COMMISSION DECISION

of 9 April 2002

on State aid C 72/2001 (ex N 361/2001) which Germany plans to grant to Hamburger AG

(notified under document number C(2002) 1340)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/824/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 31 May 2001, registered as received on 12 June 2001, Germany notified its intention to grant investment aid under the multisectoral framework on regional aid for large investment projects [2] (hereinafter called the multisectoral framework) to Hamburger AG. The proposed aid was registered under the number N 361/01.

(2) The Commission acknowledged receipt, informed Germany that the notification was considered incomplete and asked additional questions by letter dated 22 June 2001 (D/52559). Germany replied by letter dated 17 July 2001, registered as received on 20 July 2001, and by letter dated 30 July 2001, registered as received on 31 July 2001. The notification was still considered incomplete and further questions were sent by letter dated 2 August 2001. Germany replied by letter dated 15 August 2001, registered as received on 17 August 2001. By letter dated 21 August 2001, the Commission informed Germany that the notification was now considered complete and that a final position would be adopted within two months from the date of registration of the letter containing the complete information.

(3) By letter dated 4 October 2001, 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.

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

(5) By letter dated 21 December 2001, registered as received on the same day, Germany responded to the initiation of the procedure.

(6) The Commission received comments from seven interested parties. It forwarded them to Germany, which was given the opportunity to react. Germany's observations were sent by letter dated 31 January 2001, registered as received on the same day.

II. DETAILED DESCRIPTION OF THE AID

2.1. The recipient

(7) The recipient of the aid will be Hamburger AG, Pitten, Austria. Hamburger AG is part of the Hamburger group, which is owned by Prinzhorn Holding. Hamburger AG is active in the industrial production of paper.

2.2. The project

(8) The new investment project will be located in Schwarze Pumpe, Brandenburg, an assisted area under Article 87(3)(a) of the EC Treaty in which the maximum allowable aid intensity for large undertakings is 35 % gross.

([1]) OJ C 342, 5.12.2001, p. 9.
([2]) OJ C 107, 7.4.1998, p. 7.
([3]) See footnote 1.

(9) The project comprises the construction of a new plant for the production of white and brown corrugated base paper. The construction of the plant reportedly [...] (*). The start of production is planned for [...] at the earliest, and [...] at the latest.

(10) The new plant will mainly produce testliner [...]. Hamburger AG already produces brown grade in its plants in Austria and Hungary and white grades of very high quality in its plant in Rieger, Bavaria.

(11) The purpose of the construction of the new plant is firstly to fill the gap between brown grades and high grades, and secondly to be close to the east European markets. These markets, in particular Poland, the Czech Republic and the Baltic countries, are thought to have good growth potential.

(12) The planned production capacity of the new plant is [...] tonnes of testliner a year, beginning with [...] tonnes in the first year, [...] tonnes in the second year and achieving full capacity in the third year. For the first five years it is planned to produce [...] of brown grades and [...] of white grades. However, switching from the production of one to the other can be done very quickly. Both types will be recycled fibre based.

(13) The new plant will also be equipped with a corrugator of [...] tonnes a year capacity. [...] of the plant's total production of [...] tonnes of corrugated base paper together with [...] tonnes obtained from outside sources will undergo processing into corrugated paperboard there. In addition, [...] tonnes of the plant's production of corrugated base paper will be delivered to another converting plant owned by the Hamburger group in Poland, so that [...] tonnes of the plant's total production will be used within the group.

(14) Most of the production of corrugated base paper ([...] tonnes) will go to independent corrugators and converters. The target market for the brown testliner consists of Germany, Poland, the Czech Republic and the Baltic and Benelux countries. The target market for the white testliner will extend across the whole of Europe. The [...] tonnes of corrugated paperboard will be sold within a radius of 200 km around the production plant.

