

# COMMISSION

## COMMISSION DECISION

of 28 October 1998

on aid granted by Germany to Neptun Industrie Rostock GmbH

(notified under document number C(1998) 3435)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/374/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 regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given the interested parties notice, in accordance with the abovementioned Articles, to submit their observations,

Whereas:

### I

By letter No 1015 dated 11 February 1997, the Commission informed Germany that it had decided to initiate proceedings pursuant to Article 93(2) of the EC Treaty in respect of aid granted for the rescue of Neptun Industrie Rostock GmbH (hereinafter 'NIR').

The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* <sup>(1)</sup>; the other Member States and interested parties were asked to submit their comments.

Germany replied to the notice of 11 February 1997 by letters dated 10 March and 29 April 1997. In reply to further questions by the Commission, it sent further information by letters dated 28 May, 16 June, 1 July, 4 July, 22 July, 10 September, 29 September, 5 December and 8 December 1997, and 29 January, 15 May, 19 June, 17 September and 19 October 1998.

The Commission's letters asking Germany for further information on the restructuring were dated 2 May, 19 June, 5 August and 23 December 1997, and 30 March, 2 September and 30 September 1998.

One Member State submitted comments to the Commission.

<sup>(1)</sup> OJ C 119, 17.4.1997, p. 4.

## II

By letter dated 13 June 1996, Germany sent notification of a loan of DEM 15 million granted by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (Federal Institute for Special Tasks associated with Unification; hereinafter the 'BvS') to NIR as rescue aid.

In a letter dated 12 September 1996, Germany confirmed that the amount of the loan had already been paid to NIR on 4 April 1996. It was initially to be repaid by the end of that year<sup>(1)</sup>.

The loan had not been notified to the Commission prior to its grant and/or payment.

Furthermore, the Commission found that the *Land* of Mecklenburg-Western Pomerania had decided to provide a 100 % guarantee in respect of a DEM 63 million loan on 15 May 1996. By decision of 2 September 1996, the *Land* extended the guarantee until the end of 1996<sup>(2)</sup>.

The guarantee was not notified to the Commission prior to its grant.

In its decision to initiate proceedings pursuant to Article 93(2) of the EC Treaty, the Commission took the view that, in line with the 'market economy investor principle', the two financial measures had to be regarded as State aid.

The Commission also considered the aid to be illegal, since Germany had failed to fulfil its obligations pursuant to Article 93(3) of the EC Treaty by granting the aid before notification. The Commission considered that the belatedly notified loan constituted rescue aid and assumed that the non-notified guarantee constituted rescue aid as well.

It expressed doubts as to the compatibility of the aid with the criteria laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ('the guidelines')<sup>(3)</sup>, especially as Germany had failed to provide any restructuring plan by the time the Commission decided to initiate the proceedings. The initiation of proceedings therefore comprised a formal injunction requiring Germany to provide full information on the financial situation of NIR, the total amount of aid granted and the restructuring programme.

## III

Following the initiation of proceedings, the government of one Member State sent comments to the Commission. It called for rapid clarification of the actual amount of aid paid and shared the Commission's doubts as to the compatibility of the aid.

## IV

- (1) In the former GDR, there were two big shipyards in the Rostock area, VEB Schiffswerft Neptun in Rostock and VEB Warnow Werft in Rostock-Warnemünde. These two yards were merged in 1991 to form a new company, Neptun-Warnow Werft GmbH. At the same time, the Neptun yard in Rostock stopped building new ships and continued only with ship repair. The Warnemünde yard was privatised in late 1992/early 1993 in the form of an 'asset deal' and sold to Kvaerner AS.

The residual parts, with a workforce of some 1 500, not having been sold to Kvaerner AS, were combined under a new holding company, NIR. NIR was set up on 1 March 1993 and privatised later that year. Neptun Betriebsgesellschaft took 20 % of the shares as part of a management buy-out (MBO), while the Bremer Vulkan company Hanse Holding purchased the other 80 %.

<sup>(1)</sup> For final terms, see point IV.6.

<sup>(2)</sup> This guarantee was later extended several times, see point IV.6.

<sup>(3)</sup> OJ C 368, 23.12.1994, p. 12.

The closure of the Neptun yard's capacity for building and converting merchant ships was part of the capacity reductions in the East German shipbuilding industry. These capacity reductions were a condition in the special rules for the restructuring of the shipbuilding industry in East Germany, which were adopted in 1992 (Council Directive 92/68/EEC of 20 July 1992 amending Directive 90/648/EEC on aid to shipbuilding<sup>(1)</sup>). NIR therefore had to diversify into areas outside shipbuilding. According to the first provisional business plan of December 1992, NIR was to become an industrial conglomerate with a loosely annexed repair yard.

