II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 July 2001

on the State aid C 35/2000 (ex NN 81/98) implemented by the Federal Republic of Germany for Saalfelder Hebezeugbau GmbH, Germany

(notified under document number C(2001) 2347)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/85/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. PROCEDURE

(1) By letter dated 10 July 1998, registered as received on the same day, Germany notified the Commission of restructuring measures in favour of Saalfelder Hebezeugbau GmbH (SHB) in accordance with Article 88(3) of the EC Treaty. As part of the aid had already been paid out, the measures were registered under aid number NN 81/98. By letter dated 18 August 1998, the Commission requested additional information from Germany which was provided by letters dated 21 September 1998, registered as received on 22 September 1998, and 18 December 1998, registered as received on 4 January 1999. By letter dated 13 July 1999, registered as received on 19 July 1999, Germany informed the Commission of its intention to withdraw the notification. By letter dated 27 August 1999, the Commission informed Germany that the withdrawal had not been accepted. Germany submitted additional information by letter dated 20 September 1999, registered as received on 22 September. On 8 November 1999 the Commission asked further questions which were answered by letters dated 13 December 1999, registered as received on 20 December 1999, and 12 January 2000, registered as received on 14 January 2000.

(2) By letter dated 17 July 2000, 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. Moreover, it issued an information injunction.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) By letter dated 26 September 2000, registered as received on 3 October 2000, Germany replied to the opening of the procedure and the information injunction. Further questions were sent to it by letter dated 28 December 2000 and answered by letter dated 27 February 2001, registered as received on 3 March 2001. A meeting with the German authorities was held on 7 March 2001. Additional information was requested by letter dated 8 March 2001. Answers were received by letters dated 22 March 2001, registered as received on 23 March 2001, and 3 April 2001, registered as received on 5 April 2001.

[1] OJ C 27, 27.1.2001, p. 44.

[2] OJ C 27, 27.1.2001, p. 44.

(5) The Commission received no comments from interested parties.

2. DESCRIPTION

2.1. The aid recipient

(6) SHB is active in the field of crane technology, which represents 68 % of its turnover, and components for mechanical engineering and for transport, storage and transmission systems. In addition, it provides related customer services, including the supply of replacement parts.

(7) In 1997 the company had 135 employees and a turnover of DEM 15 963 000. As it is not more than 25 %-owned by a large company satisfying the definition of a small or medium-sized enterprise (SME), it qualifies as an SME within the meaning of the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises. ([3]).

(8) SHB is situated in Saalfeld, Thuringia, an assisted area under Article 87(3)(a) of the EC Treaty.

2.2. Background

(9) At the time of the German Democratic Republic, SHB belonged to the State-owned corporation TAKRAF. In 1993, following an open, transparent and unconditional competitive tender, SHB was sold to the Gresse Gruppe, which comprised Gresse GmbH Kranbau Wittenberg and Barlebener Kranbau GmbH (BAKRA), and to three private investors. The purchase price was DEM […] (*).

(10) Before the restructuring SHB benefited from the following public financial measures amounting to DEM 4 723 784 between 1992 and 1997:

(in DEM)

No	Measure	Amount
1	Investment allowances	211 612
2	Grants to promote research and development	459 630
3	Employee integration grants	81 402
4	Short-time-working grants	792 503
5	Investment grants	1 265 016
6	ERP loan (development programme)	1 000 000
7	Loan from the Reconstruction Loan Corporation (SME programme)	500 000
8	Wage-cost subsidies	240 304
9	Grants to promote innovation	120 430
10	Grants for advertising	48 837
11	Trade fair attendance and sales promotion grants	4 050
	Total	4 723 784

(11) *Measure 1:* investment allowances were granted between 1992 and 1997 under the two investment allowance laws of 1991 to 1992 ([4]) and 1993 to 1996 ([5]). Measures under these laws qualify as regional investment aid under Article 87(1) of the EC Treaty and have been approved by the Commission on the basis of the derogation in Article 87(3)(a). The allowances are covered by the relevant aid schemes and are therefore regarded as existing aid.

