COMMISSION DECISION

of 12 March 2002

on the State aid implemented by Germany for Ingenieur- und Gewerbebau GmbH (IGB)

(notified under document number C(2002) 912)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/897/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 fax of 29 December 1999, registered by the Commission on 10 January 2000 as aid NN 2/2000, the German Government informed the Commission of financial measures to assist Ingenieur- und Gewerbebau GmbH (hereinafter IGB). Given that the financial measures had already been granted to the company, they were registered as unnotified State aid (NN) in accordance with Article 88(3) of the EC Treaty.

(2) By letter dated 29 September 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.

(3) 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. The case was then registered as C 66/2001. No comments were received from third parties. Comments were received from Germany on 11 November 2001.

II. DESCRIPTION

(4) The case concerns financial measures to assist the restructuring of an SME active in the building sector in Thuringia. On 1 January 1997 IGB was merged with HAB, a company owned by IGB's shareholders, and subsequently traded under the name of HAB. Some basic economic data are given below:

Progress/output

(in DEM '000)

	1996 (IGB)	1997 (HAB)	1998 (HAB)	1999 (HAB)
Turnover	1 655	10 500	9 175	5 404
Net profit	3	44	22	23
Employees	25	85	85	82

(5) On 28 March 2001 HAB filed for bankruptcy.

1. The restructuring

(6) The restructuring period lasted from 1996 to 2000. The restructuring costs amounted to DEM 2 610 000.

2. State financial measures to assist the restructuring

(7) According to the information in the Commission's possession, the following measures were granted from public sources to assist the restructuring of:

[1] OJ C 330, 24.11.2001, p. 5.
[2] See footnote 1.

(a) a DEM 580 000 grant from the BvS (successor to the Treuhand privatisation agency);

(b) a 80 % deficiency guarantee from the Land of Thuringia amounting to DEM 1 200 000 and covered by an approved aid scheme ([3]);

(c) a one-off investment allowance of DEM 1 700 granted under an approved investment allowance scheme ([4]).

(8) According to the information provided, a loan of DEM 500 000 at 5,5 % from the European Recovery Programme (ERP) and a loan of DEM 250 000 at 5,5 % from the Thuringia Development Bank (TAB) were granted. No further information on these measures could be obtained.

3. **Financial contributions from other sources**

(9) Germany indicated the following contributions as contributions from the beneficiary or from external commercial sources:

(a) investor's own capital: DEM 170 000;

(b) a 20 % personal guarantee from the investor amounting to DEM 300 000;

(c) joint liability of the investors for 80 % of the loans, i.e. some DEM 920 000;

(d) decision by the workforce to forgo the Christmas allowance, representing DEM 345 000.

(10) Germany is of the opinion that these contributions have to be regarded as contributions from the beneficiary from its own or external commercial sources to the restructuring totalling DEM 1 735 000, i.e. 66 % of the restructuring costs.

4. **Reasons for initiating the procedure under Article 88(2) of the EC Treaty**

(11) The Commission expressed the following doubts as to the compatibility of the aid with the common market:

(a) the ERP loan of DEM 500 000 and the TAB loan of DEM 250 000 possibly contained aid elements; an information injunction was thus issued;

(b) the restructuring plan was possibly not suited to restoring the long-term viability of IGB/HAB since the market conditions in the sector were very difficult and the company was a small company with limited resources;

(c) the aid to IGB possibly distorted competition unduly since IGB operated in a sector characterised by overcapacity and the restructuring should have involved some reduction of capacity; despite a request for information, Germany did not provide any details of the capacity situation at IGB/HAB. Accordingly, the Commission issued a further information injunction;

(d) the aid was possibly not in proportion to the restructuring costs and benefits since, contrary to the opinion of the German authorities, the beneficiary's contribution appeared to be DEM 240 000, i.e. 9,2 % of the restructuring costs.