- (2) Germany notified the aid to be granted for this first privatisation and restructuring by letters dated 27 and 29 July 1993. According to the notification and the privatisation contract, the new owners were to make investments of DEM 357,1 million by the end of 1996. They had to guarantee a minimum workforce of 1 200, including no more than 200 in the repair yard. The ship repair capacity was limited to 300 000 hours/year. It was further clearly stipulated that no aid must spill over to the repair yard (as required by the relevant provision in Council Directive 90/648/EEC of 21 December 1990 on aid to shipbuilding<sup>(2)</sup>).

The restructuring aid consisted of a lump-sum payment of DEM 159 million from the Treuhandanstalt and investment aid from the *Land* of Mecklenburg-Western Pomerania of up to DEM 92,8 million under regional aid schemes. The Commission approved the restructuring aid by letter No 18963 of 23 November 1993.

- (3) From the end of 1993 until early 1996, NIR belonged to Bremer Vulkan Verbund AG as part of the intermediate holding company 'Vulkan Industrie Holding GmbH' (hereinafter 'VIH'), which held 80 % of NIR's equity. During that period, a number of enterprises in this group, mostly located in the Bremen region, were transferred to NIR. Towards the end of 1995, Bremer Vulkan ran into severe financial difficulties, had to apply for debt composition proceedings on 21 February 1996 and went bankrupt on 1 May 1996.
- (4) In preparation for an intended sale of Bremer Vulkan's holding in NIR (which was held by its intermediate holding company, VIH) to an investment company, VIH, Neptun Vermögensverwaltungsgesellschaft, the BvS, NIR and Neptun Betriebsgesellschaft agreed by means of a contract dated 25 March 1996 that the 80 % holding of Bremer Vulkan should be placed with a company held by the administrator<sup>(3)</sup>. In this arrangement, the BvS released Bremer Vulkan from its investment obligations under the privatisation agreement of 1993, which in practice were no longer enforceable anyway because of the imminent full bankruptcy of Bremer Vulkan Verbund AG and VIH. The contract of 25 March 1996 stipulated that the holding was to be sold as soon as possible, and by the end of 1997 at the latest. However, the plans for rapid sale of the holding came to nothing as the results of a 'due diligence' examination were not satisfactory to the investment company. Subsequently, the investment bank 'C. S. First Boston AG' was entrusted by the BvS with the task of looking for potential investors. In addition, NIR supervisory board members also tried to find a suitable investor for the company. However, although C. S. First Boston contacted a large number of potential buyers of NIR by the summer of 1997 and although NIR's interest in finding a new owner was made public in the specialised press, these activities had no tangible results. It was only in the autumn of 1997 that the owners of Meyer shipyard in Papenburg (hereinafter 'Meyer') made an offer to buy NIR. The only alternative to Meyer's offer was a continuation of the restructuring under the existing MBO. However, the plan worked out by Neptun Betriebsgesellschaft turned out to be financially hardly viable and would have needed very high State guarantees over an extended period. Consequently, the MBO plan was given up. Meyer, as the only bidder, then acquired all the shares of NIR.

<sup>(1)</sup> OJ L 219, 4.8.1992, p. 54 and the preceding 'Proposal for a Council Directive providing for changes to the seventh Council Directive on aid to shipbuilding of 21 December 1990' (OJ C 155, 20.6.1992, p. 20).

<sup>(2)</sup> OJ L 380, 31.12.1990, p. 27.

<sup>(3)</sup> The financing institution in question was the venture capital wing of Vereins- und Westbank, a private German bank. The BvS acted in this agreement as a private investor would have done in a similar situation, as it gave up certain rights under the previous privatisation agreement with Bremer Vulkan in return for a share in the proceeds from the sale of the holding of Vulkan Industrie Holding in NIR.

