COMMISSION DECISION

of 5 June 2002

on State aid implemented by Germany for Eisenguss Torgelow GmbH

(notified under document number C(2002) 2008)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/791/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 fax dated 29 December 1999 the German Government informed the Commission of financial measures to assist Eisenguss Torgelow GmbH (EGT), whose head office is in Torgelow, Mecklenburg-Western Pomerania, which were registered by the Commission on 3 January 2000 as aid NN 6/2000. Given that the aid had already been granted to the firm at the time of the notification, the measures were registered as non-notified State aid (NN) in accordance with Article 88(3) of the EC Treaty. The Commission requested additional information by letters dated 31 January and 26 May 2000 and 15 June, 16 July and 13 September 2001. Germany replied by letters dated 23 March, 24 May, 4 July and 1 and 5 September 2000, and 17 April and 10 and 28 August 2001.

(2) By letter dated 5 November 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, with the case being registered under No C 77/2001. Germany submitted comments which were received on 21 January 2002.

(3) The Commission's decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid. Comments by interested parties were received on 10 April 2002.

II. DESCRIPTION

(4) EGT is the successor to the formerly State-owned Gießerei Torgelow GmbH (GT), which, after being privatised in 1993, filed for bankruptcy in 1997. On 1 May 2001 EGT also filed for bankruptcy.

(5) The firm was active in the foundry sector, its objects being the manufacture and processing of castings. It produced mainly parts for engines, plant and machinery.

(6) In 1999 EGT had 87 employees and achieved a turnover of DEM 5 592 000.

1. The privatisation

(7) On 17 June 1993 GT was privatised by the Treuhandanstalt (THA) and sold to a Mr Helmut Schumann for DEM 1. In 1996 it employed 80 people and achieved a turnover of DEM 8 771 000. On 1 September 1997 it went bankrupt.

2. The restructuring

(8) During the course of the bankruptcy proceedings the receiver decided to maintain GT as a going concern in order to seek new investors for the firm.

(9) Germany states that, out of 12 potential investors, only one group of investors made an offer to purchase the firm. On 6 April 1998 the new investors set up EGT with a view to continuing the business of GT. As of 1 May 1998 EGT rented the assets necessary to this end. A contract to purchase the assets was signed in August 1998 and entered into force in June 1999. The price paid for the assets was DEM 500 000.

(10) The new investors were:

(a) Neue Harzer Werke (NHW) (20 %);

(b) Mr Dieter Brunke (20 %);

(c) Saparmet (20 %);

[1] OJ C 63, 12.3.2002, p. 4.
[2] See footnote 1.

(d) Allgemeine Industrie Beteiligungs- und Produktionsgesellschaft mbH (AIP), whose sole shareholder was a Mr Dierk Behrmann (20 %); and

(e) Unitool GmbH, whose sole shareholder was a Mr Lüpertz (20 %).

(11) According to the information in the Commission's possession, the following relationships existed between the investors:

(a) Mr Brunke was managing director of NHW;

(b) Saparmet was the holding company controlling Metallwerke Harzgerode (MWH);

(c) Mr Dierk Behrmann was managing director of EGT, MWH and, since March 1999, NHW. He also holds 24 % of the shares in NHW and 38 % of those in MWH.

(12) NHW and MWH were both active in the same sector as EGT. According to the information in the Commission's possession, between 1996 and 1998 NHW, which since 1996 had also been undergoing restructuring ([3]), had between 173 and 176 employees and achieved a turnover which ranged from DEM 13,4 million to DEM 20 million. In September 2000 NHW went bankrupt. In 1998 (1999) MWH had some 400 employees and, out of a balance sheet total of DEM 116 million (DEM 144 million), achieved a turnover of DEM 112 million (DEM 104 million).

(13) Some significant financial data for the years from 1998 to 2001 are given below:

(DEM '000)

	1998	1999		2000	2001
Turnover	3 862	*5 900*	5 592	*10 339*	*14 305*
Net profit	- 330	*424*	- 1 420 (*)	*797*	*1 072*
Employees	64	*86*	87	*90*	*95*

(*) Germany states that the profit and loss account for 1999 does not take into account a grant of DEM 2 million which was awarded subject to Commission approval.
italic = planned.

