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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 May 1999

concerning aid granted by Italy to promote employment

(Notified under document number C(1999) 1364)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/128/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 given interested parties notice to submit their comments in accordance with the abovementioned provisions⁽¹⁾ and having regard to those comments,

Whereas:

information by letter No 52270 of 4 June 1997, to which the Italian authorities replied by letter dated 11 September 1997 from the Prime Minister's Office and letter No 7224 dated 28 October 1997 from the Permanent Representative's Office. Following the information received, the investigation was extended to other aid schemes connected with this package, i.e. Laws Nos 863/84, 407/90, 169/91 and 451/94, which govern training and work experience contracts. As the aid they provide for has already been granted, the laws in question were entered in the register of non-notified aid under NN 164/97.

- (2) Investigation of the case was pursued by further Exchanges of Letters and meetings. The Commission sent letters Nos 55050 of 6 November 1997 and 51980 of 11 May 1998; the Italian authorities sent letters Nos 2476 of 10 April 1998 and 3656 of 5 June 1998. Meetings were held in Rome on 27 November 1997, 3 March 1998 and 8 April 1998.

I. PROCEDURE

- (1) By letter No 3081 dated 7 May 1997 from the Permanent Representative's Office, the Italian authorities notified the Commission, in accordance with Article 88(3) of the EC Treaty (formerly Article 93(3)), of a draft law subsequently approved by Parliament (Law No 196 of 24 June 1997) concerning measures to promote employment⁽²⁾. As it concerned a plan to grant aid, the draft law was entered in the register of notified aid under N 338/97. The Commission requested further

- (3) By letter of 17 August 1998, the Commission informed the Italian Government of its decision to initiate the procedure under Article 88(2) of the EC Treaty (formerly Article 93(2)) in respect of aid granted since November 1995 to promote employment through fixed-term training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94. The Italian Government was also informed in the same letter of the decision to initiate the Article 88(2) procedure in respect of aid for converting training and work experience contracts into open-ended contracts under Article 15 of Law No 196/97.

⁽¹⁾ OJ C 384, 10.12.1998, p. 11.

⁽²⁾ Official Journal of the Italian Republic No 154, 4 June 1997.

- (4) The Commission Decision initiating the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to comment on the measures in question.
- (5) The Italian Government set out its comments in a letter dated 4 November 1998. The Commission requested further details by letter of 1 February 1999, to which the Italian Government replied by letter dated 5 March 1999.
- (6) The Commission received comments from the Italian General Confederation of Industry (Confindustria) in a letter of 11 January 1999 and forwarded them by letter of 21 January 1999 to the Italian Government for its response.
- (7) By letter dated 1 February 1999, the Commission also invited Confindustria to provide further details and information; these were provided by letter of 22 February 1999. The most recent information from Confindustria was sent by letter of 31 March 1999 ⁽⁴⁾.
- (10) Under these laws, the training and work experience contract is a fixed-term contract for the employment of young people aged between 16 and 32. The age limit may be raised at the discretion of the regional authorities. There are two types of training and work experience contract:
- the first type concerns activities requiring a high level of training. The contract has a maximum duration of 24 months and must provide for at least 80 to 130 hours of training to be given at the workplace for the full period of the contract,
 - the second type must last no more than 12 months and include 20 hours of training.

II. ITALIAN LEGAL BASIS FOR THE AID

II.1. Training and work experience contracts

- (8) The training and work experience contract was introduced in 1984 by Law No 863/84. This was a fixed-term contract, including a training period, for the employment of unemployed persons of up to 29 years of age. Employers were exempt from paying social security contributions for two years in respect of persons employed under this type of contract. The reduction was applied in a generalised, automatic, indiscriminate and uniform manner throughout the country.
- (9) The implementation arrangements for this type of contract were changed in 1990 by Law No 407/90, which introduced a regional variation in the aid, by Law No 169/91, which raised the maximum age of eligible
- (11) The main feature of the training and work experience contract is that it provides the employee with a training programme conferring a specific qualification. Training programmes are usually drawn up by consortia of firms or trade associations and approved by the employment office, which checks whether, at the end of the training period, the employee has actually received the training required.
- (12) Employers who take people on via training and work experience contracts benefit from reductions in social security contributions. The reductions allowed for the period of the contract are:
- 25% of contributions normally due, for firms located in areas other than the Mezzogiorno,
 - 40% for firms in the commercial and tourism sector, with fewer than 15 employees, established in areas other than the Mezzogiorno,
 - total exemption for craft firms and firms in areas where the level of unemployment is above the national average.

