

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 1 July 1998

on aid granted by Germany to Chemieanlagenbau Staßfurt

*(notified under document number C(1998) 2050)*

**(Only the German text is authentic)**

**(Text with EEA relevance)**

(1999/339/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having given notice to the parties concerned to submit their comments, in accordance with that Article,

Whereas:

transferred to the list of aid measures not notified, where it was registered under number NN 24/97.

The Commission doubted whether the measure qualified as restructuring aid compatible with the common market, and on 2 April 1997 it decided to initiate proceedings under Article 93(2) of the Treaty. Germany was informed of the decision and the grounds for it by letter of 15 April 1997, the contents of which were published in the *Official Journal of the European Communities* <sup>(1)</sup>. Interested parties were invited to submit their observations within one month.

Germany replied to the Commission's letter of 15 April 1997 by letter of 13 May 1997, registered on 16 May 1997.

By letter of 9 December 1996, registered by the Commission on 10 December 1996, the German Government informed the Commission pursuant to Article 93(3) of the Treaty that it proposed to grant aid to Chemieanlagenbau Staßfurt AG ('CAS'). The Commission entered the measure on the register of State aid measures under the number N 897/96. By letter of 15 January 1997 the Commission sought additional information, which was supplied by letter of 21 February 1997, registered on 24 February 1997.

According to the Commission's information, aid had already been granted to CAS without awaiting the response of the Commission. The case was accordingly

Following publication of the notice in the *Official Journal of the European Communities* on 26 June 1997, the Commission received observations from a number of interested parties: there was a letter from a trade association, dated 23 July 1997, registered on 29 July 1997, and a letter from a European interest group, dated 25 July 1997, registered on 29 July 1997. Further observations arrived after the one-month deadline had expired: from the office of the permanent representative of a Member State, dated 28 July 1997, registered on 31 July 1997, and from a competitor, dated 29 July 1997, registered on 31 July 1997.

<sup>(1)</sup> OJ C 196, 26.6.1997, p. 13.

Copies of these letters were sent to the German authorities for comment on 21 August 1997. They replied by letter of 16 September 1997, registered on the same date.

By letter of 17 September 1997, registered on the same date, Germany informed the Commission pursuant to Article 93(3) of the EC Treaty that following the privatisation of the company, which had taken place on 2 July 1997, they were making changes to the aid package for CAS. By letter of 12 March 1998, the Commission sought additional information, which was supplied by letter of 16 April 1998, registered on the same date. Germany supplied further information by letter of 14 May 1998, registered on 18 May 1998.

## II

CAS has its registered office in Saxony-Anhalt; in 1997 it had a workforce of 210, a turnover of DEM 20 356 000, and fixed assets of DEM 48 589 000.

The origins of the company go back to 1863. In 1951 it was renamed VEB Maschinen- und Apparatebau Staßfurt, and later VEB Chemieanlagenbau Staßfurt. In 1990 it became Chemieanlagenbau Staßfurt AG. Its shares were held by the Treuhandanstalt privatisation agency until 1993, and thereafter by H.W. Urban GmbH & Co. Management KG Berlin, which was itself owned by the Treuhandanstalt and then its successor agency, the Bundesanstalt für vereinigungsbedingte Sonderaufgaben, and which acted for both agencies, taking over the management of CAS in July 1992. In April 1996 CAS became the property of Beteiligungs-Management Gesellschaft Berlin mbH ('BMGB'), which was entrusted with the task of privatising it. The same year BMGB instructed West Merchant Bank to identify potential private investors. Sale was by open invitation to tender. BMGB selected the most favourable and credible offer.

On 2 July 1997 CAS was sold to the private investor BVT Industrie-Beteiligungsgesellschaft mbH ('BVT') at a price of DEM 500 000. The German authorities made a loss of DEM 28 994 000 on the privatisation; if the company had been wound up, their loss would have been DEM 36 968 000. BVT took over certain of CAS's liabilities to third parties. BVT forms part of the BVT group, which has its seat in Munich and invests in the energy and environmental sector in Germany<sup>(2)</sup>.

