COMMISSION DECISION

of 3 April 2002

on the State aid granted by the Federal Republic of Germany for ILKA MAFA Kältemaschinenbau GmbH

(notified under document number C(2002) 1190)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/823/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 27 March 1998 Germany informed the Commission of restructuring aid for the privatisation of ILKA MAFA Kältemaschinenbau GmbH (ILKA MAFA) and its sale to Carrier. However, Carrier withdrew from the privatisation contract on 31 December 1998.

(2) On 30 December 1999, Germany again notified restructuring aid for the privatisation of ILKA MAFA; the purchasing company this time was GEA AG. By letter dated 3 April 2000 Germany provided the Commission with further information.

(3) By letter dated 1 August 2000, 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 to ILKA MAFA.

(4) 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.

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

(6) ILKA MAFA is a successor company [3] to the former ILKA MAFA Kältetechnik GmbH (Ilka-old). Ilka-old belonged to a group of eight companies from the former GDR which were first privatised in 1994 as the EFBE Verwaltungs GmbH & Co. Management KG, now Lintra Beteiligungsholding GmbH. Since the original privatisation concept failed in December 1996, it was decided in January 1997 by the Bundesanstalt für vereingungsbedingte Sonderaufgaben (BvS) to continue the restructuring of potentially viable Lintra-subsidiaries with the aim of preparing these companies for resale. Since Ilka-old had received aid that was to be assessed in the context of the other notified restructuring aid, the case was registered as non-notified aid. The aid paid to Ilka-old via Lintra Beteiligungsholding GmbH was the subject of Commission Decision 2001/673/EC on aid to EFBE Verwaltungs GmbH & Co. Management KG/Lintra Beteiligungsholding GmbH [4].

II. DETAILED DESCRIPTION OF THE AID

(7) ILKA MAFA was set up at the end of 1997 by Ilka-old in preparation for the second privatisation after it had become evident that the privatisation concept under Lintra Beteiligungsholding GmbH had failed. From 11 December 1997 onwards, Ilka-old was named Dipa-Industrie- und Vermögensverwaltungsgesellschaft (Dipa). Insolvency proceedings were started against Dipa on 1 January 2000.

(8) A privatisation contract was concluded in 1997 with Carrier. Carrier, however, withdrew its interest on 31 December 1998. Following this, BvS started looking for another investor, contacting ten domestic and foreign manufacturers of refrigeration plant and machinery. GEA AG was the only company which was interested in taking over ILKA MAFA.

---

[1] OJ C 278, 30.9.2000, p. 9.
[2] See footnote 1.
[3] A separate hive-off vehicle (Auffanggesellschaft).
[4] OJ L 236, 5.9.2001, p. 3.

(9) The privatisation agreement was concluded on 27 September 1999 between BvS, Dipa and GEA AG on the takeover of ILKA MAFA. The purchase price paid to Dipa was DEM 500 000.

(10) ILKA MAFA is located in Döllnitz bei Halle, Saxony-Anhalt. Its activities are the production, distribution, assembly, installation and maintenance of refrigerating systems (water-cooled chillers) for environmentally compatible, ammonia-based refrigeration. Water-cooled chillers are used in the food and chemicals industries, industrial production, the air conditioning of buildings and in sports facilities.

(11) The investor for the second restructuring project is GEA AG, the management holding company of the GEA Group, which has some 150 operational companies worldwide. The group has a total of 14 000 workers and its turnover in 1999/2000 was EUR 2,3 billion.

(12) The restructuring plan provides mainly for cost savings through the synergy effects of belonging to a large group, e.g. joint purchasing. Distribution will be through the group's worldwide sales network. To save costs, the administration functions will be taken over by a sister company, Grasso RT Berlin.

(13) The company will focus in future on the core business, which is the production and assembly of water-cooled chillers. It will in particular manufacture chillers of different sizes and performance categories to meet individual customers' specifications. Replacement and modernisation investment is also provided for, and joint R&D activities will be stepped up.

(14) The investor will employ on average 45 full-time workers for a three-year period starting in November 1999. The activities of the company will be carried on until at least 31 December 2004.

(15) As explained in recital 7, ILKA MAFA was set up in December 1997 to prepare for privatisation and for takeover by Carrier. The restructuring period was to last from 1 December 1997 to 31 December 2001. As explained above, Carrier withdrew its interest in late 1998. The restructuring period of the present investor GEA AG began on 1 October 1999 and ended on 31 December 2001. The whole period since end 1997 was notified as the restructuring period for Ilka-old, since the restructuring process had begun before the withdrawal of Carrier, and it continued also in 1998 and 1999 before the privatisation to GEA AG.