(12) *Measure 2:* the company received grants amounting to DEM 459 630 between 1992 and 1997 under an approved aid scheme for promoting research and development activities of SMEs in the new *Länder* ([6]). The grants are covered by that scheme and are therefore regarded as existing aid.

(13) *Measure 3:* in 1992 and 1994 to 1997 grants for the integration of elderly employees amounting to DEM 81 402 were provided on basis of Section 217 of the Social Security Code (*Sozialgesetzbuch: Drittes Buch* — SGB III). They are a general measure and so do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(14) *Measure 4:* in 1993, 1995 and 1996 short-time-working grants amounting to DEM 792 503 were provided on basis of the Labour Promotion Law (Arbeitsförderungsgesetz). They are made available directly to individuals as compensation for reduced income and do not benefit the company. Therefore they do not fall within the scope of Article 87(1) of the EC Treaty.

(15) *Measure 5:* between 1994 and 1997 investment grants amounting to DEM 1 265 016 were provided under the

([3]) OJ L 107, 30.4.1996, p. 4.

(*) Business secret.

([4]) Investitionszulagengesetz 1991 to 1992 (C 59/91, SG (92) D/8068 of 18.6.1992).

([5]) Investitionszulagengesetz 1993 to 1996 (N 561/92, SG (92) D/16623 of 24.11.1992).

([6]) Personalförderung Ost '*Zuschüsse zur Stützung des Forschungs- und Entwicklungspotentials in kleinen und mittleren Unternehmen im Beitrittsgebiet*' (N 477/91, SG (91) D/22704 of 25.11.1991).

23rd outline plan for the joint Federal Government/*Länder* scheme for improving regional economic structures, a regional aid scheme approved by the Commission ([7]). This scheme had been approved by the Commission as a regional investment aid scheme on the basis of the derogation in Article 87(3)(a) of the EC Treaty. The grants are covered by the scheme and thus constitute existing aid.

(16) *Measure 6:* a loan amounting to DEM 1 000 000 was granted to the company in 1995 under the ERP development programme, an aid scheme approved by the Commission ([8]). It is covered by the scheme and thus constitutes existing aid. In 1997 it was converted into a private bank loan.

(17) *Measure 7:* a loan amounting to DEM 500 000 was granted to the company in 1995 under the SME programme of the Reconstruction Loan Corporation, an aid scheme approved by the Commission ([9]). It is covered by the scheme and thus constitutes existing aid. In 1997 it was converted into a private bank loan.

(18) *Measure 8:* between 1995 and 1997 the company received wage-cost subsidies amounting to DEM 240 304 on the basis of Section 249h of the Labour Promotion Law. The subsidies were granted with a view to promoting employment in the context of measures to improve the environment. According to a Commission decision, these measures do not constitute State aid within the meaning of Article 87(1) of the EC Treaty ([10]).

(19) *Measure 9:* in 1996 and 1997 the company received grants amounting to DEM 120 430 for the promotion of innovation activities under an aid scheme approved by the Commission ([11]). The grants are covered by that programme and thus constitute existing aid.

(20) *Measures 10 and 11:* between 1994 and 1997 grants amounting to DEM 48 837 were provided to the company for advertising measures. In 1996 an amount of DEM 4 050 was granted to promote attendance at trade fairs. These measures were granted in line with the Commission notice on the *de minimis* rule for State aid ([12]).

([7]) 23. Rahmenplan der Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur: measures under this scheme qualify as regional investment aid under Article 87(1) and were approved by the Commission on the basis of the derogation in Article 87(3)(a) (N 157/94, SG (94) D/11038 of 1.8.1994).

([8]) N 563/C/94, SG(94) D/17293 of 1.12.1994.

([9]) NN 24/96, SG(96) D/3475 of 29.3.1996.

