COMMISSION DECISION

of 13 November 2002

on the State aid which Germany is planning to implement for Capro Schwedt GmbH

(notified under document number C(2002) 4364)

(Only the German version is authentic)

(Text with EEA relevance)

(2003/439/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) On 3 August 2001, the German authorities notified an aid proposal for an investment project in the town of Schwedt, Brandenburg, to be led by a new company Capro Schwedt GmbH (Capro Schwedt) and including three other companies. The notification was made under the multisectoral framework on regional aid for large investment projects [2] (MSF), in view of the level of the proposed aid and of the investment cost.

(2) By letter dated 17 January 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. Germany sent its comments by letter dated 17 April 2002.

(3) 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.

(4) The Commission received three sets of comments from interested parties, which it forwarded to Germany. Germany gave its reaction to these comments by letters dated 20 June 2002 and 14 August 2002.

II. DETAILED DESCRIPTION OF THE MEASURE

1. The beneficiary and the project

(5) The investment is planned to take place in Schwedt, Germany, an industrial town dominated by an existing petrol refinery, around which the local authorities want to centre its industrial redeployment, transforming the area into a big chemical complex. A public infrastructure company, Infra Schwedt GmbH, was created by the city, which is to re-deploy part of the land in the vicinity of the refinery for use by potential chemical companies. The chemical complex is to be developed in five steps, of which the caprolactam project is the first.

(6) Capro Schwedt GmbH is a new company owned by Aquafil, an Italian synthetic fibre producer. Caprolactam constitutes the main raw material for the production of synthetic fibres and, at present, Aquafil buys it from chemical producers. Aquafil decided to integrate its production chain and start producing caprolactam itself. Together with Capro Schwedt, the main investor, three other companies, who will supply some of the necessary products/services for the production of caprolactam, will be established in its direct vicinity.

(7) These companies (hereinafter referred to as supplying companies) and their respective production are: AmmoSulf GmbH (oleum/sulphuric acid), CycloChem GmbH (cyclohexane) and P&F Flockungsanlage Service and Medien GmbH (hydrogen). At present they are only 'project companies', owned by the public authorities. Germany has, however, communicated the names of three big companies that would be interested in buying them, but will join the project only after the Commission approves the aid for the whole project. These acquiring companies would be Krebs-Speichim SA

[1] OJ C 63, 12.3.2002, p. 18
[2] OJ C 107, 7.4.1998, p. 7.
[3] See footnote 1.

(France), specialised in the engineering and construction of sulphuric acid/oleum plants, Infrastutture e Gestioni SpA (Italy), specialised in erecting, operating and maintaining industrial plants, and Kinetics Technology International SpA (Italy), specialised in building plants, but also in the production of hydrogen and synthetic gases.

(8) According to the notification, the project will lead to the creation of 528 new jobs, of which 448 in Capro Schwedt. The new investment project will be located in Schwedt, Brandenburg, an assisted area under Article 87(3)(a), in which the maximum allowable aid intensity is 35 % gross.

2. **The notified aid**

(9) Germany notified its intention to grant aid amounting to EUR 92,71 million (28 % (GGE) of the eligible project costs of EUR 331,11 million). The proposed aid consists of investment aid in the form of a non-reimbursable grant amounting to EUR 50,617 million (15,287 %) granted under the 28th outline plan for the joint Federal Government/Länder scheme for improving regional economic structures approved by the Commission ([4]). Furthermore an investment premium (Investitionszulage) amounting to EUR 41,108 million (12,415 %) is to be granted on the basis of the Investment Premium Law 1999, approved by the Commission ([5]), and 0,298 % (EUR 986 000) as a guarantee ([6]) on part of a loan granted by a commercial bank.

III. **REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

(10) The Commission raised doubts as to the precise scope of the project, as there was little information on the part of the supplying 'project companies'. Point 7.2 of the MSF states that 'an investment project should not be artificially divided into sub-projects in order to escape the notification obligation'.

(11) As regards the infrastructure company, the Commission raised the question whether the provision of infrastructure did not mean aid for the project (genuine character of the infrastructure, whether the infrastructure company would supply a number of connections not justified in the case of a single project developer and whether the tariffs corresponded to market prices).

(12) As regards the capital-labour factor, the Commission raised doubts whether the project would create 528 new jobs (leading to a capital-labour factor of 0,8), as claimed by Germany. The Commission estimated that the level of job creation would in fact be only around 400, which would reduce the capital-labour factor to 0,7.

(13) On the basis of data on capacity utilisation, Germany considered the competition factor to be neutral. The Commission, however, considered it useful to assess the data on the apparent consumption of caprolactam, before taking a position on the market.