<sup>(2)</sup> The BVT group also has an 80 % stake in Sodawerk Staßfurt AG, with an option on the remaining 20 %. Sodawerk Staßfurt manufactures soda ash, sodium and related substances. Its share of the German market in these products is about 20 %, and its share of the European market is about 8 %.

CAS operates in two industries, that of plant and machinery construction and that of iron casting. It sells 61,7 % of its output within Germany, 10,5 % within the rest of the common market, and 27,8 % in other countries.

On the plant and machinery side, CAS builds, supplies and installs plant for the manufacture of light ash, dense ash and potash. Its rotating drums are used for many purposes, for example in the fertiliser industry, waste recycling, non-metallic minerals and the timber industry.

On the iron foundry side, CAS makes iron castings for its own use and for outsiders. These include alloy and non-alloy grey cast iron and spheroidal graphite cast iron; the grey iron castings may weigh between 10 kilograms and 40 tonnes, and the spheroidal graphite castings between 10 kilograms and 16 tonnes. These are small runs of items made to order.

Iron foundries fall under Annex I to the ECSC Treaty. They are outside the scope of the 1988 framework for certain steel sectors not covered by the ECSC Treaty<sup>(3)</sup>. They can accordingly be treated like any other industry within the scope of the EC Treaty.

## III

The original notification, in December 1996, related to DEM 44 000 000 in aid for BMBG, in two forms. There was to be a cash injection of DEM 27 300 000, and DEM 16 700 000 in guarantees. In the course of the privatisation, in July 1997, minor changes were made to this package of aid by BMBG, bringing the total down to DEM 42 388 000. Both the original and the amended aid packages were intended to ensure the survival of CAS and to promote its further restructuring, and to carry out reorganisation measures drawn up by management consultants towards the end of 1995, which have for the most part been implemented according to plan.

The aid measures as amended in connection with the privatisation are as follows:

<sup>(3)</sup> OJ C 320, 13.12.1988, p. 3.

Measure	DEM
Redundancy payments in the event of a reduction from 180 to 150 employees	450 000
Waiver of claim to repayment of sums paid out for specific purposes (payments for social plan funding in 1994 and 1995)	12 002 000
Waiver of claim to repayment in respect of consultancy services provided by BMGB	892 000
Assumption of liability for debt, including interest	10 044 000
Grants in respect of estimated losses for 1997 to 1999	19 000 000
Total	42 388 000

Apart from these measures, BMBG also waived a claim for repayment of a shareholder loan of DEM 73 156 000 provided by the Treuhandanstalt, and of a sum of DEM 4 480 000 granted to clear up inherited environmental problems on the site. The waiver of the shareholder loan does not amount to additional aid, because the loans and guarantees provided by the Treuhandanstalt were intended for firms in particular difficulty, and it was accepted at the time they were granted that those firms might not be able to repay them. In cases of that kind it was safe to assume that the potential aid intensity was 100 %. This assumption proved correct in CAS's case; to waive the repayment of so risky a loan cannot be regarded as fresh aid. When it initiated the Article 93(2) proceedings, the Commission accepted that the aid granted by the Treuhandanstalt was in accordance with the relevant guidelines<sup>(4)</sup>. The financing of inherited environmental liabilities (Altlasten) is not considered to be State aid within the meaning of Article 92(1) of the EC Treaty<sup>(5)</sup>.

When it initiated the proceedings the Commission expressed concern at what appeared to be the grant of further guarantees to CAS in 1996; Germany has given assurances that there were no such guarantees.

Germany has stated that out of the aid covered by this Decision a sum of DEM 5 957 000 was paid out prior to approval by the Commission.

#### IV

At the outset of the proceedings the Commission accepted that other aid paid by the Treuhandanstalt in the past had also been granted in accordance with the State aid rules in force at the time<sup>(6)</sup>. This consisted of DEM 93 300 000 in 1994 and DEM 44 000 000 in 1995. But the Commission expressed doubt regarding what appeared to be the unnotified waiver of a claim to repayment of a shareholder loan of DEM 20 000 000. This question has since been clarified by the German authorities. The DEM 93 300 000 granted in aid in 1994 consisted essentially of loans and guarantees. Out of this sum CAS did not make use of DEM 20 000 000, and took up only DEM 73 156 000. This was the figure referred to in the German Government's letter of 17 September 1997 providing details of the privatisation and the amount of the shareholder loan.