- (5) Germany further explained in its letter of 22 July 1997 that the separation of NIR from Bremer Vulkan in early 1996 was necessary in order not to jeopardise the restructuring and to avoid the imminent bankruptcy of NIR. A bankruptcy would have risked losing the entire investment in the hatch covers production facility and the boat service yard, both in the Rostock region. NIR had at the time large payment obligations stemming from this investment, which was nearing completion. NIR had participated in the cash concentration system of the Bremer Vulkan group until end of 1995, though it did not benefit from the misuse of aid meant for MTW and Volkswerft<sup>(1)</sup>. It left this system in the end with balanced accounts, but due to its previous linkage with Bremer Vulkan it was not able to get any loans from banks without a State guarantee.
- (6) In its reply of 10 March 1997 regarding the initiation of proceedings and the injunction to provide the relevant information, Germany informed the Commission of the various aid measures. The aid given consists of:
1. a loan from the BvS of DEM 15 million for operating expenditure, disbursed on 10 April 1996, originally to be repaid on 31 December 1997, later prolonged until 31 December 1998;
  2. a loan from the BvS of DEM 5,4 million for ongoing investments, disbursed in March 1997, with due dates as under 1;
  3. a loan from the BvS of DEM 14,1 million for ongoing investments, social plan expenditure and operating purposes, disbursed in three tranches between February and June 1997, with due dates as under 1;
  4. a 100 % State guarantee under the Mecklenburg-Western Pomerania guarantee scheme to secure loans of up to DEM 63 million (DEM 40 million for investments, DEM 11 million overdraft facility, DEM 12 million procurement financing), granted on 15 May 1996, prolonged several times up to the envisaged approval of the restructuring aid plan by the Commission;
  5. a 100 % counter-guarantee up to DEM 8 million provided by the BvS for order financing, granted on 11 March 1997, provisionally prolonged as under 4.

All these loans and guarantees were provided against securities from NIR. The BvS set up a detailed monitoring system to ensure correct use of the funds. Of the loans totalling DEM 34,5 million, an amount of DEM 25,6 million was spent on the completion of investments in two factories in Rostock (Neptun Stahlobjektbau and A&R Neptun Boatservice), DEM 3,5 million on staff costs and DEM 5,4 million on other operating expenditure. Germany considers the measures introduced up to 31 March 1997 to be rescue aid, and their prolongations after that date to be restructuring aid.

The proceedings cover only the loan mentioned under point 1 and the guarantee mentioned under point 4 up to 31 December 1997. The Commission registered their prolongations and the additional measures as new aid under State aid case NN 102/97.

- (7) By letter dated 10 March 1997, Germany sent the Commission a provisional restructuring programme drawn up by the enterprise. It was evident from the documents and the subsequent discussion that an initial restructuring report had already been established by external advisors in September 1996 and a second in December 1996. These had not been sent to the Commission as there was a disagreement between the advisors, the management of NIR, Mecklenburg-Western Pomerania and the BvS on how to proceed. The reports of the auditors on the business years 1993 to 1995 and the analyses of the advisors showed that the situation of NIR was much worse than had been expected up to the autumn of 1996. Reported losses

<sup>(1)</sup> See the Commission Decision of 23 July 1998 on State aid C 7/96 (not yet published). NIR terminated its participation in the cash concentration system by a separate agreement between Bremer Vulkan, NIR and the relevant commercial bank. In the agreement, NIR claims on Vulkan Industrie Holding were set off against Neptun Techno Products liabilities to Vulkan Industrie Holding, so that both companies left the cash concentration system with balanced accounts.

shot up from DEM 5,2 million (1994) to DEM 122,9 million (1995), and even then the auditors indicated that the pending risks would need further corrections. In its letter of 2 May 1997 to Germany, the Commission therefore expressed serious doubts about the viability of the restructuring plan notified in the spring of 1997.

(8) By letters dated 1 July and 22 July 1997, Germany informed the Commission of revisions to the restructuring plan and a modification of the financing programme. The programme was again modified in the autumn of 1997 after the sale of all the shares in NIR for a total price of DEM [...] (\*) by the administrator of Bremer Vulkan and Neptun Betriebsgesellschaft to Meyer. The main elements of this revised restructuring programme are:

(a) the concentration of NIR's activities on the maritime core business with five companies:

- MACOR-Neptun Rostock (primarily production of hatch covers for container vessels; expected long-term workforce in 1999: 255)
- Neptun Reparaturwerft (ship repair; expected workforce: 59)
- A&R Neptun Boatservice (construction of yachts, repair of small naval and coastguard vessels; expected workforce: 29)
- Möhring Klimatechnik (air conditioning equipment, mainly for ships, expected workforce: 83)
- Personalservice Rostock (a personnel leasing company for craftsmen in the maritime trades; expected workforce: 55);

(b) the sale of the holdings in or closure of companies no longer belonging to the core business:

- Neptun Isolierglas
- Neptun-Scanhus Fertigungsgesellschaft
- Neptun Systemtechnik
- NIR Hotelbetriebsgesellschaft
- Oberflächentechnik Rostock;

(c) the sale of all properties and assets no longer needed for business operations (Neptun owns large areas close to the city centre of Rostock);

(d) a reduction in the number of directly employed staff to around 800 initially and from 1999 onwards to about 530 (the workforce at the beginning of 1996 was 1 200).