(14) Germany stated that the aid will be granted on the basis of regional aid schemes approved by the Commission. One of these schemes, the investment premium (Investitionszulage) ([7]) provides for automatic tax breaks for investments made by companies (in the area of Schwedt amounting to 15 % of the investments). Germany declared that the project will receive only 12,415 % of aid under this tax scheme. The Commission had doubts that an automatic application of the investment premium could lead to the result that the declared aid intensity of 28 % is exceeded.

IV. **COMMENTS FROM INTERESTED PARTIES**

(15) Two competitors and one agricultural association submitted comments.

(16) The 'Industrieverband Agrar', representing the interests of pesticide and fertiliser producing companies in Germany, explained that, as a by-product of producing caprolactam, ammonia-sulphate is produced and sold as a nitrogen fertiliser to agriculture. Therefore, the German fertiliser industry would be adversely affected by the caprolactam production. The 'Industrieverband Agrar' also stressed the continuous restructuring process the fertiliser industry had been going through since 1980 in a shrinking market. Although the aid might create some jobs, it would jeopardise other jobs in the fertiliser industry.

(17) DSM Fibres Intermediates BV stressed that the project appeared to be artificially structured to circumvent the MSF. In particular, there appeared to be no business rationale for the involvement of 'supplying companies' other than circumventing the MSF. The provision of infrastructure by InfraSchwedt appeared to involve state aid elements. As regards the competition factor, DSM Fibres Intermediates BV considered that it should not be regarded as neutral but as negative, since there was structural overcapacity in the caprolactam market and this situation was likely to deteriorate in the near future.

([4]) 28. 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 SC (2001) D/286551 of 2.3.2001.

([6]) Granted on the basis of an approved scheme (Bundesbürgschaftsprogramm, N 297/91).

([7]) Investitionszulagengesetz 1999 (InvZulG 1999).

In addition, the capital-labour factor appeared to be overstated, while the regional impact factor was considered correct. Finally, the project would raise technological and environmental concerns, and the loan guarantees granted by the German authorities should be scrutinised.

(18) Domo NV considered that the competition factor and the capital-labour factor should be re-assessed downwards. Taking into account the structural overcapacity in western Europe, the competition factor should be set at 0,75. As regards the capital-labour factor, Domo NV explained that a greenfield investment of the size proposed and with the technology used led to the creation of approximately 350 jobs (and an absolute maximum of 400 jobs). On the assumption of 400 jobs, the capital-labour factor should be set a 0,7. As a result, the maximum aid intensity should be set substantially below the level of 28 % proposed by Germany, at 18,375 %. Finally, Domo NV observed that the creation of InfraSchwedt GmbH might contain additional aid elements and that the artificial set-up of the three satellite companies could lead to a circumvention of state aid rules.

V. **COMMENTS FROM GERMANY**

(19) As regards the doubts raised by the Commission on the form of the proposed aid, Germany explained that any automatic, excessive granting of aid through combining the investment premium with the other aid was prevented by the applicable award rules in the German legal system (Nr 2 der Allgemeinen Nebenbestimmungen für Projektförderungen zu §44 der Bundes/Landeshaushaltsordnungen). Germany confirmed that any combining of aid from the investment premium with other aid that exceeded the allowable aid intensity would be offset by a proportional reduction of the grant under the joint Federal Government/Länder scheme for improving regional economic structures (Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur).

(20) The German authorities considered that the development of the infrastructure into a chemical complex did not include an additional aid element for the project. Germany explained that the infrastructure was being built not only in the interests of Capro Schwedt and the supplying companies. It also confirmed that Capro Schwedt and the three supplying companies were to be considered as a single unit in the project. As to the nature of the supplying companies, Germany explained that they were not only needed for the caprolactam production, but also to provide basic chemicals needed for the planned development of the chemical complex as such. As to the tariff system for the services of InfraSchwedt, Germany stated that prices charged by InfraSchwedt for its products/services were market prices.

(21) As regards the capital-labour factor, Germany considered that the assumption of 528 new jobs for the operation of the facility producing caprolactam and feedstock and for the provision of services was realistic. As the caprolactam production in Schwedt was not integrated into a production network of a large chemicals producer with corresponding synergies, it could not be compared to such companies when calculating the required workforce. The capital-labour factor should consequently be set at 0,8. However, Germany offered to base the calculation of the aid initially on a capital-labour factor of 0,7 and to pay out the last instalment only after the Commission had verified the correct implementation of the project as regards the announced direct and indirect job creation and after the Commission had agreed to the payment of the last instalment.

