COMMISSION DECISION
of 10 December 2003
on the aid scheme for the Thüringer Industriebeteiligungsfonds

(notified under document number C(2003) 4495)

(Only the German text is authentic)

(Text with EEA relevance)

(2004/115/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular 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 [1] and having regard to those comments,

Whereas:

1. PROCEDURE

(1) After scrutinising the annual reports of the Thüringer Industriebeteiligungsfonds (TIB-Fonds), the Commission had doubts as to the compatibility of the activities of the TIB-Fonds with its decision of 9 August 1994 on the TIB-Fonds aid scheme (state aid N 183/94). It accordingly initiated proceedings under No NN 120/98 and called for information to be provided (letter of 30 December 1998). Since the Federal Government did not react, the Commission informed Germany by letter dated 15 March 1999 of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty.

(2) In addition, by letter dated 17 November 1997, Germany notified the Commission of clarifications and amendments to the aid scheme previously approved by the Commission for a 10-year period under aid N 183/1994. It provided the Commission with additional information by letter dated 29 January 1998. The Commission had doubts as to whether the TIB-Fonds was effectively controlled by the *Land* authorities. By letter of 15 March 1999 (see recital 1), Germany was informed of the Commission's decision to initiate the procedure provided for in Article 88(2) in respect of this aspect too.

(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.

(4) The comments received from interested parties were forwarded to Germany.

(5) By fax of 24 October 2003, Germany withdrew its application of 17 November 1997.

2. COMMENTS FROM INTERESTED PARTIES

(6) The only comments received were those submitted by the TIB-Fonds by letter dated 31 May 1999.

3. DESCRIPTION AND ASSESSMENT

(7) The present procedure covers two distinct aspects: first, the presumed improper application of the Commission decision of 9 August 1994 on the TIB-Fonds aid scheme and, second, the notification of an improved, partially amended aid scheme for the activities of the TIB-Fonds. Since the notification was withdrawn by Germany, the procedure should be closed in accordance with Article 8 of Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [3].

(8) As regards the presumed improper application of the Commission decision in 1994, the period covered by the investigation extends from 9 August 1994 (notification to Germany of the Commission decision in procedure N 184/94) to 15 March 1999 (notification to Germany of the Commission decision initiating the procedure) (cf. point 4 of that decision). Several firms were referred to by name in that decision. In various parallel individual cases, the Commission has, in relation to those firms, examined the compatibility of the activities of the TIB-Fonds with the common market. The procedures are the following: MITEC (NN 31/97), Umformtechnik Erfurt (N 201/99), Compact Disc Albrechts (C 42/98), Kahla Porzellan (C 62/00), Zeuro Möbel (C 56/97), Henneberg Porzellan (C 36/00) and Deckel Maho (C 27/00). These cases are not, therefore, covered by the present procedure.

[1] OJ C 166, 9.6.2001, p. 14.
[2] See footnote 1.
[3] OJ L 83, 27.3.1999, p. 1.

(9) Insolvency proceedings were initiated in respect of four other small and medium-sized enterprises (KHW Konstruktionsholzwerk Seubert GmbH & Co. KG, Simson Zweirad GmbH, Polyplast GmbH and Möbelwerke Themar). None of those enterprises is active on the market any more. Since they no longer distort competition and since any recovery claims would therefore be devoid of purpose, the procedure should be closed.

(10) By fax of 25 May 1999, Germany provided information on another six firms. The information communicated does not give the Commission any grounds for considering that the criteria laid down in its decision in Case N 183/94 have not been complied with.

4. **CONCLUSION**

For the above reasons, the procedure in aid case C 17/99 should be closed,

HAS ADOPTED THIS DECISION:

Article 1

Aid procedure C 17/99, which concerns, on the one hand, the changes notified to the aid scheme initially approved and, on the other, certain measures to assist firms in Thuringia through the Thüringer Industriebeteiligungsfonds during the period from 9 August 1994 to 15 March 1999 under the originally approved aid scheme, is terminated.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 10 December 2003.

For the Commission

Mario MONTI

Member of the Commission