(9) According to the business plan sent with Germany's letter dated 8 December 1997 and the provisional annual report for 1997, the maritime core business of NIR will continue to make losses until the end of 1999. The first modest profits are expected as from the year 2000. A major part of the losses are expected in the repair yard, which has not received and will not receive any aid. These losses are to be covered by the sale of property belonging to the yard and by Meyer.

The total expected annual results of the other operative companies are: DEM [...] (\*) in 1997 (provisional outturn), DEM [...] (\*) in 1998 (including staff reduction costs of DEM 3,5 million), DEM [...] (\*) in 1999, DEM [...] (\*) in 2000 and DEM [...] (\*) in 2001. A major part of the losses will occur in Neptun MACOR. This enterprise was formed through a merger of MACOR in Bremerhaven and Neptun Stahlobjektbau in Rostock. The restructuring plan makes it clear that major improvements in the organisation and in sales

(\*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

management will be necessary to achieve positive results from the year 2000 onwards. Minor and rapidly decreasing losses are expected in Neptun Boatservice up to the year 2000. Möhring has been profitable until now and is expected to remain profitable. *De facto*, this company is hardly affected by the restructuring. Personalservice made losses of DEM 0,8 million in 1997, but expects small profits from 1998 onwards.

(10) As regards the financing of the other restructuring measures, the following was agreed between Meyer, the BvS and the *Land*:

- (a) Meyer will provide a subordinated loan of DEM 20 million to strengthen the capital base of NIR. This loan will be used primarily to finance necessary investments in the repair yard, which must not benefit from State aid.
- (b) Neptun Development GmbH, a newly founded subsidiary of NIR, will repay the bank loans taken up by NIR in 1996/97 from the proceeds of property sales by the end of 2002. The present State guarantee provided by Mecklenburg-Western Pomerania to secure these loans (DEM 63 million in total) in favour of the lending bank will be replaced by a guarantee amounting to some DEM 28 million after approval of the aid programme by the Commission.
- (c) After approval from the Commission, the BvS will waive repayment of the loans of a total amount of DEM 34,5 million given to NIR in 1996/97<sup>(1)</sup>.
- (d) At Meyer's request, the BvS will prolong the refund guarantee for a credit line of up to DEM 8 million until 31 December 1998 against securities on the property of NIR and payment of fees of 0,5 % p.a.
- (e) Mecklenburg-Western Pomerania will provide aid of up to DEM 1,7 million under the regional aid programme 'Gemeinschaftsaufgabe zur Förderung der regionalen Wirtschaftsstruktur' for residual investments of DEM 9,8 million for the production of hatch covers by MACOR Neptun. This aid is a residual amount of the regional aid committed in 1994, which was suspended after the collapse of Bremer Vulkan.

Germany gave an assurance that NIR and its enterprises undergoing restructuring would not receive any additional aid during the restructuring period, which runs until the end of 2001. Germany will provide the Commission with annual reports on the progress of the restructuring and the disinvestment measures. These reports will be certified by the company's auditors. For Neptun Reparaturwerft, separate accounts will be maintained, and annual reports will be submitted to the Commission in order to make sure that no aid spills over to the repair yard.

Germany and the company confirmed that Neptun Reparaturwerft will continue to comply with its capacity limitation of 300 000 hours per year. By letter dated 10 September 1997, Germany agreed to provide six-monthly production control reports to the Commission. These will also deal with the status of investments in the yard. Neptun Reparaturwerft will not resume conversion activities for merchant ships before 2001, when the 10-year closure period of the former Neptun Werft comes to an end<sup>(2)</sup>. Germany and the company confirmed further that the facilities of A&R Neptun Boatservice will not be used for the building, conversion or repair of vessels falling under the scope of Community legislation on aid to shipbuilding. The auditor will check compliance with this commitment.

<sup>(1)</sup> See point 6 items 1 to 3.

<sup>(2)</sup> See Article 7 of Directive 90/684/EEC, which stipulates a 10-year closure period.

- (11) In view of the developments in the enterprise, this Decision deals with the rescue aid on which the Article 93(2) proceedings were initiated <sup>(1)</sup> as well as with all other aid granted or planned for the rescue and restructuring of NIR.

## V

- (1) The loans and the guarantee given by the BvS in 1996/97, like the State guarantee of DEM 63 million provided by Mecklenburg-Western Pomerania in 1996 <sup>(2)</sup>, are State aid. In its letter of 10 March 1997, Germany stated that these measures were indispensable as banks had refused to give loans to NIR, even after the separation from Bremer Vulkan, without a full refund guarantee from the State. It is therefore uncontested that all the financial measures of the BvS and Mecklenburg-Western Pomerania, including those notified in 1997, are State aid within the meaning of Article 92(1) of the EC Treaty.