(22) As regards the competition factor, Germany considered that sufficient data as regards the capacity utilisation of the relevant product was available. By letter dated 14 August 2002, Germany submitted additional information on the apparent consumption of caprolactam during the period 1995 to 1999 ([8]). As regards the future market development, based on forecasts on the development of the caprolactam market by SRI International, Germany considered that the apparent consumption of the product would increase from 708 000 tonnes in 1999 to 770 000 tonnes in 2004. As regards the regional impact factor, Germany agreed with the Commission's assessment.

(23) In response to the comments received from third parties, Germany reconfirmed that the capital-labour factor should be set at 0,8. As regards the competition factor, Germany reconfirmed its earlier view and referred to the increase of apparent consumption as of 2005. It also explained that the Asian market was an important sales area for the investor. With respect to an analysis of capacity utilisation, Germany considered the relevant reference period to be the last five years. Germany explained that the guarantees granted were in accordance with the State aid rules. Finally, Germany considered that the project did not raise technological or environmental concerns as the company used the 'state of art' technology. Germany explained that there was no technology that produced less ammonia sulphate as a by-product. With a production of 120 000 tonnes of caprolactam, around 165 000 tonnes of ammonia sulphate are produced as a by-product, which would be only around half of the amount indicated by the 'Industrieverband Agrar'. The most environmentally friendly way to dispose of ammonia sulphate would be its further use as fertiliser, as is planned by Capro Schwedt.

VI. **ASSESSMENT**

1. **Form of the aid**

(24) As regards the doubts raised by the Commission on the form of the proposed aid, Germany explained that the

([8]) Data from CEH Marketing Research Report 'Caprolactam', Chemical Economics Handbook.

applicable award rules in the German legal system (Nr 2 der Allgemeinen Nebenbestimmungen für Projektförderungen zu §44 der Bundes/Landeshaushaltsordnungen) ensure that the permissible aid intensity will not be exceeded. Any cumulation of aid from the investment premium with other aid that could exceed the allowable aid intensity would be automatically offset by a proportional reduction of the grant under the joint Federal Government/Lander scheme for improving regional economic structures (Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur). On the basis of this confirmation, the Commission considers that it can be ensured that no aid will be granted that goes beyond the aid ceiling approved by the Commission.

2. **The infrastructure project**

(25) In response to the doubts raised by the Commission in its decision to initiate the formal investigation procedure, Germany provided substantial additional information as to the nature of the infrastructure set up by Infra Schwedt. Germany indicated that the Capro Schwedt project is part of the development of the chemical complex of Schwedt. The development is split into five phases, of which the Capro Schwedt project is to be the first. The Capro Schwedt project will make use of only part of the available land (total 100 ha). For the other four development phases, it is planned to establish producers of plastics and other chemicals in the complex. The infrastructure layout could therefore take into account not only the needs of Capro Schwedt. InfraSchwedt, in providing this infrastructure, needed also to take into account the needs of the other companies which were to be established in the complex. To support its view, Germany pointed out that the power transformation plants, for example, will be needed for the production of plastics and the wastewater installations for the cracker (phase 5).

(26) Germany provided additional information on the nature of the supplying companies. They were to act independently from the caprolactam producer. Germany stated that they were not just needed for the caprolactam production, but that their products (oleum/sulphuric acid, cyclohexane and hydrogen) were needed for the planned development of the chemical complex as such. In contrast to already existing chemical complexes, the chemical complex in Schwedt was a newly created complex, where the supply of basic chemical products needed to be established.

(27) Germany agreed with the Commission that the Capro Schwedt project should be considered as a single project. Capro Schwedt and the supplying companies were to receive only one set of infrastructure connections. InfraSchwedt would not cover connection costs between Capro Schwedt and the supplying companies.

(28) As to the tariff system of InfraSchwedt, Germany stated that all prices charged by InfraSchwedt for its products/services were to be market prices, covering the operating and capital costs, including depreciation, refinancing and reinvestments. The tariff system would be based on costs and would not produce profits for InfraSchwedt. It did not allow for cross-subsidisation between loss-making and profitable activities in InfraSchwedt.

(29) The Commission notes that Capro Schwedt is to use only a small part of the total chemical complex of Schwedt. Other chemical companies, independent of the caprolactam project, are also to establish themselves at the complex during the five development phases. The infrastructure provided by InfraSchwedt to the caprolactam project must accordingly also satisfy the needs of these other companies.

(30) The Commission notes further that the project is to be considered a single project, receiving from InfraSchwedt only one set of infrastructure connections to its premises. All the infrastructure costs within the Capro Schwedt area are to be covered by Capro Schwedt and the three supplying companies.