(14) On 1 May 2001 EGT was declared bankrupt. While the bankruptcy proceedings were under way, the firm was maintained as a going concern and the assets were sold to a new investor, CHL Handels- und Projektierungsgesellschaft mbH (CHL), which, according to Germany, is not linked in any way to the bankrupt firm. Germany states that the main criterion for the sale was the purchase price and that CHL, which now operates the business under the name Eisengießerei Torgelow GmbH, submitted the best offer.

3. **The restructuring**

(15) The restructuring period lasted from 1998 to 2000. Under the restructuring plan, EGT was to concentrate on niche markets such as the production of small volumes of custom-made castings. In order to avoid dependency on any one segment or any one customer, not more than 30 % of EGT's turnover was to be derived from one segment and not more than 20 % from one customer. EGT was to cooperate closely with its new investors. The intention was that sales should increase by 30 % in 2000. According to Germany, a further increase of 100 % was planned for 2001.

(16) The restructuring costs were indicated as follows:

(DEM '000)

Investment	10 894
Asset purchase	500
Investment 1998	309
Investment 1999	6 840
Investment 2000	3 245
Working capital	3 539
Other	3 003
Training workshop	452
Maintenance, repairs and removal	2 000
Product development R & D	318
Miscellaneous	233
Total	17 436

4. **Rescue and restructuring aid**

(17) The following aid was granted with a view to rescuing GT or restructuring EGT:

(DEM '000)

	Source	Measure	
Rescue aid:			
1.	Land ([4])	70 % fallback guarantee in relation to private loan at 7,75 % p.a. until 30.10.1998 ([5])	1 050

([3]) NHW had also received aid that was registered by the Commission in 1999 under NN 38/99. A formal investigation procedure was initiated on 16 May 2000.

([4]) The *Land* of Mecklenburg-Western Pomerania.

([5]) Rules on guarantees of the *Land* of Mecklenburg-Western Pomerania: SG(91) D 21124 of 12 November 1991 (N 627/91).

(DEM '000)

	Source	Measure	
2.	BvS [a]	Loan at 7 % p.a. until 31.10.1998	500
		Subtotal	1 550
		Restructuring aid:	
3.	Land	80 % guarantee [6]	3 760
4.	KfW [b]	Refinancing of loans at 3,75 % p.a. [7]	1 955
5.	Land	Investment grants (GA-Mittel) [8]	3 047
6.	Federal Government	Investment allowance (Investitionszulage) [9]	1 660
7.	Land	R & D measures [10]	318
		R & D project	(292)
		Innovationsassistent	(26)
8.	Landesförderinstitut	Loan at 7 % p.a. for intermediate financing of investment allowance [11]	1 300
9.	Landesförderinstitut	Loan at 7 % p.a. for intermediate financing of capital stock (Gesellschaftereinlage) [12]	400
10.	KfW	Refinancing of loans (ERP-Aufbauprogramm) [13]	978
11.	BvS	Grant (awarded as a loan at 6 % pending Commission approval)	2 000
12.	KfW	Refinancing of loans (KfW-Mittelstandsprogramm)	622
		Subtotal	16 040
		Total	17 590

[a] Bundesanstalt für vereinigungsbedingte Sonderaufgaben (successor to the Treuhandanstalt).
[b] Kreditanstalt für Wiederaufbau.

[6] Rules on guarantees of the *Land* of Mecklenburg-Western Pomerania: SG(91) D 21124 of 12 November 1991 (N 627/91).
[7] ERP reconstruction programme: SG(94) D 17293 of 1 December 1994 (N 563/C/94).
[8] 27th framework plan of the joint Federal Government/*Länder* scheme for improving regional economic structures: SG(99) D 582 of 26 January 1999 (C 84/98).
[9] Investment allowance for the new *Länder*: SG(96) D 3794 of 11 April 1996 (N 494/A/95).
[10] Reconstruction programme of the *Land* of Mecklenburg-Western Pomerania — Promotion of technology and innovation: SG(97) D 156 of 10 January 1997.
[11] Consolidation fund of the *Land* of Mecklenburg-Western Pomerania: SG(95) D 7054 of 2 June 1995 (N 75/95).
[12] Consolidation fund of the *Land* of Mecklenburg-Western Pomerania: SG(95) D 7054 of 2 June 1995 (N 75/95).
[13] ERP reconstruction programme: SG(94) D 17293 of 1 December 1994 (N 563/C/94).

