COMMISSION

COMMISSION DECISION

of 21 December 2000

on the State aid implemented by Germany for Förderanlagen- und Kranbau Köthen GmbH and Kranbau Köthen GmbH

(notified under document number C(2000) 4403)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/264/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 9 December 1997, Germany informed the Commission of aid from the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) and the *Land* of Saxony-Anhalt for Förderanlagen- und Kranbau Köthen GmbH and Kranbau Köthen GmbH. The aid was registered under No NN 191/97.

(2) By letter dated 16 March 1998, the Commission informed Germany that it had decided to initiate the formal investigation procedure in respect of the aid and enjoined Germany to submit information by means of an information injunction.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. In response to the initiation proceedings, the Commission received comments from interested parties which were forwarded to Germany.

(4) By letters dated 26 and 28 August 1998, Germany informed the Commission of further aid to Kranbau Köthen GmbH. As the decision initiating the formal investigation procedure contained an extension clause, this new aid was also included in the same procedure.

(5) The case was discussed with representatives of the German authorities in Berlin on 13 November 1998. Further information was submitted by letter dated 3 March 1999. The case was discussed again with the German authorities during a meeting in Berlin on 29 March 1999, at which the German authorities requested that examination of the case be delayed until further information was submitted to the Commission. This information was received by letter dated 21 May 1999 and by letter dated 26 May 1999.

(6) The Commission received further information from Germany on 1 July 1999 and by letters dated 12 July, 10 September, 29 September and 6 October 1999. The case was discussed again with the German authorities in Brussels on 21 October 1999, and the Commission sent Germany a letter outlining the main problems with the case on 26 October 1999. Final information was submitted by Germany on 24 November 1999, 21 March, 27 April, 18 May, 30 June, 26 July and 27 September 2000.

[1] OJ C 338, 6.11.1998, p. 4.

[2] OJ C 338, 6.11.1998, p. 4.

II. **DESCRIPTION**

The recipient undertaking

(7) The aid beneficiary is an economic unit consisting of two legal persons each separately constituted under German company law [1]: Förderanlagen- und Kranbau Köthen GmbH (FKK) and Kranbau Köthen GmbH (Kranbau Köthen or KK).

(8) FKK is based in Köthen, Saxony-Anhalt. It designed and manufactured cranes and industrial conveyancing systems. FKK was privatised in December 1992 after an open public tender procedure by sale to the Ludwig Willenborg Verwaltungsgesellschaft mbH & Co., KG. This was the first privatisation of the recipient undertaking. FKK filed for bankruptcy proceedings on 22 July 1997 and proceedings were opened on 1 September 1997.

(9) Kranbau Köthen is based at the same site as FKK. It designs and makes specialist cranes, has 169 employees and […] (*). It is wholly owned by FKK. Prior to the transfer of business and assets, Kranbau Köthen was a commercially inactive 'shell company' set up on 28 June 1997. Kranbau Köthen took over assets as well as those contracts of FKK which had not yet been started.

(10) In 1998, Kranbau Köthen was, subject to specific conditions, privatised to the Georgsmarienhütte Group (GMH Group) (described below), which is not an SME. Legal ownership of the shares has remained with FKK. Because of its relation to the GMH Group, any aid to Kranbau Köthen cannot be assessed as aid to an SME [2]. Several of the State aid measures implemented for Kranbau Köthen relate to the privatisation to the GMH Group.

The prospective new owner of Kranbau Köthen

(11) The prospective new owner of Kranbau Köthen is the GMH Group. This group is active in the production, processing and further processing of iron, steel, stainless steel and other raw materials and supplies. The sole shareholder and manager of the group is Dr Jürgen Großmann. The Group has plants in Germany and Austria, two scrap recycling companies as well as several steel works within the Community. According to Germany, it has a workforce of some 5 000 and […]*. It is not an SME.