([10]) NN 117/92, SG(95) D/341 of 13.1.1995.

([11]) Innovationsförderung '*Förderung der Entwicklung neuer Produkte und Verfahren in kleinen und mittleren Unternehmen in den neuen Bundesländern*', (N 534/91, SG (92) D/3225 of 4.3.1992).

2.3. **The restructuring**

(21) In May 1997 BAKRA, a company 100 %-owned by the Gresse Gruppe, went bankrupt. As a consequence, the financial situation of the whole Gresse Gruppe was threatened. SHB also ran into difficulties. Turnover fell from DEM 19 278 502 in 1996 to DEM 15 962 850 in 1997. In 1996 SHB made a profit of DEM 2 103 000 whereas in 1997 losses amounted to DEM 1 486 595. The company was faced with financial difficulties due to the cancellation of credit insurance by suppliers, a loss of confidence on the part of buyers and the freezing of credit lines.

(22) Separation from the Gresse Gruppe was regarded as inevitable to secure the continuation of the company's business activities. The shares held by the Gresse Gruppe were therefore temporarily taken over by SHB. The contract was signed in April 1997 and the purchase price was DEM […] (*).

2.3.1. *The restructuring measures*

(23) In 1997 a restructuring plan was drawn up consisting in a further exchange of shareholders and a restructuring of the firm's activities. The plan was modified in 1998. Germany submitted two restructuring plans dated May 1997 and March 1998.

(24) The restructuring of the company was based on a new company structure and the reorganisation of production facilities. Most of the measures were supposed to be implemented before the second half of 1998, the remaining measures in the first half of 1999.

(25) The financial aspects of the restructuring plan were as follows:

(in DEM)

	1998	1999	2000
Turnover	34 540 000	29 540 000	30 040 000
Material costs	15 854 050	15 682 700	15 345 900
Staff costs	8 727 000	8 877 000	9 027 000
Depreciation	1 000 000	1 000 000	1 000 000
Profit	109 866	569 698	1 194 981

([12]) OJ C 213, 19.8.1992, p. 2. See also Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9).

(26) In order to restore the viability of the company, turnover was supposed to increase in the following years while costs were supposed to fall. The best prospects for an increase in production were to be seen in components and services. Costs were supposed to fall following internal reorganisation.

(27) A distribution network for sales of components was supposed to be set up and a new marketing concept in the field of services established in order to exploit the favourable prospects anticipated in these fields. Moreover, SHB intended to boost productivity by taking several internal measures. A new company structure should lead to increased transparency. A restructuring of the purchasing department should strengthen the position of the company so that it could obtain discounts and favourable payment terms. The reorganisation of internal auditing and control should enhance planning certainty.

(28) The costs of restructuring the company amounted to an estimated DEM 3 827 000 plus a credit line (*Avalrahmen*) of DEM 4 000 000. The breakdown was as follows:

(in DEM)

Restructuring measures	Amount
Exchange of shareholders	1 110 000
Investment	
— buildings	860 000
— reorganisation of equipment and machinery	997 000
Loss cover 1997/liquidity	860 000
Total	3 827 000
Credit line (*Avalrahmen*)	4 000 000
Total	7 827 000

(29) In order to stabilise the pattern of ownership, two new investors acquired the shares of two former shareholders for a price of DEM 585 000 as part of a management buy-out. The third investor already owning shares in the company acquired the shares held by SHB for DEM 525 000. The exchange of shareholders took place in July/August 1997. The costs of the exchange amounted to DEM 1 110 000. The company is now owned by three natural persons who are part of the management and do not hold shares in other companies.

(30) An amount of DEM 860 000 was needed to finance part of the construction of an administrative building. The total cost of this new building amounted to DEM 1 810 000. The building was needed because the company was forced to leave its old building owing to the construction of a main road by the Erfurt city authorities.