(15) The costs of the project can be broken down as follows:

(EUR '000)

Item	Total	Eligible
Land	[...]	[...]
Buildings	[...]	[...]
Plant, machinery	[...]	[...]
Tools	[...]	[...]
Intangibles	[...]	[...]
Total	**153 388**	**153 388**

(16) The construction of the new plant will increase the corrugated base paper production capacity of the Hamburger group from [...] tonnes in 2000 to [...] tonnes in 2005. The Hamburger group had a share of [...] in the market for corrugated base paper in the European Economic Area in 2000.

(17) According to the notification, the project will lead to the creation of 277 permanent jobs (194 in the corrugated paper producing factory, 57 in the corrugated paperboard producing factory and 26 for transport and other activities). Germany has notified the creation of 356 indirect jobs in an assisted area, mainly in the fields of raw materials supply and transport services.

2.3. **Aid measures**

(18) The proposed aid consists of investment aid in the form of a non-reimbursable grant amounting to EUR 31 582 500 awarded under the 29th framework plan of the joint Federal Government/*Länder* programme for improving regional economic structures, approved by the Commission [4]. Furthermore, an investment premium amounting to EUR 22 103 148 is to be granted on the basis of the 1999 Investment Premium Law, approved by the Commission [5].

(*) Business secret.

[4] 29. Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur'.

[5] Investitionszulagengesetz 1999, C 72/98 (ex N 702/97), SG (98) D/12438 of 30.12.1998 and SG (2001) D/286551 of 2.3.2001.

2.4. Reasons for initiating the formal investigation procedure

(19) The Commission considered that the relevant product market was the market for corrugated base paper. On the evidence available the Commission moreover at that stage considered the relevant market to be in relative decline as the average annual growth of apparent consumption in this market was significantly below the average annual growth of manufacturing industry as a whole. The competition factor was thus provisionally set at 0,75. Moreover the Commission provisionally set the capital-labour factor at 0,8.

(20) The Commission had doubts in particular regarding the creation of 356 indirect jobs as announced by Germany. It doubted whether the total number could be taken into account as they might not all be created in adjacent assisted regions. In all, 139 of the indirect jobs claimed by Germany were expected to be located in Poland and the Czech Republic. The Commission questioned whether these jobs could be taken into account as the Czech Republic and Poland are not Member States of the European Union. Moreover, the Czech Republic has no border with the *Land* of Brandenburg and is thus not an adjacent region.

(21) Germany had claimed that 40 indirect jobs would be created by a new company making recycled paper that Hamburger AG would establish at Schwarze Pumpe. The Commission proceeded on the basis that this project should be considered part of the main project and that the jobs should therefore be included in the calculation of the direct jobs and not of the indirect jobs. It therefore provisionally considered that the project at issue would lead to the creation of 177 indirect jobs. The regional impact factor was therefore provisionally set at 1,25. However doubts also existed as to whether all the jobs created in the transport field could be taken into account, as they might not all be created in adjacent assisted regions. This might lead to the regional impact factor being lowered to 1,0.

(22) In its decision to initiate the procedure the Commission calculated the formula for the project as follows: either $35 \times 0{,}75 \times 0{,}8 \times 1{,}25 = 26{,}25\ \%$ or $35 \times 0{,}75 \times 0{,}8 \times 1{,}0 = 21\ \%$ depending on the regional impact factor. The Commission thus had doubts whether the amount of EUR 53,7 million (DEM 105 million), equivalent to an aid intensity of 35 %, which Germany intended to grant to Hamburger AG for its investment in Schwarze Pumpe, Brandenburg, was in conformity with the maximum allowable aid intensity calculated on the basis of the multisectoral framework.

III. COMMENTS FROM INTERESTED PARTIES

(23) After the procedure was initiated, the Commission received comments from seven interested parties. The comments were made by competitors as well as by an association of the Spanish paper industry, an association of the American forest and paper industry and the French Government. The comments were forwarded to Germany by letters dated 20 December 2001 and 11 and 16 January 2002 to give it the opportunity to react. An answer from Germany was received on 1 February 2002.