5. **Financial contributions from other sources**

(18) According to the initial information provided by Germany, the financing of the restructuring included the following contributions from the recipient firm and from external commercial sources:

(a) financing of the purchase price of DEM 500 000 and shareholder loans totalling DEM 1 500 000;

(b) a 20 % guarantee provided by Deutsche Bank AG (Deutsche Bank), i.e. DEM 940 000, on a credit line of DEM 2 700 000 at 7,75 % p.a. and an ERP loan (refinanced by the KfW, measure No 4) of DEM 1 955 830 at 3,75 % p.a. granted in July 1999;

(c) a bridging loan of DEM 485 000 at 7,75 % p.a. granted by Deutsche Bank in July 1999 until June 2000 pending payment of the public investment allowance;

(d) loans amounting to DEM 1 600 000 granted by Deutsche Bank in August 2000 and refinanced by the KfW that same month (measure No 10);

(e) a partial wage cut accepted by the workforce between 1999 and 2000, amounting to DEM 1 550 000;

(f) *cash flow* of DEM 161 000.

(19) The financial contributions made by Deutsche Bank in 1999 were secured by the 80 % public guarantee (measure No 3) and by collateral provided by the recipient firm and the investors, including a mortgage taken out by EGT (DEM 5 million), the transfer of ownership of machinery by way of security, equipment and stocks, the assignment of claims, and personal guarantees.

6. **The decision to initiate proceedings under Article 88(2) of the EC Treaty**

(20) In the decision to initiate the formal investigation procedure, EGT was also considered a recipient of the rescue aid originally granted to its predecessor in liquidation, Gießerei Torgelow, since the actual purpose of the aid was to make possible EGT's formation and subsequent restructuring.

(21) Additionally, the refinancing of a Deutsche Bank loan of DEM 622 085 at 6 % p.a. via the KfW (measure No 12) was assumed to constitute aid since the measure was granted by a public body on terms that a private investor would probably have found unacceptable.

(22) On the question of the compatibility of the aid with the common market, the Commission wondered:

(a) whether the whole group of companies consisting of EGT, NHW and MWH into which EGT had been integrated ought not to be considered the aid recipient since some of these companies are related to one another through the influence that several of the investors exert on them and through their mutual cooperation. The recipient could therefore be a larger undertaking;

(b) whether four measures supposedly granted under approved schemes, i.e. the KfW refinancing of loans amounting to DEM 1 955 830 (measure No 4) and DEM 977 915 (measure No 10), investment grants (GA-Mittel) amounting to DEM 3 760 000 (measure No 5) and an investment allowance of DEM 1 660 000 (measure No 6), complied with the conditions of those schemes since it was questionable whether the maximum aid intensities admissible for investment grants and the cumulative aid ceilings had been observed;

(c) whether the aid had been paid out only for the time necessary to devise the restructuring plan, i.e. to bridge the gap until the restructuring aid was granted, since the rescue loan was only partially reimbursed 16 months after it was disbursed and 12 months after restructuring had begun;

(d) whether the aid was granted to a firm in difficulty since it was doubtful whether EGT could be considered the sole recipient of the restructuring aid;

(e) whether the restructuring plan was capable of restoring the firm's viability since:

(i) the plan provided for cooperation with NHW, one of the investor companies, which from 1996 up until it was declared bankrupt in 2000 was itself in continuous difficulties;

(ii) it was doubtful whether the plan to allocate resources among various segments within the sector was implemented as part of the restructuring; and

(iii) it was questionable whether the plan was based on realistic assumptions;

(f) whether the aid was limited to the minimum needed to enable restructuring to be undertaken since the contribution by the recipient from its own resources and from external financing amounted, in the Commission's view, to only DEM 2 000 000, i.e. 11,5 % of the restructuring costs.

(23) The Commission therefore had doubts whether the aid was granted in compliance with the criteria of the 1999 Community guidelines on state aid for rescuing and restructuring firms in difficulty ([14]).