(31) In this connection, the company received DEM 950 000 from the city of Erfurt as compensation for the old building. This payment does not constitute State aid as it is compensation for damages caused to the company. As proof, Germany has submitted a report by an independent consultant confirming this figure and the fact that the compensation was paid at market conditions. The costs covered by this payment of DEM 950 000 were not included in the restructuring plan since they do not constitute a restructuring measure.

(32) In addition, the restructuring plan included the purchase and modernisation of equipment and machinery with a view to rationalising production and reducing costs. Lastly, computer software and hardware were also to be renewed. The costs of these investments were put at DEM 997 000.

(33) An amount of DEM 860 000 was intended to cover losses from 1997 and to provide the company with liquidity.

(34) In order to safeguard the company's ability to pay, a credit line of DEM 4 000 000 was made available.

2.3.2 *Financial commitments*

(35) Financing for the restructuring measures was to come from the following sources:

(in DEM)

Financial measures	Amount
Own resources	216 000
Two loans from the Equity Loan Scheme	228 000
Loan from the Equity Fund for Eastern Germany	900 000
Direct investment grants (joint scheme)	557 000
Two loans from the Consolidation Fund	1 926 000
Total	3 827 000
Credit line	4 000 000
— guarantee covering 80 % of credit line	3 200 000
— non-guaranteed part of credit line	800 000
Total	7 827 000

(36) An amount of DEM 216 000 was financed out of own resources.

(37) Two loans amounting to DEM 228 000 were granted under the Equity Loan Scheme *Eigenkapitalhilfeprogramm*. A loan of DEM 900 000 was granted by the Reconstruction Loan Corporation *Kreditanstalt für Wiederaufbau* from the Equity Fund for Eastern Germany *Beteiligungsfonds Ost*.

(38) The company received investment grants totalling DEM 557 000 from the *Land* of Thuringia.

(39) A credit line of DEM 4 000 000 was made available to the company by a private bank. The Thuringia Development Bank granted an 80 % deficiency guarantee (*Ausfallbürgschaft*) in respect of this credit line in October 1997.

(40) Two loans of DEM 1 575 000 net (DEM 1 615 000 gross) and DEM 351 000 were granted to the company by the Thuringia Development Bank from the Thuringia Consolidation Fund in April 1998.

(41) Germany had notified the two loans from the Consolidation Fund by letter dated 10 July 1998. This aid scheme requires individual notification of aid to the Commission if any rescue and restructuring aid in excess of EUR 1 000 000 has already been granted to the company. The individual notification of the two loans was justified on the grounds that the guarantee of the Thuringia Development Bank covering 80 % of the credit line of DEM 4 000 000 had been granted to the company when it was already in difficulty.

(42) However, by letter dated 13 July 1999, Germany withdrew the notification. It claimed that the deficiency guarantee granted in October 1997 was not restructuring aid because the company had not been in difficulty at the time.

(43) Germany asserted that SHB ran into difficulties only at the end of 1997 and the beginning of 1998. At the time that the guarantee was granted, SHB was a company with no liquidity problems and able to meet its payment obligations.

(44) The Commission cannot accept this view. The firm's annual report for 1997 States that the opening of the bankruptcy proceedings in respect of BAKRA on 4 March 1997 caused liquidity problems for the Gresse Gruppe as well as for SHB. According to this report, the company faced financial difficulties due to the cancellation of credit insurance by suppliers, a loss of confidence on the part of buyers and a freezing of credit lines. This is also mentioned in the first restructuring plan dating from May 1997. According to the Commission, SHB therefore already had liquidity problems at the time that the guarantee was granted and has to be regarded as a company in difficulty. Individual notification of the two loans from the Consolidation Fund is therefore necessary.

2.4. **Market analysis**

(45) SHB is active in the field of crane technology and components for mechanical engineering and for transport storage and transmission systems. In addition, it provides related customer services, including the supply of replacement parts. It operates in the market for special cranes. This market is worldwide and thus extends across Member States.