(24) All interested parties express their concern about the capacity situation in the relevant market. The sector for corrugated base paper is already faced with structural overcapacities. According to one competitor, overcapacities are particularly high in Germany. In the years 2000 to 2002, capacities are expected to increase further owing to new plants and extensions of already existing plants, and as market growth is slowing down this situation will worsen.

(25) Even if the percentage growth in eastern Europe is relatively high, the increase in volume will be low as the overall level of paper consumption is modest. According to one competitor, the future growth rates of the market presented by Germany are overestimated. The American Forest and Paper Association points out that the projected capacity expansions in the next two years are significantly out of proportion to demand projections.

(26) One competitor has misgivings because the market is characterised by medium-sized companies and family businesses. The new project of Hamburger AG will lead to significant excess capacity and will thus have a detrimental effect on the market and lead to serious distortions.

(27) Two competitors maintain that the sector is highly capital intensive and that value added is low. The planned aid for the project will help Hamburger AG to significantly reduce its production costs and consequently to lower its prices (by around 10 % according to one competitor).

(28) As regards the supply of recycled paper, one competitor points out that already this year there has been a shortage of recycled paper over a longish period. In particular, east European countries such as Poland and the Czech Republic from which Hamburger wishes to obtain most of its raw materials are already net importers of recycled paper. The competitor therefore expects not enough raw material to be available for the new plant.

(29) Two competitors consider that the creation of direct jobs is exaggerated. One competitor points to the figure of 17 plus 14 jobs for sales and 22 jobs for finance and management control, which in its opinion is far too high. Another competitor indicates that in particular the number of jobs related to the corrugator is too high.

(30) Two competitors addressed the issue of indirect job creation. In their opinion the number is significantly overestimated. No new jobs will be created in the field of recycled paper as this already accounts for a large proportion of total production. Moreover, a large part of the transport will be done by rail and not by road, thus creating fewer jobs than claimed by the German Government. In any event, the number of jobs created in the field of transport seems too high. One of the competitors also points to the high number of jobs allegedly created in the field of maintenance and energy, arguing that most of the jobs will probably not be created in an adjacent assisted area.

IV. **COMMENTS FROM GERMANY**

(31) In its comments on the initiation of the procedure, Germany explains that the establishment of the new company making recycled paper is an independent project carried out by H&H Recycling GmbH. H&H Recycling GmbH used to be 75 % owned by Hamburger AG. For strategic reasons, Hamburger AG decided to end its involvement in activities related to the recycling of paper and on 4 October 2001 sold its share in H&H Recycling GmbH to RWE Umwelt Services Deutschland GmbH. In the notification, the collection of waste paper by this new company had been estimated at around [...] tonnes a year, leading to the creation of 40 new jobs. However, not all this amount will be purchased by Hamburger AG as the various types of recycled paper produced by the plant are not all needed by it. The new company will also supply other companies and was therefore never regarded as part of Hamburger AG's project.

(32) As regards the jobs created by H&H Recycling GmbH, Germany explains that the expected supply of [...] tonnes of recycled paper to Hamburger AG will lead to the creation of 10 jobs. This is confirmed by a letter of intent provided by the company.

(33) Regarding the evolution of the market and the assessment of the competition factor, Germany argues that the multisectoral framework provides for a period of five years for the calculation of average annual growth. The relevant period for the project at issue is therefore 1996 to 2000. Over this period, average annual growth amounted to 10,04 %. Germany stresses that the investment is taking place in the sub-sector of waste-based papers, i.e. corrugated base paper made of recycled fibre, in which, in recent years, the average annual growth was higher than for corrugated base paper as a whole. Moreover, Germany points out that the below-average growth rate is due, not to the evolution of the market, but to political intervention. Because of political intervention, prices for recycled paper had dropped significantly from 1995 to 1996, which resulted in lower prices for corrugated base paper. According to Germany the market took three years to recover from this intervention.