(16) According to the forecasts in the restructuring plan, the company will make a slight profit of DEM 14 000 in 2002 from a turnover of DEM 16,2 million. For 2003 the profit forecast was DEM 670 000 with a turnover of DEM 17,4 million, and, for 2004, DEM 1,1 million with a turnover of DEM 18,2 million.

(17) The restructuring plan as assessed by the Commission in its decision to initiate the procedure was to be financed as follows:

(DEM thousand)

Financing	BvS/Land	Investor/ILKA MAFA
Financing of Dipa until liquidation – 6 450 1.12.1997-30.9.1999 Operating losses – 8 232	6 450 12 800 grant	
Investments – 333		
Integration-/restructuring costs Carrier – 1 842		
Increase of liquidity – 2 393		
Total – 19 250	**19 250**	

Financing	BvS/Land	Investor/ILKA MAFA
1.10.1999-31.12.2001 Social plan and related costs 2 029	1 748 grant	281 ILKA MAFA
Operating losses – 3 881	3 500 grant	381 — Shareholder's loan
Investments and other restructuring costs – 9 800	3 700 grant	Increase of equity 2 000 Shareholder's loan 4 100
Working capital – 1 150		Shareholder's loan 1 150
Purchase price 500		GEA 500
TOTAL: 36 610	**28 198**	**8 412**
	77 %	23 %

(18) In addition to the financing shown in the table, Germany announced a contribution of DEM 2,760 million to the labour costs. The contribution would be made by the workforce of ILKA MAFA, who would waive 12,5 % of their annual wages/salaries during the restructuring.

(19) In its decision opening the procedure the Commission noted that the share of the public financing would be DEM 28,198 million, representing 77 % of the total costs. The investor contribution would be DEM 8,381 million representing 23 % of the total costs. Therefore, the Commission had doubts whether the investor contribution to the restructuring could be considered significant as provided in the Community guidelines on State aid for rescuing and restructuring firms in difficulty [5] (guidelines).

(20) In addition, the Commission noted that of the DEM 9,8 million allocated by the investor in the restructuring plan for investment and reorganisation, a total of DEM 1,1 million was to be used for setting up sales offices in Scandinavia and Japan and for expanding the sales network in South America. Since ILKA MAFA's sales operations are to be taken over by the parent group, the Commission doubted whether the part of the aid linked to these investments will really be granted to ILKA MAFA, whether these investments were essential for restoring the viability of the company and whether the aid was thereby limited to the strictly necessary.

(21) The Commission also pointed out that as a result of the final decision in case C-41/99 Lintra Beteiligungsholding GmbH some additional claims against the former Ilka-old might arise that would have to be added to the costs of the present restructuring plan. The exact amount of these was not established at the time of the decision to initiate the procedure but would be made clear in the final decision. These additional liabilities should be taken into account in the assessment of the proportionality of the aid.

III. COMMENTS FROM GERMANY

(22) As regards the Commission's doubts about the insufficient investor contribution, Germany explains that the calculation should also take account of the fact that the restructuring period with the present investor began on 1 October 1999, whereas the overall restructuring period started in December 1997. Consequently, the total volume of funding was initially higher than the amount provided by the new investor.

(23) If the costs of the restructuring are assessed on the sole basis of the period from 1 October 1999 to 31 December 2001, the contribution by the investor and ILKA MAFA amounts to 52 %, which must be regarded as a significant contribution to the restructuring plan.

(24) As regards the Commission's doubts about the necessity for the DEM 1,1 million investment earmarked for the establishment of sales offices, Germany explains that one of the most glaring weaknesses of most companies from the new *Länder* has been, and still remains, their inadequate distribution structure. Particularly in globalised sectors of activity such as the refrigeration and air-conditioning industry, a well-developed and efficient global distribution network is one of the cornerstones of a company's long-term success.

[5] OJ C 288, 9.10.1999, p. 2.

(25) Germany stresses that through its close cooperation with the other companies in the GEA refrigeration division, ILKA MAFA has free access to a well-developed distribution network and the means of expanding this network at low cost. The amount of DEM 1,1 million represents only a small part of the GEA refrigeration division's total investment in new distribution organisations. Besides, ILKA MAFA will only contribute to the establishment of those new channels if they are of particular interest for the marketing of its products.