(46) The general crane market is fiercely competitive. According to information from the Federal Statistical Office, the turnover in the German market for lifting and conveyance systems increased significantly from DEM 20 500 million in 1998 to DEM 21 900 million in 1999, i.e. by around 6,83 %. There are grounds for believing that there may be excess capacity in the sector ([13]).

(47) No precise data are available for the niche market in special cranes. However, according to the information available to the Commission, there is no indication of any excess capacity in the market.

3. **OPENING OF THE PROCEDURE**

(48) The Commission initiated the formal investigation procedure in respect of two loans granted by the Thuringia Development Bank out of the Thuringia Consolidation Fund, an aid scheme for companies in difficulty approved by the Commission. In order for the loans to be covered by this scheme, under which they had allegedly been granted, the conditions of the Community guidelines for rescuing and restructuring firms in difficulty (1994 guidelines) ([14]) must be fulfilled. When opening the procedure, the Commission had doubts that these conditions had been satisfied: no detailed restructuring plan had been submitted, there was no indication that the financial forecasts would be met and the investor contribution could not be regarded as being significant.

(49) In addition, Germany claimed that a number of measures had been granted under approved aid schemes. On the basis of the information available, however, the Commission was unable to ascertain whether the loans of DEM 228 000 under the Equity Loan Scheme and DEM 900 000 under the Equity Fund for Eastern Germany were covered by the relevant schemes, under which they had allegedly been granted. No information had been provided either on the terms

([13]) See page 57, '*Statistisches Handbuch für den Maschinenbau*', 1997 edition, prepared by the Verband Deutscher Maschinen- und Anlagenbau e.V.

([14]) OJ C 368, 23.12.1994, p. 12.

of the loans or on the exact identity of the schemes. The Commission issued an information injunction to determine whether these loans complied with the schemes under which they had allegedly been granted.

4. COMMENTS FROM GERMANY

(50) In its reply to the decision to open the procedure, Germany claimed that the condition for restoring the viability of the company was met. Although the turnover forecasts laid down in the restructuring plan would not be fully met, the results in 1998 and 1999 were better than originally envisaged. In addition, Germany submitted a detailed restructuring plan.

(51) Germany restated its view that the company was not in difficulty in October 1997, when the 80 % deficiency guarantee for a credit line was granted. It thus claimed that notification of the two loans from the Thuringia Consolidation Fund was not necessary.

5. ASSESSMENT OF THE AID

5.1. Aid within the meaning of Article 87(1) of the EC Treaty

(52) SHB has received financial assistance deriving from public resources which a company in difficulty would not have received from a private investor, conferring on it advantages vis-à-vis its competitors. As the relevant product market is worldwide, such assistance affects trade between Member States. These financial measures thus constitute State aid within the meaning of Article 87(1) of the EC Treaty and the Commission must assess their compatibility with the common market.

5.2. Compliance with existing aid schemes

5.2.1. *Loans from the Equity Loan Scheme (Eigenkapitalhilfeprogramm)*

(53) Two loans of DEM 160 000 and DEM 68 000 were allegedly granted under the Equity Loan Scheme, an aid scheme approved by the Commission ([15]). As the Commission did not possess enough information to assess whether these loans are covered by that aid scheme, it issued an information injunction.

(54) The scheme provides loans to individuals starting up or consolidating a business activity. In the case of a company in difficulty, the conditions set out in the 1994 guidelines ([16]) have to be met.

(55) The loans were granted in 1998 to two individuals to enable them to acquire shares in the context of a management buy-out. As the company was in difficulty at the time the aid was granted, the conditions set out in the aforementioned guidelines have to be met. As pointed out below, these conditions are met. The other conditions laid down in the scheme are also met. The loans are thus covered by the aid scheme under which they were allegedly granted and therefore constitute existing aid, which does not need to be re-assessed in the present procedure. However, they will be taken into account in calculating the proportionality of the aid.