(31) In view of the above and by taking into account the fact that Germany confirmed that InfraSchwedt will charge competitive prices for its products/services on a non-discriminatory basis, the Commission concludes that Capro Schwedt does not benefit from any specific infrastructure measures provided by InfraSchwedt.

(32) The Commission concludes that there is no element of state aid involved in the provision of infrastructure by InfraSchwedt to the Capro Schwedt project.

3. **Notification requirement**

(33) Germany indicated total eligible investment costs of EUR 311,11 million. The planned cumulative aid intensity is 28 % of the eligible investment costs and the indicated aid per job created is EUR 589 223. Therefore, pursuant to point 2.1 of the MSF, the aid is notifiable individually and has to be assessed accordingly.

4. **The relevant market**

(34) The relevant product market for determining the market share comprises the product covered by the investment project and any substitutes. The Commission has noted that, as a by-product of producing caprolactam, ammonia-sulphate is produced, which can be sold as a nitrogen fertiliser to agriculture. However, as the main purpose of the project is to produce caprolactam (as a raw material for synthetic fibres production), which the company at present buys externally, the Commission considers caprolactam to be the relevant product

market. (No separate NACE classification exists for this market. The lowest available segmentation of the NACE classification for caprolactam is the NACE code 24.14 (Manufacture of other organic basic chemicals)).

(35) Under point 7.6 of the MSF, 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. As caprolactam is an interchangeable commodity product, regardless of its provenance, and as transport costs are relatively low, the EU as a whole, for which reliable data is available, is regarded as the relevant geographic market.

(36) As regards the development of apparent consumption in value terms (in EUR), Germany submitted the following data ([9]):

(EUR million)

Year	EEA	Worldwide (price/US, price/EEA)	
1995	756	3 910	4 130
1996	708	3 890	3 550
1997	863	4 800	4 270
1998	949	4 910	4 280
1999	742	4 860	3 540

5. **Assessment under the multisectoral framework**

(37) Point 7.2 of the MSF states that 'an investment project should not be artificially divided into sub-projects in order to escape the notification obligation'. The notified project comprises four companies, the main producer of caprolactam and three of its direct suppliers. The three supplying companies, which so far exist only as 'project companies', will be set up in direct vicinity to Capro Schwedt with the purpose to supply to it some of the necessary products/services for the production of caprolactam. In notifying the project as a single investment project, Germany thus complied with the requirement laid down in point 7.2 of the MSF not to divide the project artificially.

(38) Under point 3.1 of the MSF, in order to determine the maximum allowable aid intensity for the proposal to award aid, the Commission 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 the notification.

([9]) Data from CEH Marketing Research Report *'Caprolactam'*, Chemical Economics Handbook.

(39) Taking into account the overall project, Capro Schwedt GmbH has to be considered a large undertaking. The maximum allowable aid intensity (R) in the present case is 35 % gross ([10]). 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).

6. **Competition factor (T)**

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

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

(42) The NACE code corresponding to the production of caprolactam is 24.14, which comprises the manufacture of a whole range of other organic basic chemicals. No separate NACE classification exists for the sub-sector of caprolactam. Caprolactam represents only a small share in the relevant NACE code. Therefore, the Commission considers that capacity data concerning NACE code 24.14 are not representative for the appraisal of the capacity situation for caprolactam. Pursuant to point 3.4 of the MSF, the Commission will base its assessment of the competition factor on the data for apparent consumption and will consider whether the investment takes place in a declining market.

(43) For this purpose, the Commission compares the 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 (point 7.8 of the MSF).

(44) The MSF refers to the average annual growth rate over the last five years. It is therefore the Commission's practice to look at apparent consumption over a period of six years in order to calculate five growth rates. The average annual growth rate of the EEA manufacturing

([10]) OJ C 340, 27.11.1999, p. 8.

industry as a whole comes to 6,12 % for the years 1995 to 2000.

(45) Germany provided data derived from CEH Marketing Research Report *'Caprolactam'*, Chemical Economics Handbook on the apparent consumption for the period 1995 to 1999. On the basis of these data, the average growth rate of apparent consumption on the market for caprolactam was 5,42 %. The average annual growth rate of manufacturing industry as a whole in the EEA for the same period comes to 5,79 %. According to the definition in the MSF, the sector would not be in decline and the competition factor would remain unchanged at 1,0.