(26) As regards the potential additional liabilities incurred by the former Ilka-old in the framework of the present procedure, Germany refers to its opinion delivered in case C-41/99 Lintra Beteiligungsholding GmbH. The opinion relates to Lintra's claim against Ilka-old, amounting to DEM 1 787 586. This claim was being settled from the assets remaining after the liquidation of Dipa.

IV. **ASSESSMENT OF THE AID**

(27) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case-law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(28) The Commission notes that the notified aid was granted from State resources to a particular company, which benefited from a reduction of the costs it would normally have to bear in carrying out the notified restructuring project. Moreover, the recipient of the aid, ILKA MAFA, develops, produces and assembles chillers, which activities involve trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

(29) The notified project concerns restructuring of the company in accordance with the restructuring plan submitted by the investor. The Commission was originally informed about the restructuring on 27 March 1998. The Commission notes that the restructuring aid for firms in difficulty is assessed pursuant to the guidelines. According to these a rescue and restructuring may within the meaning of Article 87(3)(c) of the Treaty contribute to the development of certain economic activities where it does not adversely affect trading conditions to an extent contrary to the common interest, if the conditions laid down in the guidelines are met.

(30) The Commission notes that the present guidelines entered into force on 9 October 1999. According to point 7.5., the guidelines apply if some or all of the aid is granted after their entry into force. Since part of the aid to the notified restructuring is, according to the notification, to be granted after this date, the 1999 guidelines apply to the notified restructuring.

(31) According to point 2.1. of the guidelines, typical symptoms of a firm in difficulty are deteriorating profitability or increasing size of losses, diminishing turnover, declining cash flow and low net asset value. The Commission notes that both Ilka-old and ILKA MAFA have been loss-making since 1994. The losses when the original notification was submitted were DEM 6,687 million and when the present restructuring plan was submitted DEM 1,8 million. Therefore, the company is regarded as a firm in difficulty, and aid for its restructuring is assessed according to the guidelines.

(32) Under the guidelines, newly created firms are not eligible for rescue and restructuring aid, even if their initial financial position is insecure. This is the case in particular where a new firm emerges from the liquidation or takeover of a previous firm. Footnote 10 of the guidelines states that 'the only exceptions to this rule are cases dealt with by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben in the context of its privatisation remit and other similar cases in the new *Länder*, involving companies emerging from a liquidation or a take-over of assets occurring up to 31 December 1999'. The Commission notes that ILKA MAFA used to be a BvS-owned company and it is situated in the new *Länder*. It was set up in 1997 with a view to the future privatisation and it took over the relevant assets of Ilka-old before the deadline of 31 December 1999. For these reasons ILKA MAFA is eligible for rescue and restructuring aid.

(33) According to point 3.2.3 of the guidelines, restructuring aid should be granted once only. However, footnote 25 of the guidelines states that the section does not apply to cases of aid granted to enterprises in the former German Democratic Republic which were notified before 31 December 2000. Since the aid to ILKA MAFA was notified before the deadline laid down in the guidelines, the company can be granted restructuring aid for the second time.

(34) According to the guidelines, the aid should be in proportion to the restructuring costs and benefits. Section 3.2.2(d) stipulates that the aid needs to be limited to the strict minimum necessary to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Aid beneficiaries should make a significant contribution to the restructuring plan from their own resources. No aid should go to finance new investment that is not essential for restoring the firm's viability.

(35) In its decision opening the procedure the Commission doubted whether the investor contribution of 23 % could be considered significant in the meaning of the Guidelines. In addition, it doubted whether the aid linked with the foreseen DEM 1,1 million investment in distribution network was essential for restoring the company's viability.

(36) Germany communicated changes to the original restructuring plan by letter dated 20 July 2001. The changes relate to the three following points: the extension of the restructuring period, the increased investor contribution and the deletion of the sales network investments from the restructuring plan.

(37) The period for implementing the GEA restructuring plan now extends from 1999 to 2003. Germany explained that in 1999 the financial result was better than foreseen mainly due to booking proceeds in the financial accounts which would be subject to costs the following year. The year 2000 consists only of nine months, since the financial year needed to be synchronised with that of the other companies of the GEA-group. The target result and turnover were not achieved, since there were virtually no orders at the beginning of the year. In 2001 the turnover target was nearly achieved, but the operating result was worse than predicted. The reason for this was a one-year delay in development of semi-hermetic compressors. The proposed savings in material costs could therefore not be achieved. The financial situation is not expected to improve until 2002/2003 and the operating result until 2004, instead of 2002.