Economic development of the recipient undertaking since 1992

(12) Germany states that FKK began experiencing difficulties in 1993 and 1994. The company made continuous losses from 1994 onwards. It suffered from the following problems: mismanagement, overstaffing and involvement in loss-making activities such conveyor systems manufacturing, inadequate financial resources on the part of the investor and inadequate implementation of the restructuring plan. In 1995, these difficulties led to the BvS and the *Land* of Saxony-Anhalt intervening in the restructuring by way of concerted action.

(13) Germany states that basic preconditions for successfully restructuring FKK were the selection of a new industrial partner and the replacement of the existing management. Negotiations with a Finnish company came to nothing. The shareholder also refused to comply with the demand of the BvS that the management of FKK be replaced. This resulted in 1996 in the target turnover for FKK […]* not being achieved, but with full overhead costs […]* being incurred. Steps to reduce the workforce meant financing redundancy measures […]*.[…]*. In 1997, FKK went bankrupt.

(14) In 1997, in the course of FKK's bankruptcy, Kranbau Köthen was set up as a subsidiary of FKK to take over its potentially profitable crane construction operation. According to information submitted by Germany in November 1999, a restructuring plan for the crane construction operation of FKK had already been prepared in 1997 by the administrator in bankruptcy of FKK. The restructuring measures were intended to address the difficulties which were inherent in the ongoing economic operation and which remained despite both the creation of a new legal personality for the undertaking and the settlement of outstanding liabilities. Basic capital was provided to cover acquisition of key assets of the crane construction operation from FKK and to carry out contracts taken over from FKK.

(15) The main element concerned a holding phase during which the crane operation was removed from the main body of FKK and set up on a stand-alone basis provided with basic capital. Preliminary restructuring measures were also implemented during this period and an industrial partner was sought. Once a suitable industrial partner, i.e. the GMH Group, had been found in August 1998, supplementary steps were introduced to complete the restructuring plan.

(16) The plan consists of the following steps: Kranbau Köthen is to concentrate on the design and manufacture of specialist non-mobile cranes (i.e. for use on specific sites). This includes the design and construction of entire cranes as well as the manufacture and supply of spare parts and also the provision of associated services such as converting cranes. The restructuring is to last from 1997 to 2001. The key measures include cost reduction, continued reduction of the workforce, building up the necessary financial means for financing contracts, acquisition of the basic assets from FKK to carry on the crane construction operation, acquisition of other industrial property rights to allow Kranbau Köthen to develop and

[1] The Court of Justice has stated: 'In competition law, the term 'undertaking' must be understood as designating an economic unit... even if that economic unit consists of several persons natural or legal' (Case 170/83 *Hydrotherm* v *Andreoli* [1984] ECR 2999); similarly Case T-234/95 DSG Dradenauer Stahlgesellschaft, judgment of the Court of First Instance of 29 June 2000, at paragraph 124 (not yet reported).

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

[2] See Community guidelines on State aid for small and medium-sized enterprises, OJ C 213, 23.7.1996, p. 4.

modernise its product range, and, finally, improving the facilities taken over from FKK which were in part run down and obsolete. In addition, these organisational measures are accompanied by auxiliary financial restructuring such as provision of basic capital and finance to carry out contracts.

(17) According to the German authorities, KK will also profit from its integration into the GMH Group, which will provide KK with the necessary and crucial experience in production and distribution as well as training.

(18) The envisaged turnover for 2000 and for 2001 will most likely be reached, in particular in the light of the recent successful acquisition of three large orders […]*. According to the information submitted in September 2000, there are now enough orders to fully employ the production capacity of KK until mid-2001.

(19) The costs of the restructuring between 1997 and 2001 are as follows:

Table 1

Costs of restructuring Kranbau Köthen

(in DEM million)

Measure	
[...] (*)	[...] (*)
[...] (*)	[...] (*)
[...] (*)	[...] (*)
[...] (*)	[...] (*)
[...] (*)	[...] (*)
[...] (*)	[...] (*)

(20) […]*. The viability of this restructuring plan has in the meantime been further validated by the most recent audited annual report of KK. […]*.