(34) Germany confirms that all indirect jobs created by road transport will be located in the assisted region. Concerning the indirect jobs related to rail transport, Germany admits that not all of the indicated 33 jobs may be located in an assisted region, but at least 10 jobs will.

(35) As regards the question whether the alleged indirect job creation in the Czech Republic can be taken into account for the assessment of the regional impact of the project, Germany argues that the five new German *Länder* should be regarded as a single assisted area pursuant to Article 87(3)(a) of the EC Treaty so that a common border exists with the Czech Republic. As to the indirect jobs created in Poland, Germany points out that a regional map at the NUTS II level has been drawn for this country and encourages the Commission to reconsider its position as to whether the indirect jobs created there can be taken into account for the regional impact factor.

(36) According to Germany at least 164 indirect jobs will be created in the assisted region and adjacent assisted regions, not counting the jobs created in Poland and the Czech Republic.

(37) Germany also submitted comments on the third-party observations. As regards the calculation of the competition factor, it points out that the future development of apparent consumption only plays a minor role in this context. The relevant period for determining the evolution of the market comprises the last five years. Germany stresses that in 2000 apparent consumption grew by 6,1 % in volume terms.

(38) As regards the capacity situation in the market, Germany explains that large projects like the investment at issue normally take one to three years until they reach the production stage. According to calculations submitted by Germany based on the assumption of an average annual growth rate of 2,8 % in the years to come, there will be no overcapacity in the market until 2003 even after production in the new plant has started. The same holds true for the year 2004.

(39) Germany recalls that the new plant will produce white and brown testliner depending on the market conditions. The white testliner produced in the new plant will be of [...] quality, which is a quickly growing market segment.

(40) Germany draws attention to the fact that two competitors complaining about overcapacities are themselves planning to increase their production capacities significantly between now and 2004.

(41) As regards the situation on the market for recycled paper, Germany points out that it is a net exporter of recycled paper (2,6 million tonnes). This surplus will probably be reduced to 1,7 million tonnes by 2010 because demand will outstrip supply, the proportion of total sales accounted for by recycled paper being already high (more than 60 %). However, Germany will remain the biggest net exporter of recycled paper in the EU. In other European countries supply will grow faster than demand so that there is no detrimental effect on the market for recycled paper and prices will remain stable. These findings are confirmed by Jaakko Pöyry.

(42) As regards the direct job creation, Germany explains that the higher number of jobs in relation to total capacity of the project at issue compared with a project of a competitor may be due to the fact that the installations of Hamburger AG will have a smaller width. Thus capacity will be lower although the same number of employees are needed to operate the installations. Another reason may be that a plant has close links with the parent company so that fewer staff are needed in the field of sales, management control, etc.

(43) Concerning the regional impact of the project, Germany points out that it has provided the Commission with calculations and confirmations by future partner companies. As regards the jobs related to transport, Germany indicates that not only the final product but also the raw materials have to be transported.

V. **ASSESSMENT OF THE AID**

3.1. *Notification requirement*

(44) Total project costs amount to EUR 153 million, the cumulative aid intensity is 35 % of the eligible investment costs and the aid per job created is EUR 193 881. Therefore, according to point 2.1 of the multisectoral framework, the aid is notifiable individually and has to be assessed accordingly.

(45) Prior to any assessment of proposed aid, the multisectoral framework requires that the relevant market first be defined.

3.2. *The relevant market*

(46) The relevant product market for determining the market share comprises the product envisaged by the investment project and, where appropriate, its substitutes.

(47) In the present case, the investment concerns the production of brown and white testliner on the basis of recycled paper. Testliner belongs to the product group of corrugated base paper. Corrugated base paper can be classified into the following three categories: waste-based papers, semi-chemicals and kraftliner. The testliner produced in the plant in question is 100 % recycled fibre based and thus falls into the category of waste-based papers. Semi-chemicals are special products, while kraftliner is made from cellulose (e.g. wood).

(48) In 1999 the share of waste-based papers in total consumption of corrugated base paper amounted to 74 %. Semi-chemicals had a share of 6 % and kraftliner a share of 20 %.