(38) When asked by the Commission to explain the reasons for the delays and why these were not foreseen in the original restructuring plan, Germany explained in its letter of 14 November 2001 that the delays occurred for technical reasons. They were not foreseen in the original plan, since at the time of taking over ILKA MAFA the investor, GEA was not fully aware of all the technical details of the latter's product range. After the takeover a working group consisting of employees of ILKA MAFA and the GEA group was set up to analyse certain products manufactured by both of them. It was concluded that the compressors used by ILKA MAFA were technically outdated and needed to be replaced in order to have a competitive product. In particular, it was also concluded that the material costs of the old product were much too high.

(39) According to Germany, in view of this unforeseen need for adaptation and reconstruction of the compressors, it was decided to replace the two production lines by the end of 2001. Due, however, to technical problems, replacement was delayed by almost a year and will only be completed by end September 2002. Without these delays, the planned cost savings would have been achieved earlier, since the new products have much lower material costs. This means in practice that the company had to bear the higher production costs one year longer than planned, which is reflected in the financial results of the company.

(40) As regards the increased investor contribution, Germany explains that the investor is making available to ILKA MAFA a DEM 3,2 million credit line [6] for covering the potential liability and other guarantee claims of the clients. Since the investments in PC systems and networks are DEM 0,5 million higher than forecast, the investor is also increasing its own contribution to the investments by that amount. The increased investor contribution therefore totals DEM 3,7 million.

(41) The Commission notes that the foreseen DM 1,1 million investment in sales networks has been deleted from the investment plan. Instead the amount will be used as follows:

— test stands for chillers were DEM 0,7 million more expensive than forecast,

— office renovation and construction was DEM 150 000 more expensive,

— production equipment was DEM 150 000 more expensive,

— storage and logistics costs: DEM 100 000.

(42) Also in the revised restructuring plan, the financing for the period before the sale to the GEA group, from 1 December 1997 to 30 September 1999, remains unchanged. The total cost for the period, DEM 12,8 million, is borne by the State (BvS and Saxony-Anhalt). The restructuring aid for the GEA group from 1 October 1999 onwards remains unchanged at DEM 8,948 million. The total amount of public financing and, hence, aid is therefore DEM 28,198 million. This is the same as in the original plan. No increase in aid is associated therefore with the revised restructuring plan.

[6] 'Avalrahmen'.

(43) As explained in recital 40, according to the new plan the investor's contribution has been increased by DEM 3,7 million. This is the result of a higher direct investment contribution of DEM 500 000 and a DEM 3,2 million credit line for covering potential guarantee claims from clients. The financing of the revised plan breaks down as follows:

(DEM thousand)

Financing	BvS/Land	Investor/ILKA MAFA/(workforce)
Financing of DIPA until liquidation – 6 450	6 450	
1.12.1997 to 30.9.1999 Operating losses – 8 232	12 800 grant	
Investments – 333		
Integration/restructuring costs, Carrier – 1 842		
Increased liquidity – 2 393		
Total –19 250	**19 250**	
1.10.1999 to 31.12.2004 Social plan and related costs – 2 029	1 748 grant	281 ILKA MAFA
Operating losses – 3 881	3 500 grant	381 — Shareholder's loan
Investments and other restructuring costs – 10 300	3 700 grant	Increase of equity 2 000 Shareholder's loan 4 600
Credit line for guarantee claims – 3 200		3 200 GEA
Working capital – 1 150		Shareholder's loan 1 150
Purchase price 500		GEA 500
Workforce's contribution to labour costs 2 760		Workforce 2 760
TOTAL: 43 070	**28 198**	**12 112**
	65 %	28 %

(44) As regards the workforce's restructuring contribution of DEM 2,760 million, the Commission notes that this amount has been included in the restructuring costs, because it is an actual contribution to those costs. This should not be seen as a contribution from the investor, however, since it will be funded neither from the investor's financial resources nor from ILKA MAFA's [7].

(45) As regards its doubts expressed in the opening of the procedure concerning the amount of the investor's contribution to the restructuring, the Commission notes that this was increased by a total of DM 3,7 million in the revised restructuring plan and now amounts to 28 %. In accordance with the Commission's previous practice in the eastern German restructuring aid cases [8], this can be considered as a significant contribution within the meaning of the guidelines.