⁽³⁾ See footnote 1.

⁽⁴⁾ The information consists solely of official statistics published by the Istituto Nazionale di Statistica (ISTA) 'Forze di lavoro media 1997' and 'Formazione universitaria e mercata del lavoro' and by the Organisation for Economic Cooperation and Development ('Uno sguardo sull'educazione', 1997). The statistics provided by Confindustria consist solely of those data reproduced in the form of graphs.

(13) In order to qualify for these reductions, the employer must not have reduced staff numbers in the previous 12 months, except where he is taking on employees with a different qualification. The employer must also have kept on (with an open-ended contract) at least 60% of employees whose training and work experience contract expired in the previous 24 months.

(14) For training and work experience contracts of the second type (lasting one year), reductions are also subject to the condition that the contract be converted into an open-ended contract. The reductions apply only after conversion and for a period equal to the period covered by the training and work experience contract.

(15) The Italian authorities maintain that this is an aid scheme to promote youth employment. In their view, the Italian market has particular features which make it necessary to increase to 32 the age limit of 25 usually applied for this category.

(16) In its Decision initiating the Article 88(2) procedure in respect of the measures in question, the Commission took the view that the aid to employment under training and work experience contracts clearly has the following features:

- it does not necessarily concern the recruitment of workers who have not yet obtained employment or who have lost their previous job, as this is not required by Italian law,
- it does not contribute to the net creation of new jobs within the meaning of the guidelines on aid to employment⁽⁵⁾ since there is no obligation to increase the workforce, despite the ban on redundancies in the preceding period,
- it does not encourage firms to take on certain groups of workers experiencing difficulties entering or re-entering the labour market. Given the very high age limit (32), which can be raised even further by the regional authorities, the aid is not aimed at young people as the Italian authorities claim.

II.2. Conversion of training and work experience contracts into open-ended contracts

(17) Article 15 of Law No 196/97 stipulates that firms in Objective 1 areas which, on expiry, convert training and work experience contracts of the first type (two years) into open-ended contracts enjoy exemption from social security contributions for a further year. They must return any aid received if they dismiss the employee within 12 months of the end of the assisted period.

(18) The Commission noted when initiating the procedure that the aid does not appear to meet all the conditions laid down by the Community guidelines on aid to employment. The Commission is thus obliged to conclude that the aid is for maintaining jobs and, as stipulated in the Community guidelines in question, such aid constitutes operating aid.

III. COMMENTS FROM OTHER INTERESTED PARTIES

(19) The other interested parties which submitted comments are represented by Confindustria.

III.1. Training and work experience contracts

- (20) Confindustria noted that the aid scheme in question has not changed substantially as a result of the series of amendments, and it remains generally applicable. It was simply a question of adjusting to the scale of the problems involved. The amendments introduced by Laws Nos 169/91 and 451/94 have not, it claimed, altered the 'general and uniform' nature of the scheme in the sense that the measures are applicable irrespective of the sector and geographical area concerned. Nor has the 'automatic' and 'indiscriminate' nature of the measures been altered, as they continue to be objective and non-discretionary with regard to the eligibility of the recipients of the aid concerned.
- (21) The only measure which could alter the general nature of the scheme would be Law No 407/90, which gives some firms larger reductions according to their location. The effects of the amendment would be limited to the loss of uniformity of the scheme as the other factors remain unchanged.

According to Confindustria, removal of the regional variations, which would obviate the need for the measure owing to the unequal distribution of unemployment in the different regions of Italy, should result in closure of the file for non-applicability of Article 87 of the EC Treaty. As a result, the Commission's examination should essentially focus on this aspect of the new rules on training and work experience contracts.