III. **COMMENTS FROM GERMANY**

(24) In its response to the decision to initiate the formal investigation procedure, Germany states that EGT fulfils the criteria of Commission Recommendation 96/280/EC of April 3, 1996 concerning the definition of small and medium-sized enterprises ([15]) because it does not possess any shares in other companies and no other company or individual exercises an influence exceeding 25 % over EGT's capital or voting rights. Additionally, EGT, NHW and MWH are independent companies with completely separate financing and production. The supply relationships between EGT and MHW, for example, accounted for only 12,1 % of EGT's aggregate turnover.

(25) With respect to the rescue aid, Germany points out that the loans granted have since been fully reimbursed and that the delay in repayment was due to the fact that they were to be reimbursed from out of the proceeds of the sale of EGT's bankrupt predecessor GT.

(26) With respect to the refinancing of the Deutsche Bank loan of DEM 622 085 at 6 % p.a. by the KfW (measure No 12), Germany is of the opinion that the fact that Deutsche Bank entered into this commitment shows that it judged its fallback risk to be reasonable and that this contribution can therefore be considered external financing.

([14]) OJ C 288, 9.10.1999, p. 2.
([15]) OJ L 107, 30.4.1996, p. 4.

(27) On the question whether the restructuring plan was capable of restoring EGT's viability, it is stated that the relationship with NHW under the plan was of minor importance and that, in fact, the customer base was spread over some nine major customers none of which accounted for more than 15 % of EGT's turnover. It is further stated that the plan was based on detailed customer/turnover planning and that orders had increased steadily.

(28) With respect to contributions by the aid recipient from its own resources or from external financing, Germany states that:

(a) the provision of own capital by the investors is made up of a capital injection of DEM 500 000 and loans of DEM 2 200 000;

(b) a loan from Deutsche Bank of DEM 660 000 at 9,25 % p.a. used to pre-finance a public loan which subsequently was not granted is to be considered external financing;

(c) the cash flow is a contribution by the aid recipient since, even though its claimed amount cannot be guaranteed, the investors still have to finance it even if it is not generated by the firm. According to Germany, this was the case with EGT and therefore the investors had to increase the capital by DEM 264 000;

(d) the 20 % guarantee provided by Deutsche Bank on a credit line of DEM 2 700 000 at 7,75 % p.a. independently of a public fallback guarantee must be considered external financing since the whole loan was secured by private collateral prior to the fallback guarantee. Furthermore, Germany points out that the interest rate of 7,5 % was not fixed but adjustable and amounted to 9,26 % at the end of 2000;

(e) the interest rate for calculating the interest subsidy contained in a DEM 1 956 000 loan from Deutsche Bank should be established in the light not of the firm's situation before the restructuring but of its prospects for recovery.

(29) Lastly, Germany provided additional information on the application of schemes which indicates that, owing to larger investments and to R & D measures, the restructuring costs are higher than originally estimated and, in fact, amount to DEM 18 965 000.

IV. COMMENTS FROM INTERESTED PARTIES

(30) Eisengießerei Torgelow GmbH, as the firm is now called, submitted comments on the aid. It states that it learned of the sale of the assets only from an official notice in the 'Frankfurter Allgemeine Zeitung' and the 'Handelsblatt'. After studying the call for tenders, it decided to submit a bid under the tender procedure, in which other bidders also took part.

V. ASSESSMENT OF THE AID

(31) Article 87(1) of the EC Treaty declares any aid granted through State resources which distorts or threatens to distort competition by favouring certain undertakings incompatible with the common market in so far as it affects trade between Member States.

1. State aid

(32) Article 87(1) of the EC Treaty applies to all the financial measures made available by Germany to the recipient firm. All these measures involve conferring economic benefits on a certain undertaking which it would not have received from commercial sources. The measures therefore constitute aid. By its very nature, such aid is likely to distort competition. Given the nature of the assistance and the existence of intra-Community trade in the sector in which the recipient firm is active, the financial measures granted fall within the scope of Article 87(1).

(33) With respect to the aid allegedly granted under approved schemes, the Commission would point out that the schemes concerned will not be further assessed in this Decision. It is accordingly not necessary for the Commission to decide whether EGT is to be regarded as a small or medium-sized firm.

(34) The rescue aid of DEM 500 000 (measure No 2) and the restructuring grant of DEM 2 000 000 (measure No 11) are measures that could not have been obtained by a firm in difficulty on these terms from commercial sources. They must therefore be considered ad hoc aid in the present Decision.