(46) As regards the doubts concerning the investment in the sales network, the Commission notes that this investment has been replaced by direct investments in the production facilities of ILKA MAFA. For this reason the doubts about whether ILKA MAFA was the real and/or the only beneficiary of the aid relating to those investments have been allayed.

(47) The Commission notes, however, that the restructuring period has been extended by two years. Germany explains that this is due to the unforeseen need to replace some additional production facilities and the resultant technical difficulties.

(48) An essential element of the restructuring plan communicated by Germany in 1999 was the replacement and modernisation of the production facilities and development of new products. In its decision opening the procedure, the Commission stated that it had no doubts as regards the ability of the restructuring plan to restore the long term viability of the company.

(49) The decision to replace an additional production facility after an in-depth examination of ILKA MAFA's production range is in line with the original restructuring plan and does not involve changes of substance or the introduction of new strategies or measures not already provided for in the original plan. Had it been possible to carry out the additional replacement of a production facility as planned without the delay, the timetable for achieving an operating profit would have been kept, according to the information provided. The delays caused by the technical difficulties affect the operating result accordingly and postpone the date for achieving profitability. The restructuring plan, however, is carried out as planned. The Commission therefore considers that, despite the extension of the restructuring period on account of the technical difficulties, the ability of the plan to restore viability to the company is unaffected.

(50) According to the guidelines, the restructuring plan must restore the long-term viability of the company within a reasonable timeframe. The delay defers for two years the moment when the company will achieve profitability. As the original restructuring period for the present investor was only two years (1999 to 2001), the deadline for restoring profitability is still, despite the two-year delay, within a reasonable timeframe, as stipulated in the guidelines.

(51) In accordance with the 'one time, last time' condition laid down in point 3.2.3 of the guidelines, restructuring aid can be granted only once. Further restructuring aid can only be allowed in exceptional and unforeseeable circumstances for which the company is not responsible. The extension of the original restructuring period, however, does not lead in the present case to any increase of aid. On the contrary, the investor contribution has been increased, and to a degree that is significant within the meaning of the guidelines.

(52) So that the Commission can monitor the implementation of the revised restructuring plan, Germany is requested to provide an annual report on the progress of the restructuring from 2001 to 2004. The report is to be submitted by the end of March of the following year and should contain all relevant information to enable the Commission to check the implementation of the authorised restructuring programme, the payment of aid to the company and its financial position. Further changes to the restructuring plan will be examined in accordance with point 3.2.4 of the guidelines.

(53) In its decision opening the procedure the Commission reserved its position on the possible additional claims against Ilka-old resulting from Case C-41/99 Lintra Beteiligungsholding GmbH.

([7]) See Commission Decision 2002/186/EC, Case C-66/00-ZEMAG, (OJ L 62, 5.3.2002, p. 44).

([8]) See *inter alia* Commission Decision 1999/339/EC, Case C-24/97 Chemienlagenbau Stassfurt AG (OJ L 130, 26.5.1999, p. 20) (25 %) and the Decisions in Cases NN 49/98 Hydraulik Seehausen (26 %) and NN 100/97 KAB Kraftwerks (25 %).

(54) The Commission took its final decision 2001/673/EC in case C-41/99 on 28 March 2001 [9]. By letter dated 17 September 2001, Germany informed the Commission that the aid of DEM 1 787 586 granted to the former ILKA MAFA Kältetechnik GmbH, which had been declared unlawful by the decision, had been recovered with interest, giving a total of DEM 2 235 114. Evidence of payment dated 6 September 2001 has been submitted to the Commission. The unlawful aid was paid back by Dipa Industrie und Vermögensverwaltung GmbH [10] in liquidation.

V. **CONCLUSION**

(55) Germany has unlawfully granted aid amounting to EUR 14,417 million to ILKA MAFA Kältemaschinenbau GmbH in breach of Article 88(3) of the Treaty. However, since this aid complies with the 1999 Community guidelines on State aid for rescuing and restructuring firms in difficulty, it is compatible with Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for ILKA MAFA Kältemaschinenbau GmbH, amounting to EUR 14 417 000 (DEM 28 198 000) is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Article 2

Germany shall provide an annual report to the Commission on the progress of the restructuring for the period 2001 to 2004. The report shall be provided by the end of March of the following year. It shall contain all the relevant information that the Commission needs to monitor the implementation of the authorised restructuring plan, the receipt of the aid by the company and its financial position.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 3 April 2002.

For the Commission

Mario MONTI

Member of the Commission

[9] See footnote 4.
[10] Formerly ILKA MAFA Kältemaschinenebau GmbH.