After the publication of the letter from the Commission to Germany initiating the proceedings, several interested parties submitted observations. The Committee of European Foundry Associations argued that there was excess capacity in the industry, and consequently that CAS, which was an iron foundry, should not be given any State aid. The Association did not submit any specific data for the industry. A firm competing with CAS alleged that it had lost contracts to CAS because of predatory pricing. It did not supply any specific information either. A national trade association supported the allegations made by the competitor, in a brief letter which did not give details. The office of the permanent representative of a Member State submitted that CAS was considerably less efficient than the competitor already referred to, and consequently ought not to receive any State aid. This letter did supply some arguments, but it represented CAS as an iron foundry only, whereas in both relative and absolute terms iron casting is only a minor part of its business.

These letters were passed on to Germany for comment. It replied by letter of 16 September 1997, arguing that the aid given to CAS was the indispensable minimum needed to carry out the restructuring, and that CAS consequently had no excess finance available to be able to act in a way that distorted the market. CAS had not misused funds for anti-competitive conduct. The privatisation would not

<sup>(4)</sup> For aid before 31 December 1994, see the Commission Decisions on Treuhandanstalt operations in Cases NN 108/91 and E 15/92. For aid in 1995, see also the Commission Decision on Treuhandanstalt operations in Case N 768/94.

<sup>(5)</sup> See Case NN 108/91.

<sup>(6)</sup> See footnote 4.

increase capacity in the iron casting industry. The question of excess capacity is addressed in Section VII, which concludes that CAS has carried out a permanent reduction in casting capacity in line with the 1995 restructuring plan. As part of the restructuring to be carried out under the plan, capacity has also been reduced on the plant and machinery side.

## V

When it initiated the proceedings the Commission explained why it was that the EC Treaty and in particular Article 92(1) applied in this case. Although the aid package has since been amended, the same considerations apply. As the Commission commented in the notice announcing the proceedings, the aid package can be declared compatible with the common market only under the exemption in Article 92(3)(c). The conditions in which aid may qualify for exemption under this provision have been clarified in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the guidelines')<sup>(7)</sup>.

The notification has accordingly to be considered in the light of paragraph 3.2 of the guidelines, which deals with aid for restructuring. The aid must restore the long-term viability of the recipient firm within a reasonable time. It must not result in any unacceptable distortion of competition. If there is excess capacity in the relevant market, the recipient will generally be expected to reduce capacity. The costs and benefits of the restructuring operation must be in reasonable proportion. The restructuring plan must be implemented in full, and the Commission must be kept informed of progress.

When it initiated the proceedings the Commission explained which aspects of the aid and of the restructuring plan gave rise to doubt and which aspects did not.

The Commission expressed doubts whether the conditions laid down in the guidelines were met. Its objections were of three kinds. First, at the time of the original notification it was questionable whether a private investor could be found for CAS, and it was to be expected, therefore, that further aid might have to be granted, or that the restructuring plan might not be implemented in full. This also made it difficult to assess the costs and benefits of the restructuring operation. The second uncertainty arose out of the then state of the iron casting market. If there was overcapacity, CAS would have to be required to dismantle capacity irreversibly. Lastly, there were points where the information supplied by Germany was unclear and suggested that CAS might have received more aid than had been notified.

## VI

The guidelines state that the restructuring must restore the long-term viability of the firm within a reasonable time. When it initiated the proceedings the Commission drew attention to several difficulties in applying this test to the restructuring of CAS. First, there was no information to show what practical restructuring measures had to be taken, and which had already been carried out. Secondly, there were no forecasts of results after 1998, so that it could be supposed that the company's losses would continue. Thirdly, there were no expressions of interest on the part of private investors, so that there was no guarantee that aid would need to be granted only once, since a privatisation was a typical case where a final State-aided restructuring operation might be called for. The suspicion also persisted that loans to CAS amounting to about DEM 20 million had been covertly written off.