(21) The Commission notes that its assessment has to be based on the data available at the time the restructuring measures for KK were implemented, i.e. in 1997. With the subsequent entry of the new investor, the GMH Group, the initial restructuring plan necessarily underwent substantial modifications reflecting this new situation. Therefore the following figures, in so far they are actual ([1]), already take note of these changes, whereas the forecast data for the period 2000 to 2002 are still based on the restructuring plan as it stood in 1997. All figures are in DEM million.

([1]) The figures for 1998 and 1999 are based on the company records as testified by independent auditors.

Table 2

Financial performance of Kranbau Köthen ([1])

(in DEM million)

Restructuring plan	1998 (actual)	1999 (actual)	2000 (planned)	2001 (planned)	2002 (planned)
[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)
[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)
[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)
[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)	[...] (*)

([1]) The table contains selected data only and is not arithmetically complete.

FINANCE

Financial measures for FKK (first aid package)

(22) The communication informing the Commission of the measures for FKK lists measures by the Treuhand Anstalt (Treuhand) for FKK prior to and in the course of its privatisation in 1992. Between 1993 and 1994 inadequate implementation of an earlier restructuring plan led to serious cash flow problems. At the start of 1995 the continued existence of FKK was highly uncertain. Therefore, in March 1995, a package of financial measures was agreed between the BvS, the *Land* of Saxony-Anhalt and the then private investor. The following measures were implemented for FKK up to and including 1995:

Table 3

State financial measures implemented for FKK

(in DEM million)

	Information as at 28.8.1998
A. *Before 1992 privatisation*	
1. Loans for the social plan	14,243
2. Guarantees	37,262
3. Waiver of credits	45,921
4. Loans	5,000
	Subtotal: 102,426
B. *In context of 1992 privatisation*	
5. Takeover of impending losses	6,963
6. Takeover of costs of social plan	1,780

(in DEM million)

	Information as at 28.8.1998
7. Waiver of loans for the social plan	14,243
8. Direct investment grants	0,569
9. Loss cover	13,655
	Subtotal: 37,210
C. *In the 1995 concerted action*	
10. Loans	8,200
11. Guarantees [1]	1,626
12. Waiver of liabilities	6,800
	Subtotal: 16,626
Total	141,636

[1] These guarantees are stated to be a prolongation of the guarantee awarded before the privatisation in 1992.

Financial measures implemented for Kranbau Köthen (second aid package)

(23) In its communication of 9 December 1997, Germany submitted initial information concerning State financial measures implemented for KK from 1997 onwards. According to the latest information, the second aid consists of DEM 30,9 million and is intended to cover the restructuring period from 1997 to 2001:

Table 4

State financial measures implemented for Kranbau Köthen

(in DEM million)

Measure	
Investment grant — BvS and *Land* of Saxony-Anhalt	10,500
Grant for taking over the assets of FKK	5,800
Credit/finance facilities	11,500
Restructuring aid total	27,800
Other aid: *Land* 'Joint task' resources and investment allowances	3,100
Total	30,900

Financial measures from private sources implemented for Kranbau Köthen

(24) A private contribution first became possible on conditional privatisation of Kranbau Köthen to the GMH Group in July 1998. On the basis of the information supplied in November 1999 and thereafter, the private contribution to the costs of the new restructuring plan is stated to be DEM 3 million by way of cash contribution, the arranging of a loan of DEM 1,879 million for Kranbau Köthen and the provision of DEM 9,5 million by way of guarantee facilities (totalling DEM 14,379 million) These contributions were provided without State aid.

(25) Germany also asserts that there are additional private contributions from the workforce of Kranbau Köthen consisting of a waiver of wage and salary payments amounting to DEM 3 million as well as a know-how transfer from the GMH Group to Kranbau Köthen said to be worth DEM 3,4 million.