Confindustria therefore shares the Commission's view that the aid is constituted by the differential part — with regard to the general 25% reduction in social

⁽⁵⁾ OJ C 334, 12.12.1995, p. 4.

security contributions applicable throughout the country — of the reduction in contributions for firms operating in certain regions.

- (22) The different level of assistance by size of firm is, according to Confindustria, due to the greater financial weakness of some firms compared with others and to the fact that those firms make proportionally the largest contribution to new job creation. Such parameters are not being sufficient, according to Confindustria, to conclude that the successive legislative provisions confer sectoral selectivity on such aid within the meaning of Article 87(1) of the Treaty, inasmuch as all sectors engaged in productive activity benefit from the same treatment. The more favourable treatment of service industries is, it is claimed, granted according to the type of employment and does not confer advantages on some firms in relation to their competitors.

- (23) According to Confindustria, aid that varies according to size of firm is, moreover, compatible in every case with the intensities provided for in the Community guidelines on State aid for small and medium-sized enterprises⁽⁶⁾.

- (24) Confindustria also states that it would not be possible to separate the three elements referred to in points 12.1 and 12.3 of the Commission letter of 17 August 1998⁽⁷⁾ because, to some extent, the various characteristics necessarily overlap. It would not be easy in practice to establish when unemployed persons were recruited or even to distinguish between that condition and the net creation of jobs.

- (25) Nor, according to Confindustria, is there any justification for stating that training and work experience contracts are not aimed at the net creation of jobs as the law does not provide for the obligation to increase the workforce. Such a claim must not diminish the importance of objective monitoring of the Italian labour market, where training and work experience contracts constitute an essential instrument.

- (26) As regards the age limit for 'young persons' Confindustria notes that it cannot be uniform in all countries. Eurostat data on employment in Europe in 1995 not only support that claim but also show that, in the age group challenged by the Commission, Italy has a higher unemployment rate than the European average. The number of unemployed persons in the 29 to 32

age group is, furthermore, identical to that of the 25 to 29 age group: this justifies the need to provide employment aid for the entire 25 to 32 age group.

Table 1

Unemployment in Europe by age group — 1995

(from data supplied by Confindustria)

Age group	Europe (EU 15 average)	Italy
20 to 24	20,8	31,7
25 to 29	13,4	17,7
30 to 34	10,1	10,9

Source: Eurostat.

- (27) Confindustria also compared the 15 to 29 age group with the 25 to 34 group: it states that, whilst there is a significant gap in the regions of northern Italy between the unemployment rate in the 15 to 24 age group (49,7%) and that in the 25 to 34 group (40,4%), the difference is much smaller in the regions of southern Italy, where unemployment is 45% for those aged 15 to 24 and 45,5% for those aged 25 to 34. It concludes that unemployment in southern Italy remains high even after the age of 25.

Table 2

Jobseekers aged 15 to 39 — percentages by age group and geographical distribution

(April 1995)

	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39
North	13,0	36,7	26,0	14,4	10,0
Central	10,4	37,0	26,0	16,7	9,9
South	12,3	32,7	28,6	16,9	9,5
Italy	12,1	34,5	27,5	16,2	9,7

Source: ISTAT.

- (28) As regards young persons with a university degree (25 to 34 group), the difference between unemployment in Italy and the EU average is even greater: compared with an EU average of 8,9%, unemployment among young graduates in Italy is 20,4%.

⁽⁶⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁷⁾ See footnote 1.

Table 3

Unemployment in Europe in the 25 to 34 age group by level of education — 1995

(from data supplied by Confindustria)

Level of education	EU 15 average	Italy
University graduates	8,9	20,4
Secondary school leavers	9,6	12,8
Students completing compulsory education	17,2	14,6

Source: Eurostat.