The original notification submitted by the German authorities in December 1996 described the restructuring plan drawn up at the end of 1995 only in very general terms; the German authorities have since provided detailed information on the individual measures envisaged in the plan and on progress with their implementation. The restructuring plan is based on an assessment of CAS carried out by management consultants in mid-1995, with the object of finding a suitable private investor. Their report drew attention to a number of problems: the loss of markets in central and eastern Europe, an industrial site that was overlarge, the lack of effective management structures, uncertainty as to which were the most profitable aspects of the supply of plant to potash and soda ash manufacturers, and poor supervision of financing and prices.

On the basis of this assessment a number of short- and medium-term measures were programmed in the restructuring plan drawn up at the end of 1995, and were implemented between the end of 1995 and 1996. These included the following:

- (a) Proper costing methods were introduced for the selection of contracts and the monitoring of their performance, in order to prevent a repetition of a case where a contract concluded in 1995 resulted in a loss of DEM 15 000 000.
- (b) New costing and monitoring mechanisms have made it possible to ascertain and focus on CAS's core skills and to apply them to new products. Identifying its most profitable activities has enabled CAS to concentrate on the production of key components and the sale of its know-how, rather than relying on building and installing entire plants. An example is the production of columns for distillation, absorption and carbonisation. With the application and marketing of rotating drums in the environmental sector, CAS's

<sup>(7)</sup> OJ C 368, 23.12.1994, p. 12.

core skills are being applied to new markets. The company is investigating uses for its high-performance filters outside the production of soda ash. On the foundry side, new product lines are being developed in collaboration with potential customers, including for example parts for wind-power generators or coke-oven jets.

- (c) Land that is not needed has been sold: CAS's site now covers only one-third of its previous area. Alongside the sell-off of land, the design centre in Halle has been sold to a private firm for DEM 400 000. The German authorities state that there was no aid involved. Concentration of operations in a smaller

area has also reduced internal transport costs. The rearrangement of the site has also led to an irreversible reduction in the capacity of the foundry, which is described below.

- (d) At the beginning of 1990 CAS had about 3 000 employees. By 1997 this figure had fallen to 210, in line with the plan. The gradual reduction in the workforce has entailed costs of DEM 87 000 000.

In response to the Commission's criticisms regarding a lack of information as to future performance, especially after 1998, the German authorities have now supplied projections up to the year 2000.

	1997	1998	1999	2000
Turnover	31 515 000	39 200 000	43 120 000	47 432 000
Other revenue	2 072 000	3 972 000	500 000	500 000
Total revenue	33 587 000	43 172 000	43 620 000	47 932 000
Expenditure on materials	22 475 000	26 180 000	23 613 000	22 135 000
Expenditure on staff	17 340 000	16 100 000	13 500 000	13 500 000
Operating profit or loss	- 16 953 000	- 9 908 000	- 4 338 000	1 305 000

According to the projected profit-and-loss accounts, CAS can expect an operating profit of DEM 1 305 000 in the year 2000. It should make pre-tax profits of DEM 221 000 in 1999 and DEM 1 202 000 in 2000. These figures do indicate a return to viability.

The sale of CAS to BVT, in July 1997, dispelled the Commission's doubts about compliance with the 'one time last time' principle. A private investor has taken over the firm, and the suspicion that further funding might be needed for restructuring on the occasion of a future privatisation has proved groundless.

The Commission's doubts regarding additional aid which might not have been notified have been discussed in Section III.

The aid measures which were notified, and which were amended in connection with the privatisation, give rise to no further doubts here, for the following reasons. The restructuring measures have for the most part been implemented in accordance with the 1995 plan; CAS's results are on the whole developing as anticipated; no major restructuring measures are planned in connection with the privatisation, apart from the effort to open up new

markets; and privatisation has enabled cost savings to be made, as plant and facilities have been used jointly with the new parent company.

Under the circumstances, the Commission concludes that the German authorities have satisfactorily allayed all the doubts considered in this Section.

## VII

A second condition in the guidelines is that the aid must not lead to undue distortion of competition. Especially in industries where there is excess capacity, a firm receiving restructuring aid will as a rule be expected to dismantle capacity so as to protect competitors. CAS operates in two industries, namely plant and machinery and, to a lesser extent, iron casting.