RELEVANT MARKET

(26) Kranbau Köthen develops, plans and produces immobile specialist cranes and the relevant spare parts and conversions on a one-off basis.

(27) The Commission does not have any precise information on the niche market for immobile specialist cranes on which KK operates. There is at any rate no evidence of overcapacity on this niche market. The Commission notes that the general crane market is fiercely competitive. There were grounds to believe there may be overcapacity in this larger sector [1]. According to information provided to the Commission by the German Statistisches Bundesamt (Federal Office for Statistics), turnover in the overall market for cranes and conveyancing systems in Germany grew strongly from DEM 20,5 billion in 1998 to DEM 21,9 billion in 1999.

(28) The market for specialised cranes covers at least the European Economic Area [2]. There is lively cross-border trade within the Community in this sector.

GROUNDS FOR INITIATING THE FORMAL INVESTIGATION

(29) The formal investigation procedure was initiated because the nature and purpose of the aid granted to Kranbau

[1] See page 57, 'Statistisches Handbuch für den Maschinenbau' Ausgabe 1997, prepared by the Verband Deutscher Maschinen- und Anlagenbau e.V.

[2] See the Commission Decision of 17 August 1999 in Merger Case No IV/M.1594 — Preussag/Babcock Borsig — recital 16.

Köthen and described by Germany were initially unclear and, insofar as the information was clear, the aid did not seem to comply with the criteria set out in the Guidelines on State aid for rescuing and restructuring firms in difficulty (the Guidelines) [1]. In initiating the formal investigation procedure, the Commission also stated its concern that there might be overcapacity in the sector.

(30) As far as an assessment as rescue aid is concerned, several measures did not comply with the conditions set out in the Guidelines because at the time of the award the generally accepted maximum period of six months was clearly exceeded by two of them. No explanation was offered which could be taken into account in granting an exception.

(31) As far as an assessment as restructuring aid is concerned, there was initially no analysis of the problems which gave rise to the difficulties, nor any indication of a restructuring plan to address them. There was no information as to capacity development, and the absence of an investor made it hard to ascertain whether the company was not being kept artificially alive. This also meant that, at the time, there was no sufficient private contribution to the restructuring costs.

III. COMMENTS FROM INTERESTED PARTIES AND GERMANY

(32) In April 1997, a Member of the European Parliament forwarded to the Commission a complaint against FKK from a west German competitor. The complaint was withdrawn without explanation on 1 April 1999. The publication of the letter to Germany in the *Official Journal of the European Communities* in November 1998 elicited another complaint against Kranbau Köthen from another west German competitor. This complaint was also withdrawn without explanation on 27 April 1999. Comments were also received from a Dutch customer of Kranbau Köthen in its support.

(33) The abovementioned comments were forwarded to Germany. By letter dated 3 March 1999, Germany rejected the complaints and referred to their withdrawal. In November 2000, two further letters from third parties were received. Because they were received so late in relation to the one-month deadline set by the initiation of the formal investigation procedure, the Commission was unable to take them into account for the purposes of this Decision.

IV. ASSESSMENT

Applicability of Article 87(1) of the EC Treaty

(34) Article 87(1) of the EC Treaty provides that State aid granted to specific undertakings is incompatible with the common market where such aid affects trade between Member States and where there is an actual or threatened distortion of competition in the common market.

(35) Germany has demonstrated to the Commission in sufficient detail that two measures granted by the BvS as part of the concerted action in 1995, namely a loan worth DEM 8,2 million and the waiver of liabilities worth DEM 6,8 million, were intended to settle a claim against the BvS. Under a specific clause in FKK's privatisation agreement of 1992, the BvS could in certain circumstances be held responsible for not having providing the privatised company with all the capital resources provided for in the privatisation contract. In 1994, it emerged that this had been indeed the case, and the missing capital resources were estimated at DEM 15 million. This estimate was later confirmed by outside experts.