- (29) Confindustria comments that youth unemployment affects a very wide age range and especially those who, even if they have a university degree, have difficulties in obtaining stable employment on the labour market. This is particularly true in the Mezzogiorno, where the age limit of 25 appears to be too restrictive.
- (30) The training and work experience contracts are intended to provide the technical and theoretical know-how to allow the workers to find employment on the labour market. The lack of flexibility in the application of the guidelines as regards the definition of 'young persons' seems inexplicable. Confindustria challenges the Commission's reasoning, which defines the training and work experience contracts as operating aid. It underlines the lack of correlation between the (possible) exclusion of some beneficiaries (those over 25) from the 'young persons' category and the fact that training and work experience contracts are not serving their intended purpose and therefore constitute operating aid.
- (31) Confindustria also states that certain sociological studies show that young persons aged 29 to 32 face specific problems in obtaining employment, with employers usually preferring, all qualifications being equal, to recruit younger candidates. The difficulty for them in both cases is to find their first job: in Italy, young university graduates seeking employment are often aged over 25. University studies are completed on average at the age of 23 to 25, and men still have their military service to carry out. The statistics provided by Confindustria show that 75% of Italian students are over 25 when they graduate from university, whilst 26,8% is the median age for 50% of graduates.

- (32) The statistics on the average time spent finding employment indicate, according to Confindustria, that youth unemployment is not limited to those under 25,

since the number of unemployed between 25 and 32 is the same as those under 25.

Table 4

Distribution by age of university graduates ('laureati' in Italy) (1995)

(from data supplied by Confindustria)

Country	Age in the first quartile	Median age	Age in the third quartile	Usual age
Austria	25,6	27,3	29,6	22 to 25
Belgium (Flemish Community)	20,5	22,0	23,3	22 to 24
Denmark	26,5	28,2	30,5	25 to 27
Finland	26,1	27,6	29,9	25 to 26
Iceland	24,7	26,0	28,0	25,0
Italy	25,5	26,8	28,7	23,0
Netherlands	23,8	25,3	28,0	23,0
New Zealand	21,7	22,7	24,7	23,0
Norway	23,8	25,2	27,5	24,0
Spain	23,9	25,3	41,0	23,0
Sweden	25,3	26,3	29,4	23 to 24

Source: OECD.

- (33) Confindustria also stated that the average time spent finding employment increased with age. This is particularly true of graduates, who on average remain unemployed for 14 months in the 15 to 24 age group, 20 months in the 25 to 29 age group and 37 months in the 30 to 39 age group. As regards the total number of jobseekers, unemployment lasts 24 months for the 15 to 24 age group. The period of unemployment rises to 36 months in the 25 to 29 age group and to 37 months in the 30 to 39 age group.

Table 5

Jobseekers by age group and length of unemployment — average for 1997

(from data supplied by Confindustria)

1 000

Period of unemployment	Age group 15 to 24	Age group 25 to 29
Less than 1 month	55	27
2 to 3 months	79	39

Period of unemployment	Age group 15 to 24	Age group 25 to 29
4 to 5 months	51	33
6 to 11 months	146	69
12 to 13 months	245	116
24 months and over	432	353
Information not available	19	14
Total	1 038	652

Source: ISTAT.

Table 6

Average number of months spent seeking work per person (1997)

(from data supplied by Confindustria)

Age group	University graduates	Total
15 to 24	14	24
25 to 29	20	36
30 to 39	37	37
40 to 49	34	34
50 and over	30	32

Source: ISTAT.

(34) The data supplied by Confindustria concerning university graduates in 1992 show that, three years after gaining their diplomas, over 50% had not yet found stable employment and 23% were still seeking employment and that 93% of those under 24 and 45,7% of those between 25 and 34 lived with their parents. According to Confindustria, this is because being jobless acts as a barrier to independence for young people over the age of 25.

(35) As regards the selectivity of the measures in question, Confindustria considers that the contradiction in the Commission's reasoning on the non-applicability of the regional exemptions. If the Commission considers that the aid consists of the additional aid for training and work experience contracts concluded by firms in less-favoured regions, it cannot deny that the measure qualifies for regional exemption on the ground of its general nature. The Commission's finding that the aid is constituted by the regional-specificity differential as compared with the general measure is not consistent

with its statement⁽⁸⁾ that the aid is not restricted to the areas eligible for derogation as it applies to the country as a whole. Examination of the derogations provided for in the Treaty should therefore be carried out with regard to this part of the benefit.