Germany proved with certified detailed reports from the auditors that Neptun Reparaturwerft has not so far received any aid. An assurance has also been given that Neptun Reparaturwerft will not benefit from the rescue and restructuring aid in future either. The expected losses of Neptun Reparaturwerft will be covered by sales of company assets and by Meyer. In the case of A&R Neptun Boatservice, it is clearly set out that this small yard will limit its activities to yachts and small naval boats — in other words, to vessels not falling under the scope of the specific Community legislation governing the building of merchant ships. The rescue and restructuring aid for NIR is therefore not to be regarded as aid to shipbuilding. The aid is to be assessed pursuant to Article 92 of the Treaty in the light of the criteria set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(3)</sup>.

- (2) The loans and the guarantee from the BvS and the guarantee on an amount of DEM 63 million from Mecklenburg-Western Pomerania have to be regarded as non-notified aid as all the aid was granted before the Commission could state its position on it. Germany failed to fulfil its notification obligations pursuant to Article 93(3) of the EC Treaty. The Commission cannot fully accept the argument put forward by Germany that the guarantee from Mecklenburg-Western Pomerania was granted under an aid scheme approved by the Commission in November 1991. It should be borne in mind that the Commission requested Germany by letter No 15716 of 9 November 1994 to take appropriate measures within the meaning of Article 93(1) of the EC Treaty for the operation of the guarantee scheme. One important measure was the individual notification of guarantees granted for large enterprises in difficulty as required by the guidelines. As Germany did not implement this measure, the Commission found in Decision 96/475/EC <sup>(4)</sup> that the guarantee scheme of Mecklenburg-Western Pomerania was incompatible with the common market. Since 1 July 1996, the individual notification of guarantees for large enterprises has been obligatory. The decision of the guarantee board to grant the first guarantee until 31 August 1996 dates from 15 May 1996. While the Commission therefore concedes that the first granting of the guarantee by Mecklenburg-Western Pomerania did not require an individual notification, Germany was bound to notify its extension from 1 September 1996 onwards. This was not done.
- (3) The guidelines distinguish between rescue and restructuring aid. In the present case this distinction is difficult to apply. NIR was already undergoing restructuring at the time of its separation from Bremer Vulkan. While it was clear from the beginning that the previous restructuring plan needed some modification, the full scope of the problems became visible only towards the end of 1996, when the auditors had finalised their work on the annual report for 1995 and the external advisors from UBB had presented their analysis. Matters

<sup>(1)</sup> See Section II.

<sup>(2)</sup> See the detailed description in point IV.6.

<sup>(3)</sup> OJ C 368, 23.12.1994, p. 12.

<sup>(4)</sup> OJ L 194, 6.8.1996, p. 25.

were further complicated by the fact that the NIR holding company consisted of some 15 rather small enterprises, at different locations and working in very different fields. In many cases these enterprises had strong commercial links with other parts of the former Bremer Vulkan group, whose future was uncertain as well. The continuing viability of these firms had to be examined in each individual case. The first restructuring plan, 'Neptun 2000' of December 1996 prepared by NIR itself, was based on over-optimistic assumptions. It was accepted neither by the NIR's bankers nor by the BvS. To arrive at a feasible solution, the restructuring plan had to be modified several times. This process was painful and difficult, as each step involved further closures and further reductions of staff. At the same time, the restructuring of the residual parts had to be continued. It therefore took 15 months to arrive at a new restructuring plan agreed between the relevant parties in Germany<sup>(1)</sup>. When the shares of the company were sold to Meyer, the new owners made further modifications up to November 1997<sup>(2)</sup>. This is far more than the period of six months laid down in the guidelines. The Commission acknowledges the particular difficulties involved in the rescue and restructuring of NIR and can therefore as an exception accept the delays which occurred in this case. The Commission regrets, however, that Germany failed until March 1997 to fulfil its obligations of providing information on the progress achieved in drawing up a restructuring plan.