(35) With respect to the Deutsche Bank loan of DEM 1 600 000 at 6 % p.a., it must be noted that the full amount was refinanced by the KfW, which also bore 50 % of the fallback risk. To the amount of DEM 978 000 (measure No 10), the refinancing falls under an approved aid scheme and therefore need not be assessed in this Decision.

(36) The remaining amount of DEM 622 085 (measure No 12) of the above loan was not covered by any scheme. The 50 % fallback risk of DEM 311 042 in relation to the refinanced part outside the scheme must be considered ad hoc aid since, when it received this aid, EGT was a firm in difficulty and would not have received such assistance from commercial sources.

(37) Furthermore, contrary to Germany's opinion as expressed in its response to the decision to initiate the formal investigation procedure, the Commission takes the view that EGT would also not have received such a loan at 6 % p.a. from Deutsche Bank without the public refinancing. Deutsche Bank's decision to grant the loan at 6 % cannot be seen as an independent risk assessment that does not take into account the public refinancing. On the contrary, if, as Germany itself suggests, one assesses Deutsche Bank's contribution as part of an overall plan, the conclusion must be drawn that the 6 % interest rate is, in fact, a result of the public refinancing of the loan. Therefore the difference between the actual costs and the costs at market rates has to be considered ad hoc aid. Since it is impossible to compare these conditions with the actual market conditions prevailing at the time, the Commission's reference rate plus 4 % is taken as a basis in accordance with the Commission notice on the method for setting the reference and discount rates [16]. In 2000, when the loan was granted, the reference rate was 5,7 %, which gives as a basis for comparison with market conditions an interest rate of 9,7 %. As a result, the Commission considers the amount represented by the difference between the two interest rates, i.e. 3,7 % p.a. of DEM 622 085, also as ad hoc aid to the restructuring.

(38) The Commission notes further that Germany failed to discharge its obligation under Article 88(3) of the EC Treaty. From a formal point of view, the aid is therefore unlawful. It may, however, be declared compatible with the common market if the conditions of the derogations provided for in Article 87(2) and (3) of the EC Treaty are satisfied.

2. **Derogations under Article 87(3) of the EC Treaty**

(39) Measures falling within Article 87(1) of the EC Treaty that do not constitute existing aid are generally incompatible with the common market unless the derogations provided for in Article 87(2) or (3) are applicable to them. Germany has not claimed that the aid satisfies the conditions of Article 87(2), and it is obvious from the facts of the case that this provision does not apply here. The aid in question must therefore be assessed in the light of Article 87(3) of the Treaty, which confers on the Commission a discretion to authorise State aid in certain specified circumstances. The derogations referred to in Article 87(3)(b), (d) and (e) were not invoked in the present case and are indeed not relevant. Article 87(3)(a) empowers the Commission to authorise State aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. The *Land* of Mecklenburg-Western Pomerania falls under this provision. In the present case, however, the main purpose of the aid was to promote the development of a certain economic sector rather than the economic development of an area. Thus the restructuring aid granted in accordance with the submitted restructuring plan should be assessed under Article 87(3)(c) of the EC Treaty rather than under Article 87(3)(a).

(40) In its 1999 guidelines on state aid for rescuing and restructuring firms in difficulty (the guidelines), the Commission laid down in detail the preconditions for a favourable exercise of its discretion under Article 87(3)(c) of the Treaty. Pursuant to point 7.5 of the guidelines, the Commission will examine the compatibility of non-notified aid on the basis of the guidelines if some or all of the aid was granted after their publication in the *Official Journal of the European Communities*. Although the plan for the restructuring of EGT was drawn up in 1998, some of the aid examined here was not granted until 1999 or even later. The guidelines therefore apply to the measures in question.

(a) *Rescue aid*

(41) With respect to whether the time limits for the reimbursement of the rescue aid (measure No 2) were exceeded, the Commission notes Germany's comments as expressed in its response to the decision to initiate the formal investigation procedure to the effect that the rescue aid has since been fully reimbursed and that the delay in repayment was due to its being effected from out of the proceeds of the sale of EGT's bankrupt predecessor GT. In keeping with previous practice in similar cases [17], the Commission considers that the conditions for the granting of rescue aid were met.