(36) Confindustria also states that the Commission has not given sufficient reasons for its finding that the measures to overcome the structural handicaps of less-developed regions are inadequate. If the view is that the aid should be examined under Article 87(3) and not under the guidelines on aid to employment, Confindustria points out that there is no reason why the aid, which is tied to a costly vocational training programme and is commensurate with the seriousness of the structural problems, should not qualify for exemption.

(37) According to Confindustria, the employer's commitment to provide training acts as a counterpart to the aid granted⁽⁹⁾. It represents a contribution which is not related to the initial investment but takes the form of financial and organisational efforts to set up the training courses. The employment aid guidelines provide that aid must be accompanied by training or retraining of the worker concerned.

(38) According to Confindustria, there are insufficient grounds for the Commission's doubts when it states that 'the aid does not qualify for the regional derogations under Article 87(3)(a) and (c), as it is not investment aid'. Since this provision is given as the legal basis in point 20 of the employment aid guidelines, Confindustria does not understand why the measures in question do not qualify for exemption simply because they do not consist of investment aid. In the present case, the initial investment would be replaced by a budgetary and organisational commitment by the employer.

III.2. Aid for the conversion of training and work experience contracts into open-ended contracts

(39) Confindustria disputes the fact that aid for the conversion of training and work experience contracts into open-ended contracts constitutes operating aid. As

⁽⁸⁾ Point 12.6 of the Commission letter of 17 August 1998 (see footnote 1).

⁽⁹⁾ In support of this argument, Confindustria refers to the judgment of the Court of Justice in Case 730/79, *Philip Morris v Commission* [1980] ECR 2671.

to the reasoning, it refers to the comments made regarding such contracts (see recitals 20 to 38).

IV. COMMENTS FROM THE ITALIAN AUTHORITIES

IV.1. Training and work experience contracts

(40) According to the Italian authorities, training and work experience contracts are one of the most important instruments providing access to the labour market and an essential part of the Government's efforts to combat unemployment and encourage the employment of persons aged between 16 and 32. They are particularly useful in southern Italy, where unemployment is especially severe. The Italian authorities pointed out that training and work experience contracts are aimed at fostering the entry or re-entry into the labour market of those who, because of their age or for other reasons, experience difficulties in obtaining employment.

(41) As regards the 16 to 25 age group, the Italian authorities do not consider that the measures in question give rise to any problems of incompatibility with the Treaty as that age group should be regarded as an underprivileged category. Accordingly, there is no need to comply with the net job creation requirement over a given period.

(42) The Italian authorities also justify the application of the measures in question to the 26 to 32 age group on the ground that the latter constitutes a category experiencing specific difficulties: persons in that age group have either been unemployed for a long time or can be treated in the same way as those under 26 because of the special employment situation in Italy.

(43) In support of their arguments, the Italian authorities stress that, according to the statistics for the period 1994 to 1996, 34,3% of those aged 25 to 32 were registered as unemployed in 1994, 33,1% in 1995 and

32,8% in 1996. In the Mezzogiorno the percentages are higher (39%), 37% and 36,4%). On the basis of these statistics, the percentages of persons registered as unemployed (*liste di collocamento*) in the 19 to 24 age group are lower than those in the 25 to 32 age group (31,7%, 31,1% and 30,8% in these same years). The Italian authorities forwarded the data for the 25 to 32 age group (Table 7) by letter of 5 March 1999.

Table 7

Percentages of persons aged 25 to 32 registered as unemployed (*liste di collocamento*)

(data supplied by the Italian authorities)

	Italy	Mezzogiorno
1994	34,3	39
1995	33,1	37
1996	32,8	36,4

Source: Provincial Employment Office.