(36) Therefore, in order to avoid a legal challenge, the BvS in 1995 provided a total of DEM 15 million to FKK by way of the two measures mentioned above. The Commission concludes that the settling of a reasonable and justified claim can be regarded as normal commercial behaviour. Consequently, these two measures adopted in 1995 do not constitute State aid.

(37) All the remaining resources made available by Germany to the recipient undertaking as part of the first and second aid packages involve conferring economic benefits on a specific undertaking in difficulty which it is unlikely to have received from private commercial sources. The measures are therefore liable to constitute aid. By its nature such aid is likely to distort competition. Given the nature of the assistance and the existence of cross-border trade within the common market in the relevant markets in which the recipient undertaking was and is active, whether as FKK or Kranbau Köthen, the relevant aid — with the exception of the two aid measures worth DEM 15 million implemented in 1995 — falls within the scope of Article 87(1) of the EC Treaty.

State aid falling within the scope of Article 87(1) of the EC Treaty which is compatible with the common market

(38) Measures falling within the scope of Article 87(1) of the EC Treaty are generally incompatible with the common market unless they fall within the scope of the derogations in either Article 87(2) or Article 87(3) of the EC Treaty. In any event, Member States are obliged under Article 88(3) to notify such aid to the Commission before it is granted.

[1] OJ C 368, 23.12.1994, p. 12. A new version of the Guidelines was published in 1999 in OJ C 288, 9.10.1999, p. 2. The new Guidelines are not applicable here, since the aid measures were implemented before the new Guidelines were published (see section 7 of the 1999 Guidelines).

(39) In this case Article 87(3) is relevant. It gives the Commission discretionary power to permit State aid in certain specified circumstances. These include, under Article 87(3)(c), aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In the guidelines, the Commission spelled out in detail the preconditions for the application of the derogation provided for in Article 87(3)(c) of the EC Treaty.

(40) Article 87(3)(a) also empowers the Commission to approve State aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The new German *Länder* fall within the scope of this provision ([1]). In this case, however, the main purpose of the aid is to rescue or restructure a company in difficulty rather than to promote the economic development of a region. Even if a successfully rescued or restructured company may contribute to the development of a region, the aid should be assessed under Article 87(3)(c) rather than under Article 87(3)(a).

Financial measures in support of FKK — first aid package

(41) According to Germany's letter of 28 August 1998, FKK received a total of DEM 141,636 million under the first aid package, including the DEM 15 million granted in 1995 found not to constitute State aid. The Commission's assessment on the basis of the information at its disposal is as follows:

(42) As regards the loans for the social plan totalling DEM 14,243 million granted before the 1992 privatisation, the Commission notes that the obligations a company itself has under employment legislation or collective agreements to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources, therefore any contribution by the State to these costs must be counted as aid. In this sense, the loans constitute aid.

(43) However, the loans and guarantees awarded to Kranbau Köthen before its privatisation under the Treuhand-Regime NN 108/91 ([2]) comply with the terms of this approved scheme ([3]), regardless of their amounts.

(44) The waiver of credits amounting to DEM 45,921 million accorded before the privatisation in 1992 relates to old debts (Altschulden) dating from before 1 July 1990 and are therefore not considered aid, according to the Treuhand-Regime NN 108/91 ([4]).

(45) As regards the measures implemented under the privatisation in 1992, the Commission notes that the direct investment grants are based on an approved aid scheme ([5]) and therefore need not be assessed by the Commission. As concerns the waiver of loans for the social plan, these waivers relate to aid measures, the repayment of which had never been envisaged, given the difficult situation of the company. Since loans and guarantees for the rescue and restructuring of firms in difficulty have an intensity of 100 %, the waiver of repayment of those measures can be deemed not to constitute new aid.