(49) Corrugated base paper comes under NACE code 21.12, which covers the whole range of manufacture of paper and paperboard. Corrugated base paper is an intermediate product used in the manufacture of corrugated paperboard and paper. White and brown corrugated paperboard is used as packaging material and as raw material for packages in several fields.

(50) Some of the testliner produced in the plant in question is processed on site into corrugated paperboard, but most is sold on the market to independent converters and corrugators. The main activity of the new plant is therefore the production of testliner.

(51) In the light of the above, the Commission considers the market for corrugated base paper to be the relevant product market. No separate NACE classification exists for this market.

(52) According to the multisectoral framework, the relevant geographic market comprises usually the EEA or, alternatively, any significant part of it if the conditions of competition in that area can be sufficiently distinguished from other areas in the EEA.

(53) Germany considers that the relevant geographic market comprises at least the EEA. In its view, owing to the location of the new plant on Germany's eastern border, eastern Europe should be considered part of the relevant market as well. Inasmuch as reliable data on the east European market are difficult to obtain and the east European market is tiny compared with the EEA market, the Commission bases its analysis on the EEA market and considers the EEA to be the relevant geographic market.

3.3. *Evolution of the market*

(54) Germany submitted the following data on apparent consumption of corrugated base paper in the EEA based on statistics provided by the European Association of Makers of Corrugated Base Papers ([6]):

	1994	1995	1996	1997	1998	1999	2000	Average annual change 1994 to 1999	Average annual change 1995 to 2000
Volume (million tonnes)	16 873	16 928	17 121	18 307	18 915	19 022	20 193	2,43	1,36 %
Value (EUR million)	5 886	7 740	5 465	5 679	6 178	6 295	8 104	1,35	0,70 %

(55) According to Germany, consumption of corrugated base paper is expected to grow by an annual average of 2,8 % in volume terms in the EEA over the next ten years ([7]).

(56) Data on apparent consumption of corrugated base paper in eastern Europe are difficult to obtain. The market is estimated at around 1,5 million tonnes in 1999 (excluding Russia and the CIS). The average annual growth rate of consumption in volume terms is expected to be around 5,2 % over the next ten years ([8]).

3.4. *Multisectoral framework assessment*

(57) Under the multisectoral framework, the Commission, in order to determine the maximum allowable aid intensity for the proposal to award aid, has to identify the maximum aid intensity (regional aid ceiling) which a company could obtain in the assisted area concerned within the context of the authorised regional aid system valid at the moment of notification.

(58) Owing to the fact that Hamburger AG is to be considered a large undertaking, the maximum allowable aid intensity (R) in the present case is 35 % gross ([9]). The Commission accordingly notes that the proposed aid intensity of 35 % gross corresponds to the admissible aid ceiling for a large undertaking in the region where the project is located.

(59) A range of adjustment factors then have to be applied to that percentage figure in accordance with three specific assessment factors in order to calculate a maximum allowable aid intensity for the project in question, namely the competition factor (T), the capital-labour factor (I) and the regional impact factor (M).

Competition factor (T)

(60) The Commission notes that the market share of Hamburger AG does not exceed 40 % in the relevant market and will not exceed this percentage as a result of the new investment.

(61) The authorisation of aid to companies operating in sectors that are in structural overcapacity poses particular risks of a distortion of competition. Any capacity expansion not offset by capacity reductions elsewhere will exacerbate the problem of structural overcapacity. The sector or subsector will be established at the lowest available segmentation of the NACE classification.

(62) The NACE code corresponding to the production of corrugated base paper is 21.12, which comprises the whole range of manufacture of paper and paperboard. In the light of the above considerations, the Commission finds that the relevant sector is the corrugated base paper subsector.

([6]) Groupement Ondulé Statistique 1991-2000.
([7]) Study by Jaakko Pöyry Consulting.
([8]) Study by Jaakko Pöyry Consulting.
([9]) OJ C 340, 27.11.1999, p. 8.