(46) However, more recent data from Eurostat, covering the period 1995 to 2000, lead to the conclusion that the caprolactam market is in relative decline. According to this information, the apparent consumption of caprolactam (in EUR) for the years 1995 to 2000 is:

(EUR)

Apparent consumption of caprolactam	
1995	754 355 927
1996	594 031 089
1997	821 433 942
1998	776 641 984
1999	694 245 630
2000	923 249 239

(47) On the basis of these figures, the average growth rate of apparent consumption on the market for caprolactam was 4,12 %. The average annual growth rate of manufacturing industry as a whole in the EEA for the same period comes to 6,12 %. The Commission has based its assessment on these more recent data from EUROSTAT. Consequently, pursuant to point 7.8 of the MSF, the market for caprolactam is regarded as being in relative decline, as the average annual growth rate is significantly (more than 10 %) below that of manufacturing industry as a whole. In the light of the above considerations, the Commission applies a competition factor of 0,75.

7. **Capital-labour factor (I)**

(48) The capital-labour factor is used to adjust the maximum aid intensity so as to promote those projects which make a more effective contribution to the reduction of unemployment through the creation of a larger number of new jobs.

(49) According to Germany, the overall project will lead to the creation of 528 permanent jobs, of which 448 will be in Capro Schwedt and 80 with the suppliers. In the initiation of the procedure, the Commission took the view that, for a company to produce 120 000 tonnes per year, a more normal level of job creation would be around 400, which is well below the declared level of 528. This raised doubts, in particular as such a number would result in the capital-labour factor being reduced to 0,7.

(50) In its comments on the initiation of the procedure, Germany agreed to calculate the aid initially on the basis of a capital-labour factor of 0,7 and to pay out the last instalment only after the Commission had verified the correct implementation of the project as regards the creation of jobs and after the Commission had agreed to the payment of the last instalment. The Commission agrees to this approach.

(51) Consequently, in accordance with point 3.10.2 of the MSF, the capital-labour factor (I) for the adjustment of the maximum aid intensity for the project at stake is, up to the payment of the last aid instalment, to be calculated at 0,7 (resulting from the ratio new capital/jobs of EUR 827 775). Any additional aid amount, based on the creation of 528 jobs and consequently a capital-labour factor (I) of 0,8, may be granted only after the Commission has verified the creation of 528 jobs and has agreed to the payment of the last instalment.

8. **Regional impact factor (M)**

(52) 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 impact in terms of 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.

(53) As the project does not contribute directly to the creation, by other companies in the same region, of new jobs in a number exceeding 50 % of the jobs created by the project itself, the regional impact factor is set at 1,0.

9. **Maximum allowable aid**

(54) In view of the foregoing, the maximum allowable aid intensity is calculated as follows: 35 % × 0,75 × 0,8 × 1,0 = 21,00 % gross (point 3.10 of

the MSF). The proposed aid of EUR 92,71 million, equivalent to an aid intensity of 28 % gross, that Germany intends to grant to Capro Schwedt is therefore not in conformity with the maximum allowable aid intensity, calculated on the basis of the MSF.

10. *Ex post* monitoring

(55) 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 beneficiary conforms to the Commission decision.

(56) For each aided project approved by the Commission under the MSF, 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 will be made only when the aid beneficiary 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.

(57) Germany has agreed to calculate the aid intensity initially on the basis of 400 created jobs and a capital-labour factor of 0,7. The allowable aid intensity will thus initially be 18,375 % (35 % × 0,75 × 0,7 × 1,0). The Commission notes that the final payment of the aid, based on the creation of 528 jobs and a capital-labour factor of 0,8, will be made only when Capro Schwedt has satisfied the Commission that the execution of the project as regards the announced creation of 528 jobs has been implemented and after the Commission has agreed to the payment of the last instalment.

(58) The Commission further notes that the undertaking concerning the *ex post* monitoring given by Germany complies with the obligations laid down in point 6 of the MSF, 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 MSF refers.

VII. **CONCLUSION**

(59) 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 according to the provisions of the MSF does not fulfil the conditions to be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany is planning to implement for Capro Schwedt GmbH, amounting to EUR 92,71 (aid intensity: 28 %), is incompatible with the common market in so far as it exceeds the maximum allowable aid intensity for the project of 21 %.

The aid may accordingly not be implemented above the aid intensity of 21 %.

Article 2

The payments, with the exception of the final payment, shall be made on the basis of an aid intensity of 18,375 %.

The final payment on the basis of an aid intensity of 21 % may be made only when Capro Schwedt GmbH has demonstrated to the Commission that 528 jobs have been created by the project and after the Commission has agreed to payment of the last instalment.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 November 2002.

For the Commission

Mario MONTI

Member of the Commission