In its letter to the German authorities of 17 April 1997, announcing the initiation of proceedings pursuant to Article 93(2) of the Treaty, the Commission expressed particular concern at evidence existing at the time of the assessment of overcapacity in the iron-casting industry in the relevant period.

Germany states that during the restructuring of CAS's plant and machinery business in 1995 and 1996, CAS reduced capacity from 230 000 machine-hours a year in 1995 to 66 000 machine-hours in 1996. This was achieved by discontinuing several product lines, including small machines and stainless steel products produced using carbide technology, and the filter operation. The work-force actively engaged here fell from 175 in 1995 to 70 in 1996. The permanent team working in labour-intensive plant building was also reduced from 40 in 1995 to 20 in 1996. In line with the restructuring plan drawn up at the end of 1995, the overall staffing of the plant and machinery operation (including distribution, quality control and administration) was reduced from over 370 in 1995 to around 150 in 1997.

The share of iron casting in CAS's total turnover was put at no more than 15 % in 1997, at DEM 5 million out of DEM 31 515 000. The total output of the iron foundry will remain static, so that in relative terms its share of total sales will fall to about one tenth by 2000. Of the roughly 210 employees at CAS, less than 60 are employed in the iron foundry.

As regards the capacity of the iron casting industry, covering the production of alloy and non-alloy grey iron and spheroidal graphite iron castings, the most recent available information suggests that there was in fact no structural overcapacity in the relevant period, i.e. between the end of 1995 and the end of 1996, and that there has been none since. There had indeed been excess capacity in this area for many years. Between 1989 and 1996 some 300 European iron foundries were closed, 100 of them in the new German *Länder* alone<sup>(8)</sup>. Over the same period about 50 000 jobs were lost in this labour-intensive industry. The wave of redundancies has now come to an end<sup>(9)</sup>. The problem of overcapacity is also reflected in the decline in production from 9 628 000 tonnes in 1990 to 8 007 000 tonnes in 1993; this was reversed in 1994, when it reached 8 873 000 tonnes<sup>(10)</sup>. Structural overcapacity continued to exist until the beginning of 1994,

when among other things far-reaching measures to restructure capacities and employment which had been taken in the preceding years began to have their effect<sup>(11)</sup>.

The German authorities have now provided details of the irreversible reduction in capacity made by CAS in the period referred to, as required by the guidelines in order to protect competitors against undue distortion of competition. CAS reduced its foundry capacity from 4 500 tonnes a year in 1995 to 3 500 in 1996. This is an irreversible reduction in capacity, for the following reasons.

The cooling area of the works has been cut back; this reduces overall capacity, because the cooling section is a bottleneck in the firm's production cycle. After casting, the castings must cool before they can be sold or processed further. Cooling normally takes place in sand-pits. In CAS's case these sandpits were located in a large shed, in order to keep the sand dry and to maintain an even temperature. As part of the restructuring of the site a wall has been built dividing this cooling shed into two. In the part of the shed no longer used for cooling, the floor has been concreted over. This area is now used for storing moulds, which are an important element in the production process. The area available for production has been reduced from 3 900 m<sup>2</sup> to 2 300 m<sup>2</sup>.

The reduction is permanent, because to return this area to its old use would require considerable rebuilding work and conversion, and an interruption in the production process, and would also cause difficulties with the storage of the casting moulds.

CAS is located in an area which qualifies for aid pursuant to Article 93(2)(a) of the Treaty<sup>(12)</sup>. Under the guidelines the Commission may accept a smaller reduction in capacity in such areas than it would require of firms in regions not covered by that provision.

The Commission accordingly concludes, first, that CAS was not required to dismantle capacity in its foundry in order to avoid undue distortion of competition, and, second, that a permanent reduction in capacity was nonetheless carried out under the terms of the 1995 restructuring plan. The Commission notes that there was also a reduction in the capacity of the plant and machinery operation. The conditions laid down in the guidelines in respect of capacity and capacity reductions are consequently met.

<sup>(8)</sup> Source: Committee of European Foundry Associations, annual reports.

<sup>(9)</sup> Source: *Panorama of European Industry 1997*.

<sup>(10)</sup> Source: Committee of European Foundry Associations, annual reports.