(4) Due to the fact that no viable restructuring plan was available until 28 May 1997, the aid given up to that date, as described under point IV.6, is to be regarded as rescue aid. According to the guidelines, rescue aid must meet the following conditions:

- (i) It must consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates. The rescue aid was given in this form. The loans from the BvS carried an interest rate of 3 % above the discount rate, which can be regarded as a market rate in view of the collateral provided by NIR. The loan secured by the State guarantee carries a market interest rate as well. The Commission estimated the aid intensity of the guarantees at 15 % per annum, due to the fact that the securities provided by NIR would not have allowed a full recovery in the event of a default (the corresponding aid amount over an approximate period of two years is therefore DEM 21,3 million<sup>(3)</sup>).
- (ii) It must be restricted to the amount needed to keep a firm in business. Germany provided evidence that the funds were limited to the minimum and only disbursed when the payment obligations became due. This also applies to the large payments for investments, which had to be made under existing contracts. The investments were about 80 % complete at the beginning of 1996. Any termination of the contracts with the suppliers would have caused excessive costs and most likely the bankruptcy of NIR. In addition, it would have left major production facilities incomplete and therefore without any economic use.

<sup>(1)</sup> Fortschreibung der Unternehmenskonzeption 'Neptun 2000': this restructuring plan handed over to the Commission at a meeting on 30 June 1997 in Brussels contains the essential elements of the final restructuring plan. It is the first restructuring plan which can be considered feasible within the meaning of the guidelines.

<sup>(2)</sup> The final business plan dates from 12 November 1997 and was sent to the Commission by Germany by letter dated 8 December 1997.

<sup>(3)</sup> The guarantees in question are shortfall guarantees. The guarantor has to meet the shortfall after liquidation of all collateral securities. The collateral securities provided are mortgages on all real properties belonging to NIR. In its analysis, the Commission estimated the default risk on the basis of the value of the collateral securities, based on assessment of the value of the property. It came to the conclusion that the collateral securities, which had a book value of some DEM 144 million at the end of 1995, would not have been sufficient to repay all loans (some DEM 115 million) from the proceeds of a forced sale of the property. A shortfall in the range of 30 % could have been expected in the two-year guarantee period. This 30 % shortfall on the amount of the guarantees corresponds to an amount of DEM 21,3 million.



- (iii) It must be paid only for the time needed to devise the necessary and feasible recovery plan <sup>(1)</sup>. As set out above, the Commission can accept in this particular case the reasons given for the delays in drawing up a feasible restructuring plan. The Commission can also agree to the prolongation of this aid until it has taken a decision on the restructuring programme and the restructuring aid linked to it.
  
- (iv) It must be warranted on the grounds of serious social difficulties and have no unduly disruptive effects on the industrial situation in other Member States.

Most parts of NIR are located in the region of Rostock, with a small proportion in Bremerhaven. Both regions are classified as assisted areas and suffer from very high unemployment. In addition, both areas were particularly affected by the collapse of Bremer Vulkan, as this group was one of their main industrial employers. The rescue aid is therefore justified on social grounds.

The analysis of the impact of the aid on the industry in other Member States can concentrate on the maritime core business of NIR. As mentioned above, the Neptun Reparaturwerft repair yard is not covered by the restructuring aid programme and has not received any aid, nor will it do so. Mohring is a profitable enterprise which never needed any aid. All rescue aid for operative and investment purposes was used for MACOR Neptun and the A&R Neptun Boatservice with the exception of a minor part used in the holding company to meet its social costs for the termination of a number of activities. Boatservice is a small enterprise with less than 50 staff operating on the regional German market for smaller yachts. Its limited activities in the repair of small vessels belonging to the German navy are outside of the scope of Article 92 of the Treaty, owing to the provisions of Article 223 thereof. MACOR Neptun's main activity is the design, engineering and construction of cargo access equipment for freight vessels, particularly of hatch covers for container ships. The engineering and design activities are carried out in MACOR. Three engineering companies, MacGregor (Finland), Kvaerner (Norway) and MACOR control the world market for the design and engineering of hatch covers, with the Finnish company MacGregor in a dominant position. The closure of MACOR would have strengthened this dominant position. The production of hatch covers is concentrated in countries with low labour costs outside the Community, mostly in Asia (especially China) and Eastern Europe (Croatia, Romania, Poland) for price reasons. The main competitor within the Community is Arend & Cie (France). The entrance barriers to this market are extremely low, as in principle any enterprise active in heavy steel construction would be able to manufacture hatch covers according to the design of the engineering firms. This makes this market difficult for Community suppliers. Their main advantage is their proximity to European shipyards and the higher quality of their products. However, given the structure of the shipbuilding market, none of these suppliers, including MACOR Neptun, will be able to influence the relatively low price level. The relevant market for hatch covers is the world market, and the present difficult situation on this market is caused by developments in East Asia, where by far the most cargo vessels are built and equipped.

It can therefore be assumed that the rescue aid has had and is having no unreasonable effect on the industrial situation in other Member States.

<sup>(1)</sup> As mentioned in the guidelines, the Commission will consider favourably an extension of the rescue aid until its investigation is completed.