[16] OJ C 273, 9.9.1997, p. 3.

[17] See Commission Decision 83/252/EEC (Cematex) (OJ L 140, 31.5.1983, p. 27).

(b) *Restructuring aid*

(42) The Commission would point out first of all that the material time for assessing restructuring aid under the guidelines is the time when the restructuring plan was drawn up.

(43) Measure No 11, the 50 % fallback guarantee and the interest subsidy in relation to measure No 12 must be assessed as ad hoc aid to the restructuring.

(44) In its decision to initiate the formal investigation procedure, the Commission expressed doubts as to whether the following conditions laid down in the guidelines for the authorisation of rescue aid were met:

1. Eligibility of the firm

(45) In the light of the information now available to the effect that EGT was not part of a larger economic unit, the Commission notes that its doubts as to whether EGT could be considered a firm in difficulty have been removed.

2. Restoration of viability

(46) As regards its doubts as to whether the restructuring plan was capable of restoring EGT's viability, the Commission notes Germany's comments to the effect that the customer base was spread over several customers and that the relationship with NHW was of minor importance.

(47) However, the assertion that the plan was based on detailed customer/turnover planning could not remove the basic doubt as to whether the plan was based on realistic assumptions. The Commission is still of the opinion that the planned large increase in sales and profits, which does not correspond to the market data for the sector as indicated by the market analysis, is unrealistic. According to Germany, EGT's sales were projected to increase by 30 % in 2000 and by a further 100 % in 2001. The data contained in the market analysis indicate that sales in the foundry sector overall and in the subsegment of engine and transmission parts in particular are in fact decreasing. Although this point was also raised in the decision to initiate the formal investigation procedure, the information submitted by Germany does not explain why sales by EGT should improve in the face of the forecast trend in the market and in the subsegment in which EGT is active. It must also be noted that, according to the information submitted, the personnel costs per employee have increased significantly, which against the above background further threatens the viability of the plan. The Commission therefore considers that the plan is not capable of restoring the firm's viability. This conclusion is borne out by the fact that the firm had to file for bankruptcy in 2001.

3. Aid limited to the minimum

(48) The guidelines require aid recipients to make a significant contribution to the restructuring plan from their own resources or from external financing on market conditions.

(49) The restructuring costs amount to DEM 18 965 000.

(50) The Commission notes that, according to the latest information submitted by Germany, the recipient's contribution from its own resources or from external financing amounts to DEM 3 900 000, which can be broken down as follows:

1.	Capital/shareholder loans	2 700 000
2.	20 % guarantee by Deutsche Bank on a credit line at 7,75 % p.a.	540 000
3.	Deutsche Bank loan at 9,25 % p.a.	660 000
	Total	3 900 000

Note: The table contains rounded figures and is not arithmetically correct.

(51) With regard to the other contributions that, in Germany's view, should also be considered contributions by the recipient from its own resources or from external financing, the Commission reiterates its view as expressed in the decision to initiate the formal investigation procedure that they cannot be taken into account as a contribution by the recipient.

(52) However, in view of the fact that, according to the latest information, the recipient's contributions from its own resources and from external financing are significantly higher than indicated in the preliminary assessment, the Commission concludes that its initial doubts as to whether the recipient did make a significant contribution to the restructuring have been removed.

VI. **CONCLUSION**

(53) The Commission finds that Germany has implemented the aid in question in breach of Article 88(3) of the EC Treaty. On the basis of its assessment, the Commission further concludes that the ad hoc aid for the restructuring is incompatible with the common market as it does not fulfil the conditions set out in the guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany has implemented for Eisenguss Torgelow GmbH, Torgelow, Mecklenburg-Western Pomerania, in the form of a DEM 2 000 000 (EUR 1 022 583) grant, a DEM 311 042 (EUR 159 033) fallback guarantee provided by the Kreditanstalt für Wiederaufbau in respect of the DEM 622 085 (EUR 318 067) loan provided by Deutsche Bank AG and the 3,7 % interest subsidy on the same loan, is incompatible with the common market.

Article 2

1. Germany shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

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, 5 June 2002.

For the Commission

Mario MONTI

Member of the Commission