<sup>(11)</sup> Source: *Panorama of European Industry 1997*.

<sup>(12)</sup> See State aid measure No N 464/93.

## VIII

The aid must be limited to the minimum needed to enable restructuring to be undertaken, and must be related to the costs and benefits of restructuring. There must not be excess funds remaining which the firm could use to follow aggressive, market-distorting policies. The investor is expected to make a contribution to the financing of the restructuring from his own resources.

When it initiated the proceedings, however, the Commission felt it was questionable whether a meaningful cost-benefit analysis could be carried out at that stage, for two reasons. First, there was a lack of information on the prospect of restoring the firm's viability within a reasonable time<sup>(13)</sup>. As has already been said, the missing information has since been supplied.

The second reason was the suspicion that additional aid might have been granted, in the form of guarantees, but not notified. This might have happened either because the restructuring costs were greater than those which had been stated by the German authorities, or because excess State aid had been provided. As has been explained, this suspicion has now been allayed<sup>(14)</sup>.

At the time the proceedings were initiated there was no private investor in view, and the Commission accordingly presumed that CAS would not be in a position to make an appropriate contribution of its own. Now that CAS has been taken over the position has changed.

The total cost of restructuring CAS comes to DEM 1 58 422 000; this includes DEM 77 636 000 already exempted under the Treuhandanstalt scheme. Of the remaining DEM 80 786 000, the private investor has provided DEM 38 898 000. This includes the assumption of liability for the repayment of loans of DEM 2 076 000, the provision of DEM 26 300 000 in guarantees, a capital injection of DEM 8 000 000, and a payment of DEM 1 520 000 towards making good inherited problems.

Including the purchase price of DEM 500 000, the private investor's contribution amounts to DEM 38 898 000; the remaining DEM 42 388 000 has been met out of State resources. The investor's total contribution thus covers about 25 % of the cost of restructuring, and

breaks down into a payment of DEM 1 520 000 towards making good environmental damage on the site, the assumption of liability for the repayment of loans of DEM 2 076 000, the provision of a back-to-back guarantee of DEM 26 300 000, and a capital injection of DEM 8 000 000. This is a fair contribution on the part of the investor.

The Commission concludes that this condition in the guidelines is now met.

## IX

A further condition in the guidelines is that the restructuring plan must be implemented in full. When the proceedings were initiated there was no investor in prospect, and Germany consequently could not rule out the possibility that changes might have to be made to the restructuring plan in order to reach agreement with an investor. Now that the privatisation has taken place and the 1995 restructuring plan has largely been implemented, this question is no longer pertinent.

Germany has given assurances that the private investor has complied with the 1995 restructuring plan and will complete the parts still remaining. It has also confirmed that the investor is required to submit regular reports on the implementation of the restructuring plan and the future development of CAS.

The Commission is therefore satisfied that this condition in the guidelines is also met.

## X

When it initiated the proceedings the Commission raised no other doubts regarding the applicability of the guidelines in CAS's case. It must also be observed that CAS is located in an area covered by Article 93(2)(a) of the EC Treaty. In the circumstances, and after considering the fresh information submitted to it, the Commission is satisfied that all the conditions for the applicability of the guidelines are now met.

The Commission nevertheless notes that the German authorities paid out a sum of DEM 5 957 000 in breach of their duty pursuant to Article 93(3) of the EC Treaty,

<sup>(13)</sup> See Section V.

<sup>(14)</sup> See Section III.

HAS ADOPTED THIS DECISION:

*Article 1*

The following new aid measures taken by Beteiligungs-Management Gesellschaft Berlin mbH to assist Chemieanlagenbau Staßfurt AG are compatible with the common market:

Measure	DEM
Redundancy payments in the event of a reduction from 180 to 150 employees	450 000
Waiver of claim to repayment of sums paid out for specific purposes (payments for social plan funding in 1994 and 1995)	12 002 000
Waiver of claim to repayment in respect of consultancy services provided by BMGB	892 000
Assumption of liability for debt, including interest	10 044 000
Grants in respect of estimated losses for 1997 to 1999	19 000 000
Total	42 388 000

*Article 2*

Germany must submit annual reports on the implementation of the restructuring measures in accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 July 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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