Though the rescue aid granted is non-notified aid and therefore illegal, the Commission can declare the aid compatible with the common market, taking into consideration the exceptional circumstances as described above. The loans and the guarantees were provided to ensure the short-term survival of NIR. Subject to the above qualifications, they fulfil the criteria laid down in the guidelines.

- (5) As is explained in the description under point IV.10, the support given by the State for the completion of the restructuring by the new owners consists predominantly in a waiver of the loans from the BvS totalling DEM 34,5 million and a prolongation of the State guarantees on a reduced amount until the bank loans have been repaid. The aid element of the guarantee given by Mecklenburg-Western Pomerania is limited by the fact that the bank loan in question is primarily secured by mortgages on property and other assets valued at DEM 66,5 million. The detailed valuation was submitted to the Commission and can be accepted. The risk relating to this guarantee is therefore limited to a shortfall or delay in the proceeds from the sales of property in the event of a severe crisis on the local property market in the next few years. The fees of about 1 % per annum are, however, somewhat below the expected market price in view of the right of prior claim to 50 % of the proceeds granted to the lending bank. The Commission estimated therefore that the aid equivalent is in the DEM 2 million range. The terms of the refund guarantee by the BvS in respect of a credit line of DEM 8 million can be regarded as market terms in view of the collateral securities required. This assessment by the Commission is supported by the fact that Meyer has not yet requested issue of the guarantee bond in view of the costs.

Apart from the regional aid of DEM 1,7 million, no aid will be paid in cash. As in this case the investment by MACOR Neptun was clearly specified in the notification, any spillover of aid from NIR to its repair yard or to Meyer Werft in Papenburg can be virtually excluded. Notwithstanding that, the Commission will monitor the correct use of the aid and the repayment of the bank loans in the framework of the agreed monitoring system by means of audited reports.

- (6) The guidelines lay down the following criteria for restructuring aid:
- (a) the aid must be linked to a viable restructuring/recovery programme submitted in all relevant detail to the Commission and capable of restoring the long-term viability of the firm within a reasonable time-scale;
  - (b) the aid must be in proportion to the restructuring costs and benefits;
  - (c) undue distortions of competition through the aid must be avoided;
  - (d) the firm must fully implement the restructuring plan and observe any conditions imposed;
  - (e) the implementation of the plan and compliance with the conditions will be monitored by requiring the submission of detailed annual reports to the Commission.

- (7) Germany sent the Commission a detailed restructuring programme<sup>(1)</sup>. It comprises a complete rearrangement of NIR's activities, with a concentration on the core business in the maritime sector and the termination of all other activities. The workforce will be reduced further in this process from 1 200 to about 530 from 1999 onwards (these figures include the repair yard). According to the business plan of Meyer, NIR as a group will be profitable as from the year 2000. The provisional results for 1997 are basically in line with this plan. The planning is based on cautious assumptions as to future demand and prices,

<sup>(1)</sup> See point IV.8.

which seems realistic given developments in the shipbuilding industries in Western Europe. It is further assumed that productivity will strongly increase in the new facilities at MACOR Neptun and A&R Neptun Boatservice in the first three years after full commissioning in 1997. Together with the reduction in the workforce and lowering of overheads on the part of the holding company, this will reduce production costs and eliminate the high start-up losses in these two companies. As Möhring is already profitable and Personalservice expects a balanced result, the assumption of relatively modest but stable profitability from 2000 onwards seems realistic. The Commission can therefore accept the viability of the restructuring plan.

- (8) As was shown above, the restructuring aid will basically consist of the waiver of the loans from the BvS totalling DEM 34,5 million, the prolongation of the State guarantees on an amount which will gradually decrease until 2002, when the sale of property no longer needed by NIR will be completed, and DEM 1,7 million in regional investment aid. As the main financial contribution, Meyer will provide a capital-replacing loan of DEM 20 million to re-establish the capital base of NIR. Germany considers this package as necessary and justified, in view of the losses made during the rescue period, the losses still expected during the remaining restructuring period and the modest profits expected thereafter. Although the total aid provided for the restructuring of NIR is very high in relation to the workforce retained, the Commission can accept this argument in this specific case. The original restructuring plan of the Bremer Vulkan period must be considered to have failed. Virtually the total equity of NIR was used up due to this failure. Some of the investments recently completed need to be partly written-off because of their low returns. The waiver of the rescue loans of DEM 34,5 million covers a part of the losses run up in the past few years. It is essential in order to restore the financial equilibrium of NIR.