(46) The rest of the aid measures implemented under the privatisation are stated to be covered by the Treuhand-Regime E 15/92, a scheme approved by the Commission ([6]). According to the information available to the Commission, the company was sold to the highest bidder following an open, unconditional bidding procedure. No information on the purchase price has been provided. However, since loss cover and the takeover of impending losses was agreed to in the privatisation, the Commission considers that the company was sold at a negative price ([7]). In this case, since the company did not have more than 1 000 employees, according to the information submitted by Germany, the aid measures comply with the terms of this scheme ([8]) regardless of their amounts.

(47) The only measure implemented in the course of the concerted action of 1995 which might constitute State aid is the extension of an existing guarantee. This guarantee was originally provided before the privatisation in 1992 and covered by the relevant Treuhand-Regime. Since this measure fell under an approved scheme and was anyway considered to have an intensity of 100 % of the guaranteed amount, the Commission does not consider the prolongation to be additional aid.

([1]) See the Commission decision regarding aid case N 464/93.
([2]) SG (91) D/17825, 26.9.1991.
([3]) The Treuhand-Regime NN 108/91 covers loans and guarantees granted to companies by the Treuhand as a first step towards their privatisation and does not provide for any thresholds.
([4]) The Treuhand-Regime NN 108/91 states that 'The waiving of claims on companies dating from before 1 July 1990 and which are the result of arbitrariness in the previous planned economy does not constitute State aid'.
([5]) Investment grants (Investitionszuschüße) granted under the joint Federal Government/Länder programme for improving regional economic structures (Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur). Measures under that scheme are deemed to be regional investment aid and have been approved under the derogation in Article 87(3)(a) of the EC Treaty.
([6]) SG (92) D/17613, 8.12.1992.
([7]) Point four of the Treuhand-Regime E15/92 states: 'It is the Commission's opinion that negative prices may involve a grant with which the buyer can (…) cover losses of the company in question'.
([8]) Point three of the Treuhand-Regime E15/92 says that awards of loans and guarantees had to be notified, in the case of privatisations of companies at a negative price, when the undertaking employed more than 1 000. The information provided by Germany states that the company had a workforce of 718 in 1992. The measures were thus covered by this scheme.

Financial measures in support of Kranbau Köthen — second aid package

(48) The second aid package for Kranbau Köthen was intended for restructuring the undertaking between 1997 and 2001. The conditions for eligibility for restructuring aid are set out in section 3.2 of the Guidelines. The aid in question satisfies all of the conditions contained therein:

Restoration to long-term viability

(49) A crucial precondition for the application of the guidelines is that long-term viability must be restored within a reasonable period and on the basis of realistic assumptions. The restructuring plan addresses the problems of the crane construction operation of the recipient undertaking. The various internal restructuring measures as described above have effectively reduced the production costs of KK. The company has also benefited from the external factor of an improved market situation.

(50) KK will also benefit considerably from its integration into the GMH Group, which will provide it with the necessary and crucial experience in production and distribution as well as training. The integration of KK into the GMH Group will also give KK access to new clients, both within that group and outside, as well as access to finance. The fact that new clients will increasingly be won through KK's integration into the GMH Group has in the meantime been proven by recent information on the company's order book and profitability.

(51) The actual and projected performance data in conjunction with the improved order book of Kranbau Köthen support the conclusion that viability can now be restored within a reasonable period. This condition is therefore satisfied.

No undue distortions of competition

(52) Aid beneficiaries may not use aid to increase capacity and, in the event of sectoral overcapacity, a capacity reduction is expected. At the time of the initial notification there was concern about indications of potential overcapacity in the crane construction sector. As the restructuring already began during the bankruptcy of FKK, the productive capacity is relevant. The modernisation of the crane construction operation has been achieved by increasing efficiency, but without increasing the overall production capacity of the recipient undertaking.