(63) No separate NACE classification exists for the sub-sector of corrugated base paper. Corrugated base paper accounts for only a small part of the relevant NACE code. The Commission therefore considers that capacity data concerning NACE code 21.12 are not representative for the purpose of appraising the capacity situation for corrugated base paper. Pursuant to point 3.4 of the multisectoral framework, the Commission bases its assessment of the competition factor on the data for apparent consumption and considers whether the investment is taking place in a declining market.

(64) For this purpose the Commission compares apparent consumption of the products in question with the growth rate of EEA manufacturing industry as a whole. A market is deemed to be declining if, over the last five years, the average annual growth rate of apparent consumption of the product is more than 10 % below the annual average of EEA manufacturing industry as a whole, unless there is a strong upward trend in the relative growth rate of demand for the product. The market is deemed to be absolutely declining if the average annual growth rate of apparent consumption over the last five years is negative.

(65) As pointed out above, Germany argues that the Commission should consider a period of five years, i.e. 1996 to 2000, for the assessment of the development of apparent consumption and not a six-year period. The multisectoral framework refers to the average annual growth rate of the last five years. Therefore it is the practice of the Commission to look at apparent consumption over a period of six years in order to calculate five growth rates ([10]).

(66) Germany provided figures on apparent consumption of the products in question for the EEA from 1994 to 2000. According to these data, the average annual growth rate of apparent consumption of corrugated base paper was 1,35 % for the period 1994 to 1999 and 0,70 % for the period 1995 to 2000. The average annual growth rate of EEA manufacturing industry as a whole came to 5,81 % and 6,16 % for the years 1994 to 1999 and 1995 to 2000 respectively. Consequently, in accordance with point 7.8 of the multisectoral framework, the market for corrugated base paper is considered to be in relative decline as the average annual growth rate is significantly (more than 10 %) below that of manufacturing industry as a whole.

(67) As regards Germany's argument that the average annual growth of corrugated base paper made from recycled fibres is above the average annual growth of corrugated base paper as a whole, it should be noted that the Commission defined the relevant market as being that for corrugated base paper, and pursuant to the multisectoral framework it is the evolution of this market that has to be taken into account for the purpose of assessing the competition factor.

([10]) See Commission decision of 8.5.2001, Wacker Chemie; Commission decision of 3.7.2001, Kronoply; Commission decision of 2.10.2001.

(68) In the light of the above considerations, the Commission applies a competition factor of 0,75.

Capital-labour factor (I)

(69) The capital-labour factor aims at adjusting the maximum aid intensity with a view to favouring those projects which effectively and better contribute to the reduction of unemployment through the creation of a relatively large number of new jobs.

(70) According to Germany the project will lead to the creation of 277 permanent jobs, broken down as follows:

Field	Direct jobs
Factory for the production of corrugated base paper	**194**
— Factory management	4
— Production	97
— Mechanics/energy/construction	30
— Buying department	3
— Sales department	17
— Finance/management control	22
— Electrical engineering, measuring and regulating technology	17
— Energy	4
Corrugator	**57**
— Factory management	9
— Production	33
— Buying department	1
— Sales department	14
Transport etc.	**26**
Total	**277**

(71) In its decision to initiate the procedure, the Commission took the view that the project concerning the establishment of a company making recycled paper should be regarded as a satellite project and that it should be included in the calculation of the capital-labour factor. On the basis of the information submitted by Germany in response to the decision to initiate the procedure, the Commission considers that the establishment of the company making recycled paper can be regarded as an independent project.

(72) Germany submitted data on capacities and the number of employees of comparable projects to justify the number of direct jobs created by the project at issue. The Commission considers that this number is reasonable. The adjustment factor for an investment of EUR 153,4 million which results in the creation of 277 jobs is one corresponding to the ratio of EUR 553 790 per job. In accordance with point 3.10.2 of the multisectoral framework, the capital-labour factor (I) for the adjustment of the maximum aid intensity for the project at issue is calculated at 0,8.