The DEM 1,7 million regional investment aid for the completion of some minor investments of a total cost of DEM 9,8 million has an intensity of 18 %. This is far lower than the maximum of 35 % permitted in the region and can therefore be accepted. Germany gave an assurance that no other aid will be paid to the enterprises presently under the NIR holding company during their restructuring period, which will end in 2001. No aid will be received by Neptun Reparaturwerft.

The planned aid measures are in line with the restructuring programme submitted and are necessary from a commercial point of view. In view of the comprehensive restructuring of NIR, the substantial closure costs involved and the time needed for the completion of the restructuring, the Commission can consider the total amount of DEM 38,2 million in restructuring aid acceptable.

- (9) As the restructuring aid consists mainly in a prolongation of a State guarantee for an existing loan, which is to be repaid by Meyer, and in a waiver of debts by the BvS, the impact on competition will be very limited for the same reasons as discussed in relation to the rescue aid. Therefore, no undue distortions of competition in the common market are expected.

Implementation of parts of the restructuring programme began provisionally in 1997. On 12 February 1998 Meyer took over the management of NIR. Since then, the restructuring plan has been undergoing full implementation. Germany will provide annual reports on the progress of the restructuring. In addition, Germany will send the Commission the abovementioned reports on the activities of Neptun Reparaturwerft and A&R Neptun Boatservice.

- (10) In conclusion, the restructuring aid for NIR can be regarded as in line with the criteria set out in the guidelines. The aid can therefore be regarded as compatible with the common market pursuant to Article 92(3)(a) and (c) of the EC Treaty and Article 61(3)(c) of the EEA

Agreement, subject to compliance by Germany with the conditions set out in this Decision. Germany and Meyer on behalf of NIR have given an undertaking to implement the restructuring programme as notified and to comply with the conditions.

Past experience, however, both after the takeover by BVV and after the latter's bankruptcy, has shown considerable difficulties in the drawing-up and implementation of a sustainable restructuring plan. The Commission would therefore point out that the full implementation of the restructuring plan is a condition for the aid. The Commission will take steps to require the recovery of the aid if the restructuring plan is not fully implemented (unless any modifications which may have become necessary have been accepted by the Commission) or the conditions concerning the use of the aid are not complied with,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The loans of a total amount of DEM 34,5 million granted to Neptun Industrie Rostock GmbH (NIR) by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS), which are to be waived as from the date of adoption of this Decision, are compatible with the common market, subject to compliance with the conditions set out in Article 5.

#### *Article 2*

The guarantee in respect of an amount of DEM 63 million, which was granted on 15 May 1996 by the *Land* of Mecklenburg-Western Pomerania for NIR and which is to be replaced by a subsequent guarantee of up to DEM 28,1 million as from the date of adoption of this Decision until 31 December 2002 at the latest, comprises an aid equivalent of DEM 20,9 million and is compatible with the common market, subject to compliance with the conditions set out in Article 5.

#### *Article 3*

The counter-guarantee in respect of an amount of DEM 8 million granted on 11 March 1997 until the date of this Decision by the BvS for NIR comprises an aid equivalent of DEM 2,4 million and is compatible with the common market.

The possible renewal of this counter-guarantee until 31 December 1998 does not contain aid in view of the fees paid by NIR and the securities to be provided by NIR to the BvS.

#### *Article 4*

The regional investment aid of an amount of DEM 1,7 million to be granted for the completion of investments in the NIR company MACOR Neptun is compatible with the common market, subject to compliance with the conditions set out in Article 5.

#### *Article 5*

1. The State aid referred to in Articles 1 to 4 may be used exclusively for the rescue and restructuring of NIR, in line with the restructuring plan notified to the Commission. The aid must not be used for, and its benefits must not spill over to, the shipyards Neptun Reparaturwerft in Rostock or Meyer Werft in Papenburg. Until the end of 2001, no other aid shall be paid to the companies of the NIR group undergoing restructuring.

2. Germany shall ensure that:
  - (a) Neptun Reparaturwerft does not exceed the capacity limit of 300 000 hours for the repair of merchant ships
  - (b) no conversion work is carried out on ships falling under the scope of the Community legislation on shipbuilding
  - (c) the facilities of A&R Neptun Boatservice are not used for the building, conversion or repair of ships falling under the scope of the Community legislation on shipbuilding.
3. Germany shall report on the progress of the restructuring by means of annual reports during the period from 1998 to 2001. The reports will also provide sufficiently detailed information on compliance with the conditions set out in this Article. In addition, Germany shall submit six-monthly production control reports providing information on the activities of Neptun Reparaturwerft.

*Article 6*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 28 October 1998.

*For the Commission*  
Karel VAN MIERT  
*Member of the Commission*

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