(53) Also it is noted that KK did not take over all of the production lines of its predecessor company FKK, but only some selected ones. Hence, both the site and workforce of the recipient undertaking have decreased. Therefore, overall capacity has already been effectively reduced by the non-continuation of several of FKK's former production facilities.

(54) Production bottlenecks will remain, in particular in the cutting area, which determines the number of cranes which can be completed. Given the nature of the operation, i.e. the supply of individual, made-to-order cranes and parts, the capacity of Kranbau Köthen is hard to quantify. However, as was stated earlier, there is no evidence of overcapacity on the niche market on which KK operates.

(55) Finally, the Commission notes that on the market on which it operates, KK faces competition from subsidiaries of much larger firms. The aid to KK should therefore have only minimal distortive effects. In the light of the benefits, the restructuring aid under the second aid package will therefore not result in any undue distortions of competition. This condition is therefore satisfied as well.

Proportionality of aid

(56) The aid must be restricted to the minimum required to carry out the restructuring and be in relation to the overall restructuring costs. The beneficiary must make a substantial contribution to the costs of restructuring the firm in difficulty. Where the restructuring aid is granted to a firm in difficulty which owes its entire existence to State funding, this contribution must come from external private funding, since otherwise, contributions from the immediate aid beneficiary may derive indirectly from aid.

(57) Germany's assertion that management costs […]* have been transferred from the GMH Group to Kranbau Köthen cannot be accepted as a reduction of the restructuring costs faced by Kranbau Köthen. Although Germany describes the involvement of GMH management personnel as a 'know-how' transfer, it is unclear to what extent any know-how, industrial property or intellectual property has been transferred or licensed to Kranbau Köthen. The transfer appears rather to consist of services provided. However, management costs incurred by one company in the course of acquiring another company and integrating it into the parent company are not generally regarded as costs of restructuring the target company.

(58) The contribution by the workforce in terms of reduced salaries and wages cannot be regarded as a significant private contribution. Nevertheless, the Commission welcomes these measures as they demonstrate the commitment of the workforce to make the restructuring a success, while at the same time helping to reduce the financing needs of the company.

(59) In any event, the value of the other elements, in particular the cash contribution and financial facilities provided by the GMH Group involve a investor contribution […]*. This is a significant contribution. This condition is therefore satisfied.

Full implementation of the restructuring plan

(60) The company in receipt of restructuring aid must fully implement the restructuring plan submitted to and accepted by the Commission. The implementation of the plan will be monitored through annual reports submitted by Germany to the Commission.

V. **CONCLUSION**

(61) The Commission finds that measures implemented for FKK in 1995 and amounting to DEM 15 million do not constitute State aid. The Commission considers that Germany unlawfully implemented the second aid package registered as aid C 15/98 (ex NN 191/97) in breach of Article 88(3) of the EC Treaty. However, the second aid package, although unlawfully implemented, fulfils the criteria set out in the guidelines on restructuring aid and is therefore compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The ad hoc restructuring aid which Germany has implemented for the economic unit Förderanlagen- und Kranbau Köthen GmbH and Kranbau Köthen GmbH, amounting to DEM 27,8 million (EUR 14,21 million), is compatible with the common market, subject to the conditions set out in Article 2.

This aid consists of the following measures:

(a) grants from the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) and the *Land* of Saxony-Anhalt amounting to DEM 16,3 million (EUR 8,33 million).

(b) a back-to-back guarantee by the BvS amounting to DEM 11,5 million (EUR 5,88 million).

Article 2

1. The restructuring plan must fully be implemented. All necessary measures shall be taken to ensure that the plan is implemented.

2. Germany shall submit an annual report to the Commission on the implementation of the plan.

3. If the conditions set out in paragraphs 1 and 2 are not fulfilled, the aid may be recovered.

Article 3

This Decision is addressed to the Federal Republic of Germany

Done at Brussels, 21 December 2000.

For the Commission

Mario MONTI

Member of the Commission