5.2.2. *Loans from the Equity Fund for Eastern Germany (Beteiligungsfonds Ost)*

(56) A loan of DEM 900 000 was granted by the Reconstruction Loan Corporation (KfW) from the Equity Fund for Eastern Germany, an aid scheme authorised by the Commission ([17]). As the Commission did not possess enough information to assess whether the loan is covered by the relevant aid scheme, it issued an information injunction.

(57) The scheme provides loans for strengthening the equity capital base of companies in the new *Länder*. In the case of a company in difficulty, the conditions set out in the 1994 guidelines have to be met.

(58) The loan was granted to a shareholder of the company in December 1997. An amount of DEM 315 000 was used to purchase additional shares, while the remaining DEM 585 000 was injected into the company as capital.

(59) As the company was in difficulty at the time the aid was granted, the conditions set out in the 1994 guidelines have to be met. As pointed out below, these conditions are met. The loan also meets the other conditions set out in the programme. It is thus covered by the aid scheme under which it was allegedly granted.

([15]) N 519/95, SG (95) D/11491 of 14.9.1995.

([16]) See footnote 14.

([17]) N 646/A/95, SG(95) D/12827 of 18.10.1995.

It therefore constitutes existing aid, which does not need to be re-assessed in the present procedure. However, it will be taken into account in calculating the proportionality of the aid.

5.2.3. *Investment grants*

(60) Investment grants amounting to DEM 557 000 were granted to the company under the 26th outline plan for the joint Federal Government/*Länder* scheme for improving regional economic structures, a regional aid scheme approved by the Commission ([18]). The grants comply with the conditions set out in the scheme under which they have been allegedly granted and are therefore covered by the scheme. They thus constitute existing aid, which does not need to be reassessed. However, they will be taken into account in calculating the proportionality of the aid.

5.2.4. *80 % guarantee from the Thuringia Development Bank (Thüringer Aufbaubank)*

(61) A guarantee covering 80 % of a credit line of DEM 4 000 000 was granted by the Thuringia Development Bank under an aid scheme approved by the Commission ([19]). The scheme stipulates that, if the guarantee is granted to a company in difficulty, the conditions set out in the 1994 guidelines have to be met. As pointed out below, these conditions are met. As the other conditions laid down in the scheme are also met, the guarantee is covered by the aid scheme, under which it was allegedly granted. It therefore constitutes existing aid, which does not need to be re-assessed. However, it will be taken into account in calculating the proportionality of the aid.

5.2.5. *Loans from the Thuringia Consolidation Fund (Thüringer Konsolidierungsfonds)*

(62) Two loans of DEM 1 615 000 gross (DEM 1 575 000 net) and DEM 351 000 were granted to the company under the Thuringia Consolidation Fund, an aid scheme for companies in difficulty approved by the Commission in April 1998 ([20]).

([18]) 26. Rahmenplan der Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur: Measures under this scheme qualify as regional investment aid under Article 87(1) of the EC Treaty and were approved by the Commission on the basis of the derogation in Article 87(3)(a) of the EC Treaty (N 123/97, SG (97) D/7104 of 18.8.1997).

([19]) Bürgschaftsrichtlinie der Thüringer Aufbaubank (N 117/96, SG (96) D/11696 of 27.12.1996).

([20]) Thüringer Konsolidierungsfonds für Unternehmen in Schwierigkeiten (NN 74/95, SG (96) D/1946 of 6.2.1996).

(63) The aid scheme provides for measures for restructuring companies in difficulty. The conditions of the aid scheme are the same as those set out in the 1994 guidelines. The Commission had doubts as to whether these conditions were met and initiated the formal investigation procedure.

(64) The first loan was for DEM 1 615 000 gross, which amounts to DEM 1 575 000 net. A handling fee of DEM 40 000 was deducted from the loan, DEM 578 000 was used to provide the company with liquidity and DEM 997 000 was for investments in machinery and equipment.