III. **COMMENTS FROM GERMANY**

(12) In its reply to the decision to initiate the procedure, Germany informed the Commission that the local court in Gera refused to set the bankruptcy proceedings in motion because the remaining assets were insufficient to cover the administrative costs. The company was *ipso jure* dissolved. According to Germany, a continuation of the business in any form whatsoever is thus ruled out in practice.

(13) No further comments concerning the points raised in the decision to initiate the procedure were made since Germany is of the opinion that, in view of developments, this would serve no purpose.

IV. **ASSESSMENT OF THE AID**

(14) Article 87(1) of the EC Treaty applies to all the financial measures granted by Germany to the recipient undertaking since they confer economic benefits on a specific undertaking which it would not have received from commercial sources. The measures therefore constitute State aid likely to distort competition. Given the nature of the support provided and the existence of inter-State trade within the common market in the sector in which the recipient undertaking was active, the financial measures granted fall within the scope of Article 87(1).

([3]) Bürgschaftsrichtlinie der Thüringer Aufbaubank, SG(96)D/11696 of 27 December 1996 (N 117/96).

([4]) Investitionszulage für die neuen Länder, SG(95)D/17154 of 27 December 1995, as amended by SG(96)D/3794 of 12 April 1996 (N 494/A/95).

(15) With respect to the aid allegedly granted under approved schemes, the Commission notes that, according to the information available to it, these measures comply with the conditions of those schemes and need not be further assessed in this decision.

(16) In addition to the BvS grant of DEM 580 000, the ERP loan of DEM 500 000 and the TAB loan of DEM 250 000 have also to be considered as ad hoc aid for the restructuring since no other information is available.

(17) The Commission further notes that Germany failed to comply with its obligation under Article 88(3) of the EC Treaty. From a formal viewpoint, the aid is therefore unlawful. This does not necessarily mean, however, that it is incompatible with the common market. As a consequence, the individual measures must be examined under Article 87 of the EC Treaty.

(18) Since the other derogations provided for in Article 87(2) and (3) of the EC Treaty do not apply, the measures are assessed under Article 87(3)(c) and under the 1994 guidelines on rescue and restructuring aid ([5]) (the guidelines). The guidelines are applicable in the present case since all the aid measures were granted before the 1999 guidelines ([6]) took effect.

(19) Since no comments on the substance of the case were received in the course of the formal investigation procedure, the doubts raised in the decision to open the procedure have not been allayed. Accordingly, on the basis of the available information, the Commission must conclude that:

(a) the restructuring plan was not suited to restoring the long-term viability of HAB;

(b) the aid for IGB unduly distorted competition;

(c) the aid was not in proportion to the restructuring costs and benefits.

(20) Consequently, the aid for IGB does not comply with the criteria laid down in the guidelines and has to be considered incompatible with the common market.

(21) Where an unlawfully granted aid measure has been found to be incompatible with the common market, the Commission is required under Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([7]) to order recovery of the aid unless this would be contrary to a general principle of Community law. According to the information provided by Germany, the beneficiary company has been dissolved by order of the local court in Gera on account of a lack of assets and any continuation of its activities in any form whatsoever is ruled out. The Commission has therefore decided that an order for recovery of the aid in the present case would serve no purpose.

V. **CONCLUSION**

(22) The Commission finds that Germany has unlawfully implemented financial measures for Ingenieur- und Gewerbebau GmbH (IGB) in breach of Article 88(3) of the Treaty. On the basis of its assessment, it concludes that the aid is incompatible with the common market as it does not fulfil the conditions set out in the guidelines. However, in view of the facts of the case, recovery of the aid should not be required under the second sentence of Article 14(1) of Regulation (EC) No 659/1999,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Ingenieur- und Gewerbebau GmbH (IGB), amounting to EUR 680 018 (DEM 1 330 000), is incompatible with the common market.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 March 2002.

For the Commission

Mario MONTI

Member of the Commission

([5]) OJ C 368, 23.12.1994, p. 12.
([6]) OJ C 288, 9.10.1999, p. 2.
([7]) OJ L 83, 27.3.1999, p. 1.