(44) The Italian authorities also pointed out that young university graduates reached the labour market at a relatively advanced age (27 on average) and that they formed a large proportion of the 30 to 34 age group. By letter of 5 March 1999, the authorities also specified that the labour market entry age meant the age at which jobseekers find their first job (the labour market access period is defined as the period between obtaining a degree and finding employment for the first time). The Italian authorities also point out that a university degree does not give access to occupations for which a State examination is necessary. Of total university graduates, 42,3% are aged 27 to 34, 4,4% are aged over 35 and 15,8% are aged 23 to 24. At the time of the survey, 33% of graduates were not working. In the Mezzogiorno the corresponding percentage was 46,6%.

Table 8

Age at which university degree (*laurea*) is awarded — 1995

(from data supplied by the Italian authorities)

Age	< 23	24	25	26	27	28	29	30 to 34	35 to 39	> 40	Total
%	4,0	11,8	18,8	18,7	14,3	10,2	6,5	11,3	2,7	1,7	100

Source: ISTAT.

(45) The Italian authorities also state that unemployment among graduates in the 25 to 39 age group is 12,4%, i.e. higher than unemployment among persons of the same age but with only a lower secondary school leaving certificate (10,9%) or a secondary school leaving certificate (10,8%) and with more time to deal with the problems of finding a first job. According to the Italian authorities, higher unemployment among graduates is due essentially to the initial difficulties of gaining entry to the labour market. The difficulties are even greater in the south of Italy owing to fewer job opportunities and a more difficult transition from school to work. Unemployment rates in those regions for university graduates are, however, lower than those for young persons with a secondary school leaving certificate (17,4% compared with 20,7%).

Table 9

Unemployment rates in the 25 to 39 age group, by type of study certificate

(from data supplied by the Italian authorities)

	Italy	Mezzogiorno
First degree (laurea)	12,4	17,4
Lower secondary leaving certificate	10,9	20,7
Higher secondary leaving certificate	10,8	20,7

Source: ISTAT.

(46) The Italian authorities point out that the 25 to 39 age group faces a particularly long wait before finding employment, and the data show an increase for the period 1995 to 1997.

Table 10

Average number of months spent seeking employment, per person (1997)

(from data supplied by the Italian authorities)

Age group	1995	1996	1997
15 to 24	22	23	24
25 to 29	33	34	36
30 to 39	33	36	37
40 to 49	31	34	34
50 and over	30	31	32
Average	28	30	32

Source: ISTAT.

(47) Other statistics provided by the Italian authorities show that in southern Italy the time spent by graduates in finding a job rose from 36,3 months in 1995 to 39 months in 1996 and 44,3 months in 1997, compared with a national figure of 26,8 months, 27,9 months and 28,3 months respectively.

(48) The Second Report on youth for 1997 published by the Istituto Nazionale di Statistica (ISTAT) shows that, in the 15 to 24 age group, 65% of unemployed persons required more than one year to find employment (the long-term unemployed), whereas 14% and 19% stated that they had looked for employment for between six and 11 months and for less than six months respectively. According to those data, long-term unemployment affects 46% of total redundancies and 74% of those seeking their first job. In the 25 to 34 age group, the level of long-term unemployment is 78%, whilst 15% of the unemployed say they have been looking for employment for less than six months and 11% for between six and 11 months. In this group, long-term unemployment affects 55% of the total number of unemployed who were made redundant and 86% of persons looking for their first job.

(49) The Italian authorities also furnished statistics on single persons in order to identify the number still living with their parents and to strengthen their argument for extending the age limits applied to 'young people'. The statistics show that single persons aged between 15 and 24 accounted for 29,2% of the population in 1995, 1996 and 1997. If the 'young people' category is extended to the age of 34, the percentages rise to 36,6% (1995), 37,1% (1996) and 37,4% (1997).

(50) According to a survey conducted by Censis (32nd report on the social situation in Italy in 1998), families are essential in helping family members to cope with difficulties encountered in the areas of remuneration and work. In 1995, 87% of those aged 20 to 24 still lived with their parents, whilst, the figure was 56% in the 25 to 29 age group.