(65) The second loan was for DEM 315 000. The company used it to help two individuals acquire shares in the context of a management buy-out. This measure is part of the financial restructuring of the company and will strengthen its capital base.

(66) In order for the two loans to be covered by the scheme, under which they were allegedly granted, the conditions of the 1994 guidelines have to be met.

5.3. **Compliance with the 1994 guidelines**

(67) Since, according to the information available, the aid was granted before 30 April 2000, the 1994 guidelines ([21]) are applicable ([22]).

Restoration of long-term viability

(68) The granting of restructuring aid requires a realistic, coherent and far-reaching restructuring plan capable of restoring the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions.

([21]) See footnote 14.

([22]) Section 7.5 of the 1999 Guidelines on State aid for rescuing and restructuring firms in difficulty states that 'the Commission will examine the compatibility with the common market of any rescuing and restructuring aid granted without its authorisation (…) on the basis of the Guidelines in force at the time the aid is granted (…)' (OJ C 288, 9.10.1999).

(69) Germany submitted two restructuring plans dated May 1997 and March 1998. As explained in Section 2.3.1, these two plans taken together constitute a coherent restructuring plan capable of restoring the company's viability. The restructuring was to last two years, this being a reasonable timescale.

(70) The latest financial data confirm this assessment:

(in DEM)

	1998	1999	2000 (*)
Turnover	26 664 000	29 974 000	29 467 000
Profit	331 000	1 444 000	269 000

(*) Provisional.

(71) The strong increase in profits in 1999 is attributable mainly to extraordinary income. However, an examination of the data provided by Germany shows that SHB was able to reduce its losses significantly and to resolve the problems facing it. The figures show a continuing positive development. Provisional turnover in 2000 is only just short of the turnover of DEM 30 040 000 aimed at in the restructuring plan.

(72) In view of this development and the qualitative aspects of the restructuring, the Commission concludes that the condition of restoring viability is met.

Avoidance of undue distortions of competition

(73) The restructuring plan must contain measures for offsetting as far as possible adverse effects on competitors. Otherwise, the aid granted in support of the restructuring would be contrary to the common interest and ineligible for exemption pursuant to Article 87(3) of the EC Treaty.

(74) Where, therefore, an assessment of demand and supply shows that there is a structural excess of production capacity in a relevant market in the EU, the restructuring plan must make a contribution, proportionate to the aid received, to the restructuring of the relevant sector by irreversibly reducing or closing capacity.

(75) To assess the consequences of maintaining SHB in the market and the effect on competitors, the output of the company, the fact that the aid is granted in an assisted area under Article 87(3)(a) of the EC Treaty and the company's status as an SME must be taken into consideration.

(76) According to the information available to the Commission, there is no excess of capacity in the niche market for special cranes, in which SHB is active. Moreover, SHB is not expanding its capacity.

(77) According to the information submitted by Germany, the company accounted for 2 % of total output on the European market for special cranes.

(78) Since SHB is an SME situated in an assisted area pursuant to Article 87(3)(a) of the EC Treaty and since its production is limited, the Commission comes to the conclusion that there is no undue distortion of competition and competitors are not adversely affected.

Aid in proportion to the restructuring costs and benefits

(79) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's viewpoint. Therefore, the investors must make a contribution to the restructuring plan from their own resources. Moreover, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which would be used for aggressive, market-distorting activities not linked to the restructuring process.

(80) The costs of restructuring SHB totalled DEM 7 827 000.

(81) Of this amount, DEM 216 000 was brought in directly by the investors and can be regarded as a private investor contribution.

(82) Germany claims that the loans granted under the Equity Loan Scheme are to be regarded as a private investor contribution. However, it has to be noted that, even though the loans are provided by a private bank, they are refinanced by a public bank (*Deutsche Ausgleichsbank*) under an approved aid scheme. The scheme provides low-interest loans to individuals wishing to acquire the shares of a company. Aid is granted in form of a subsidised interest rate.