Regional impact factor (M)

(73) The regional impact factor takes into account the beneficial effects of a new aided investment on the economies of the assisted regions. The Commission considers that job creation can be used as an indicator of a project's contribution to the development of a region. A capital-intensive investment may create a significant number of indirect jobs in the assisted region concerned and any adjacent assisted region. Job creation in this context refers to jobs created directly by the project together with jobs created by first-tier suppliers and customers in response to the aided investment.

(74) According to the notification, the project will lead to the creation of 356 indirect jobs. They are expected to be created in the following fields:

Field	Indirect jobs
Supply of raw materials	161
Transport	107
Maintenance	26
Energy	15
Training and temporary staff	9
Services etc.	8
Customer	30
Total	**356**

(75) According to Germany the most important source of indirect job creation is the supply of raw materials, i.e. the supply of recycled paper and starch. The total demand for recycled paper by the new plant is expected to amount to [...] tonnes a year.

(76) Germany claimed 109 indirect jobs in the supply of recycled paper created by companies located in Poland and the Czech Republic. Hamburger AG expects to obtain [...] tonnes of recycled paper a year from sources located in these two countries within a radius of 200 km around the new plant. According to Germany and based on calculations provided by a recycling company, an additional demand for [...] tonnes of recycled paper will lead to the creation of 109 jobs in Poland and the Czech Republic. In this context Germany provided a list of five recycling companies located in the Czech Republic and of seven recycling companies located in Poland.

(77) Around one third of the alleged 109 jobs, i.e. around 36 jobs, are expected to be created by suppliers located in the Czech Republic, and around two thirds, i.e. 73 jobs, by suppliers located in Poland.

(78) In addition, the project at issue is expected to lead to the creation of 30 new jobs by a customer of Hamburger AG located in Poland producing corrugated paper products. Owing to the increased security of supply of raw materials and reduced freight charges resulting from the construction of the new plant, the company is expected to expand its production. This is confirmed by a letter of intent provided by the company.

(79) As regards the approximately 36 jobs allegedly created in the Czech Republic, it has to be noted that the Czech Republic has no common border with the *Land* of Brandenburg and is therefore not an adjacent assisted region within the meaning of the provisions. Indirect jobs created with first-tier suppliers in this country are therefore not taken into account for the calculation of the regional impact factor.

(80) In addition, Germany points to the creation of indirect jobs by suppliers of recycled paper and by a customer of the new plant located in Poland. It has to be noted that Poland is not a Member State of the European Union. In Article 63 of the Europe Agreement, which entered into force in February 1994, it is stated that, during the first five years after the entry into force of the Agreement, any public aid granted by Poland must be assessed taking into account the fact that Poland must be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the EC Treaty. This provision has

just been prolonged ([11]). When it initiated the procedure, the Commission doubted whether the jobs created by first-tier suppliers and customers located in Poland could be taken into account for the calculation of the regional impact factor.

(81) In its notification Germany stated that the establishment of a new company making recycled paper at Schwarze Pumpe which will supply [...] tonnes of recycled paper to the new plant would lead to the creation of 40 indirect jobs. According to the latest information submitted and as stated above, this company will now supply at least [...] tonnes of recycled paper, which will lead to the creation of 10 indirect jobs. Therefore 10 indirect jobs related to this project are taken into account.

(82) Twelve jobs are supposed to be created by a company supplying starch.

(83) The second important source of indirect job creation is the field of transport services (107 indirect jobs). According to Germany an amount of [...] tonnes (raw materials, final products, waste disposal) has to be transported every year. The transport of [...] tonnes will be done by the plant's own transport services. The transport of [...] tonnes is expected to be carried out by a private haulage company. Germany provided a letter of intent and estimates by this company pointing out that the transport of [...] tonnes will lead to the creation of 70 new jobs (51 permanent full-time drivers and 19 office workers and mechanics). The remaining [...] tonnes are expected to be transported by railway. According to estimates by Germany, which have been confirmed by a private railway company, this will lead to the creation of 33 jobs. Moreover, Germany presented estimates by a private company that it will create four jobs in shunting activities related to the operation of the new plant.