Table 11

Proportion of single persons in the total population

(from data supplied by the Italian authorities)

Age group	1995	1996	1997
≤ 14	15,3	15,3	15,3
15 to 19	6,7	6,7	6,7
20 to 24	7,2	7,2	7,2

Age group	1995	1996	1997
25 to 29	5,2	5,5	5,7
30 to 34	2,2	2,4	2,5

Source: The Ministry of Labour.

- (51) The Italian authorities point out that unemployment in 1995 was very high in the south and in the islands. In the 25 to 39 age group, it exceeded 50%, and in the next age groups it was manifestly higher than in the north and the centre.

Table 12

Unemployment by age group and area (north, centre, Mezzogiorno and islands) (1995)

(from data supplied by the Italian authorities)

Area	15 to 19	20 to 24	25 to 29	30 to 34	35 to 39
North	24,2	18,1	8,9	5,2	4,1
Centre	34,9	33,7	17,2	9,8	6,4
South and islands	56,4	55,0	34,0	21,1	13,3

Source: The Ministry of Labour.

- (52) The picture is similar in 1996 and 1997, with unemployment levels higher in southern Italy. Even over time, the trend reveals differences between the north, the centre and the south. In the northern regions, the fall in unemployment is constant for those aged 15 to 19 (24,2% in 1995 and 22,7% in 1997) and 20 to 24 (18,1% in 1995 and 17,3% in 1997). Central Italy is characterised by an increase in unemployment in the 25 to 29 age group, whilst in the southern regions the rate is lower only in the 15 to 19 age group. Unemployment in the 24 to 29 age group, for example, rose from 34% in 1995 to 36,5% in 1997.

- (53) The Italian authorities also state that the surveys published in the Second Report on young people show that, out of a total of 2 805 000 jobseekers in 1997, 37% are aged 15 to 24 and 38% aged 25 to 34. Overall, 75% of jobseekers are aged 15 to 34. The most striking characteristic is that 54% of those unemployed and aged 15 to 34 are seeking their first job.

- (54) The Italian authorities also presented data concerning unemployment rates by age group, by level of studies and by area. In the northern and central regions there are no significant differences in unemployment according to the level of qualifications, whereas in the south there are stronger disparities: 12,5% unemployment among those with a doctorate or a specialisation, and 34% among graduates and university students.

Table 13

Unemployment by age group and qualifications in southern Italy (1995)

(data supplied by the Italian authorities)

Age group	Doctorate or specialisation	First degree (laurea)	Shorter first degree (laurea breve)	Qualified for admission to university	Not qualified for admission to university	Secondary leaving certificate	Primary leaving certificate	Total
15 to 19	0,0	0,0	0,0	44,2	25,5	20,0	22,2	24,2
20 to 24	0,0	25,0	25,0	24,5	15,3	13,9	12,0	18,1
25 to 29	0,0	23,9	12,5	7,9	7,4	7,5	12,8	8,9
30 to 34	0,0	7,9	6,7	3,7	4,7	5,4	9,3	5,1
35 to 39	0,0	2,5	0,0	2,5	3,5	5,1	6,9	4,0
Total	0,0	10,6	8,3	10,2	9,1	8,8	9,9	9,5

Source: The Ministry of Labour.

- (55) The Italian authorities stress that the unemployment trend shows an increase in 1995, 1996 and 1997, with more significant peaks in the centre and the south. The south also has more marked differences in unemployment levels according to qualifications.
- (56) They also point out that the training that has to be provided under the training and work experience contracts should be viewed as a compensatory contribution required of firms. Training is not, the authorities claim, limited to the minimum number of hours required by law but includes apprenticeships. They also note that, in several cases, the vocational training or retraining aid is not covered by Articles 87 and 88 of the Treaty. Where, however, the measures are covered by Article 87(1), they are viewed favourably by the Commission.
- (57) The Italian authorities provided data on the calculation of the cost of training and its effect on the benefits enjoyed by the employers: on the basis of maximum aid (based on a 100% reduction in social security contributions) per year and per worker of ITL 11 282 256 (EUR 5 826,80), the estimated training cost is ITL 1 575 000 (EUR 813,42). In addition, there is the cost of training while on the job.
- (58) The situation following the increase by regional authorities in the maximum age of 32 is as follows: 35 in Lazio, 38 in Calabria, 40 in Campania, Abruzzo and Sardinia, and 45 in Basilicata, Molise, Apulia and Sicily.
- (59) Lastly, the Italian authorities stressed the temporary nature of the aid, which has a maximum duration of two years.