(83) The 1994 guidelines state that aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing.

(84) The two loans of DEM 160 000 and DEM 68 000 were granted in January 1998 for a period of 20 years. The loans are to be paid back in equal instalments between 2008 and 2017. The interest rate on the loans is 7 %. However, part of the interest is paid by the Deutsche Ausgleichsbank from the ERP Special Fund (ERP-Sondervermögen). The interest rate to be paid by the investors is thus reduced as follows: 0 % in 1998 and 1999, 3 % in 2000, 4 % in 2001 and 5 % from 2002 to 2017. The risk is covered by the private bank.

(85) As the interest rate is subsidised by the State, market conditions are not present. The reference interest rate at the time the loans were granted was 5,94 %. Since the company was in difficulty, it is assumed that no bank would have granted an equivalent loan under market conditions at this interest rate but would have charged a premium on the interest rate in order to take into account of the increased risk. The interest rate at which the loans were granted to the investors is therefore well below the interest rate which the investors would have had to pay for loans under market conditions. Consequently, the Commission considers that the two loans cannot be regarded as external financing and cannot be taken into account in calculating the private investor contribution.

(86) In addition, Germany considers that the loan of DEM 900 000 granted under the Equity Fund for Eastern Germany, an approved aid scheme, is not to be regarded as a private investor contribution. The loan is provided by a private bank but refinanced by the Reconstruction Loan Corporation, a public bank. It was granted in December 1997 for a period of 10 years at an interest rate of 6,65 %. It is to be paid back in one instalment in 2007. The contract stipulates that the private bank is liable for 50 % of the loan, i.e. DEM 450 000. The recipient of the loan provided the following securities: a personal guarantee, transfer of his rights as a shareholder of the company and a deposit of DEM 450 000 at the private bank.

(87) The part of the loan for which the private bank is liable is secured by a deposit of DEM 450 000. Moreover, the reference interest rate at the time the loan was granted was 5,54 %, so that the loan was granted at an interest rate above the reference interest rate. Although the company is in difficulty, no premium has been charged since the private bank bears no additional risk on account of the securities provided. This part of the loan amounting to DEM 450 000 can therefore be regarded as being financed under market conditions and can be taken into account in calculating the private investor contribution.

(88) A credit line of DEM 4 000 000 was made available to the company by a private bank. Of this credit line, 80 % is covered by the State's deficiency guarantee. The bank bears the risk of the remaining 20 %. The company offers a second mortgage on the company's land amounting to DEM 4 000 000 as collateral for the credit line. The 20 % of the credit line not covered by a guarantee, i.e. DEM 800 000, can therefore be regarded as financing under market conditions and can be taken into consideration in calculating the private investor contribution.

(89) In total, the private investor contribution amounts to DEM 1 466 000. This represents 18,7 % of the total restructuring costs of DEM 7 827 000. In view of the company's status as an SME and the problems SMEs have in finding financing, the investor contribution to the restructuring can be regarded as significant within the meaning of the 1994 guidelines.

Full implementation of the restructuring plan

(90) The Commission notes that the restructuring plan has to be fully implemented. It requests Germany to submit annual reports for the period covered by the restructuring.

6. **CONCLUSION**

(91) The Commission finds that the Federal Republic of Germany has unlawfully implemented aid measures amounting to DEM 1 966 000 in breach of Article 88(3) of the EC Treaty. However, these measures, although unlawfully implemented, meet the criteria laid down in the 1994 guidelines and are therefore compatible with the common market pursuant to Article 87(3)(c),

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Saalfelder Hebezeugbau, amounting to DEM 1 966 000, is compatible with the common market within the meaning of Article 87(1) of the EC Treaty.

Article 2

Germany is hereby requested to submit by the end of 2001 annual reports covering the years 1998 to 2000.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 18 July 2001.

For the Commission

Mario MONTI

Member of the Commission