiaries. This amount can be broken down into an amount of DEM 12 million of liquidity loans, which was transferred in early 1997 to various subsidiaries, and a residual amount of DEM 22,978 million, the use of which Germany was unable, in its answer to the request for information, to give a detailed account of. For the reasons given in recitals 29 and 42 in particular, the amount of DEM 12 million and that of DEM 22,978 million do not fall within the scope of the decision of 13 March 1996. Since the aid was originally granted to the Lintra group as a whole and since that group no longer exists, the Commission is not required to examine to what extent the individual companies within the group benefited from the aid. The repayment obligation should accordingly be imposed on all the companies which belonged to the group at the time the aid was granted.

(45) On the basis of the information provided by Germany, Lintra Beteiligungsholding GmbH undoubtedly received the whole aid amount. As regards the DEM 22,978 million, Germany has not proved that the amount was passed on to the subsidiaries. Under these circumstances the whole amount must be recovered from Lintra Beteiligungsholding and the subsidiaries. Although Germany has not enabled the Commission to establish in detail how this part of the aid was actually used, it is nevertheless considered appropriate to limit the repayment obligation incumbent on each separate subsidiary to an amount corresponding to its share of the total volume of aid compatible with the common market which the subsidiaries received. The amount of DEM 12 million can clearly be linked to those subsidiaries to which it was granted after the failure of the first attempt to restructure the Lintra group came to light. On the basis of information which Germany has supplied, the DEM 12 million must be recovered from the individual subsidiaries as follows:

(thousand DEM)

Company	
SKL-M	3 934
ZEMAG	4 077
ILKA MAFA	400
LTS	130
GFW	3 300
MEG	159
Total	12 000

(46) As the information available did not allow the amount of DEM 22,978 million to be apportioned among the subsidiaries, the Commission decided to ask Germany to provide all relevant information. On the basis of the information received from Germany in its response to the information request, the Commission considers that the amount of DEM 22,978 million should be apportioned among the subsidiaries in proportion to the aid received by them during the restructuring period:

	SKL-M	SKL-A	MEG	GFW	ILKA MAFA	SAXONIA	ZEMAG	LTS
Aid (1 000 DEM)	128 439	25 470	7 827	103 086	37 635	86 672	65 617	168 478
Share (%)	20,61	4,09	1,26	16,54	6,04	13,91	10,53	27,03

The misused aid amounting to DEM 22,978 million must accordingly be recovered jointly and severally from Lintra Beteiligungsholding GmbH, which is liable for the whole amount, and from each of the Lintra subsidiaries up to the share corresponding to the aid received by each of them. On the basis of the above proportions, the misused aid must be recovered from each of the subsidiaries up to the following amounts:

(DEM)

Company	Total aid
SKL-M	4 735 491
SKL-A	939 068
ZEMAG	2 419 271
ILKA MAFA	1 387 586
LTS	6 211 711
GFW	3 800 736
Saxonia	3 195 559
MEG	288 578
Total	22 978 000

Any amount recovered from Lintra Beteiligungsholding can only reduce the liability of each individual Lintra subsidiary in the same proportions. Any sale of Lintra subsidiaries to investors after the failure of the first restructuring operation cannot stand in the way of the full application of Community law and can therefore have no effect on the obligation to recover the aid in question [5].

VI. **CONCLUSIONS**

(47) On the basis of the information provided by Germany following the initiation of the Article 88(2) procedure, the Commission concludes that, although Germany failed to provide the Commission with complete and correct information prior to its decision, this information would not have been a determining factor in the decision. Consequently, the conditions set out in Article 9 of Regulation (EC) No 659/1999 for revocation of the decision of 13 March 1996 are not met.

[5] Judgment of the Court of Justice in Case C-303/88 *Italy* v *Commission* [1991] ECR 1-1433, at paragraph 60.

(48) The Commission notes that, of the total amount of aid authorised in 1996, i.e. DEM 824,2 million, the Lintra group received DEM 658,202 million. With respect to the question to what extent the granted aid was used in accordance with the terms of the decision of 13 March 1996, the Commission concludes that an amount of DEM 623,224 million was used in accordance with its decision and is therefore compatible with the common market. On the other hand, the amount of DEM 34,978 million, which remained within Lintra Beteiligungsholding, was not used in accordance with the decision of 13 March 1996.

(49) The amount of misused aid totalling DEM 34,978 million must be recovered from Lintra Beteiligungsholding GmbH and the Lintra subsidiaries as follows: the amount of DEM 12 million must be recovered from the Lintra subsidiaries as laid down in recital 45, and the amount of DEM 22,978 million must be recovered jointly and severally from Lintra Beteiligungsholding and each of the Lintra subsidiaries as laid down in recital 46,

HAS ADOPTED THIS DECISION:

Article 1

Aid amounting to DEM 623,224 million, which was authorised by the Commission for the privatisation and restructuring of the companies Zeitzer Maschinen, Anlagen Geräte GmbH, LandTechnik Schlüter GmbH, ILKA MAFA Kältetechnik GmbH, SKL Motoren-und Systembautechnik GmbH, SKL Spezialapparatebau GmbH, Magdeburger Eisengießerei GmbH, Saxonia Edelmetalle GmbH and Gothaer Fahrzeugwerk GmbH (hereinafter called the Lintra subsidiaries), together with the holding company EFBE Verwaltungs GmbH & Co. Management KG, now Lintra Beteiligungsholding GmbH, was granted in conformity with the decision of 13 March 1996.

Article 2

An amount of DEM 34,978 million, which was authorised by the Commission for the restructuring of the Lintra subsidiaries, has been misused within the meaning of Article 88(2) of the EC Treaty.

Article 3

1. Germany shall take all necessary measures to recover the misused aid referred to in Article 2 totalling DEM 34,978 million from Lintra Beteiligungsholding GmbH and the Lintra subsidiaries.

An amount of DEM 12 million shall be recovered from the subsidiaries as follows:

(DEM)

Company	Total aid
SKL-M	3 934 000
ZEMAG	4 077 000
ILKA MAFA	400 000
LTS	130 000
GFW	3 300 000
MEG	159 000
Total	12 000 000

The remaining amount of DEM 22,978 million shall be recovered jointly and severally from Lintra Beteiligungsholding GmbH, which shall be liable for the whole amount, and from each of the Lintra subsidiaries up to the following amounts:

(DEM)

Company	Total aid
SKL-M	4 735 491
SKL-A	939 068
ZEMAG	2 419 271
ILKA MAFA	1 387 586
LTS	6 211 711
GFW	3 800 736
Saxonia	3 195 559
MEG	288 578
Total	22 978 000

Any amount recovered from Lintra Beteiligungsholding GmbH shall reduce the liability of each of the individual Lintra subsidiaries in the same proportions.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of 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 4

Germany shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply therewith.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 28 March 2001.

For the Commission

Mario MONTI

Member of the Commission