(84) The Commission considers that the presented estimates of indirect jobs created in the field of transport services are reasonable. However, when it initiated the procedure it doubted whether they would all be created in adjacent assisted regions. Germany admits that in the field of rail transport not all jobs may be created in adjacent assisted regions, but at least 10 will. Therefore in the field of transport 84 indirect jobs are taken into account for the calculation of the regional impact factor.

(85) A further 26 jobs originate from the permanent maintenance of the facilities, 15 from the supply of energy, nine from training and temporary staff in case of a production standstill and eight from services related to the activities of the new plant (cleaning, catering, offices supplies, etc.).

([11]) Decision No 2/2001 of the EU-Poland Association Council of 7 May 2001, OJ L 215, 9.8.2001, p. 38.

(86) If the jobs created by suppliers and customers in Poland (73 for the supply of recycled paper and 30 by a customer) are not taken into account, indirect job creation amounts to 164 jobs. If these jobs are taken into account, a total of 267 indirect jobs will be created. In accordance with point 3.10.3 of the multisectoral framework and compared with the 277 direct jobs created by the project, these figures correspond to a medium degree of indirect job creation (between 50 % and 100 %) for each job created by the aid recipient in both cases. The regional impact factor is consequently set at 1,25.

Maximum allowable aid intensity

(87) In view of the foregoing, the maximum allowable aid intensity is calculated as follows: 35 % × 0,75 × 0,8 × 1,25 = 26,25 % gross. The proposed aid of EUR 53,7 million, equivalent to an aid intensity of 35 % gross, that Germany intends to grant to Hamburger AG for its investment in Schwarze Pumpe, Brandenburg, is therefore not in conformity with the maximum allowable aid intensity calculated on the basis of the multisectoral framework.

3.5. Ex post *monitoring*

(88) In view of the sensitive nature of the large mobile investments involved, it is essential that a mechanism exists which helps to ensure that the level of aid actually disbursed to the recipient conforms to the Commission decision.

(89) For each aided project approved by the Commission under the multisectoral framework, the Commission requires either that any aid contract between the relevant authority of the Member State and the aid recipient contains a reimbursement provision in the event of non-compliance with the contract or that the final significant payment of the aid (e.g. 25 %) will be made only when the aid recipient has satisfied the Member State that the execution of the project is in compliance with the Commission decision and on condition that the Commission, on the basis of information provided by the Member State concerning implementation of the project, has, within 60 working days, indicated its agreement or raised no objections to the final payment of the aid.

(90) The Commission notes that the proposed decision to grant aid to Hamburger AG contains a reimbursement provision in the event of non-compliance by the aid recipient with the decision granting the aid.

(91) The Commission notes that the final significant payment of the aid will be made only when Hamburger AG has satisfied the Member State that the execution of the project is in compliance with the Commission decision.

(92) The Commission further notes that the undertaking concerning *ex post* monitoring given by Germany complies with the obligations laid down in point 6 of the multisectoral framework, in particular as regards the obligation to communicate to the Commission a copy of the decision granting the aid as well as an annual report on the project and the other information and documents to which point 6.4 of the multisectoral framework refers.

VI. **CONCLUSION**

(93) In the light of the above considerations the Commission concludes that the part of the notified aid exceeding the maximum allowable aid intensity calculated for this project in accordance with the provisions of the multisectoral framework does not fulfil the conditions to be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany plans to grant to Hamburger AG, amounting to EUR 53 685 648, is incompatible with the common market to the extent to which it exceeds the maximum allowable aid intensity for the project at issue of 26,25 %.

The aid may accordingly not be granted above an intensity ceiling of 26,25 %.

Article 2

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

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 April 2002.

For the Commission

Mario MONTI

Member of the Commission