IV.2. Aid or the conversion of training and work experience contracts into open-ended contracts

- (60) The Italian authorities state that the aid scheme is consistent with the Community guidelines, as they help to maintain jobs created. The stabilisation of training and work experience contracts is, they claim, equivalent too the net creation of jobs since conversion would change temporary jobs into stable ones. Workers recruited on training and work experience contracts would not have to be included among the workforce of the firm concerned in order to check whether new jobs had actually been created. The authorities also point out

that, in the absence of such measures, employers would use other forms of fixed-term contract.

- (61) They point out that this interpretation was endorsed by the Commission when it approved the aid scheme introduced under Sicilian Regional Law No 30 of 7 August 1997⁽¹⁰⁾.

V. ASSESSMENT

V.1. Training and work experience contracts

V.1.(a) Assessment of the aid content of the training and work experience contracts

- (62) Training and work experience contracts governed by Law No 863/84 did not constitute aid within the meaning of Article 87(1), but a general measure. The aid was applicable to all firms in a uniform, automatic and non-discretionary manner and on the basis of objective criteria.
- (63) The amendments made in 1990 by Law No 407/90 modified the nature of the measures. The new provisions varied the reductions according to the location of the recipient firm and the sector to which it belonged. This meant that some firms received greater reductions than those granted to its competitors.
- (64) Selective reductions which favour certain firms in a particular Member State, whether the selectivity operates at individual, regional or sectoral level, constitute, for the differential part of the reduction, State aid within the meaning of Article 87(1) of the Treaty, i.e. aid which distorts competition and could affect trade between Member States.

This differential benefits firms which operate in particular areas of Italy as the aid was not granted to firms in other areas.

- (65) The aid distorts competition in so far as it strengthens the financial position and opportunities of the recipient firms with respect to competitors who do not receive

⁽¹⁰⁾ State aid N 692/97.

the aid. Whenever this effect extends to intra-Community trade, the latter is impaired by the aid.

(66) In particular, such aid distorts competition and affects trade between Member States where the recipient firms export some of their products to other Member States; equally, even where such firms do not export their goods, national production is favoured because firms established in other Member States have less chance of exporting their products to the Italian market⁽¹⁾.

(67) For the above reasons, the measures under examination are normally prohibited under Article 87(1) of the EC Treaty and Article 62(1) of the EEA Agreement and may be deemed compatible with the common market only if they qualify for one of the derogations provided for by those instruments.

(68) As to form, the scheme should have been notified to the Commission at the draft stage in accordance with Article 88(3) of the EC Treaty. In the absence of such notification by the Italian Government, the aid is unlawful under Community law on grounds of failure to comply with Article 88(3) of the Treaty and may be considered compatible with the common market only if it qualifies for exemption under the Treaty.

V.1.(b) *Compatibility of the training and work experience contracts*

(69) Having concluded that the measures in question constitute State aid within the meaning of Article 87(1) of the Treaty, the Commission must determine whether they are compatible with the common market under Article 87(2) and (3).

(70) With regard to applicability of the derogations provided for in the Treaty, the Commission takes the view that the aid does not qualify for the derogations under Article 87(2) because it is not aid having a social character within the meaning of Article 87(2)(a), aid to make good the damage caused by natural disasters or exceptional occurrences within the meaning of Article 87(2)(b) or aid that is covered by Article 87(2)(c). Nor does the aid qualify for the regional derogations under Article 87(3)(a) and (c) since it is not investment aid. For obvious reasons, the derogations under Article 87(3)(b) and (d) are not applicable either.

(71) The guidelines on aid to employment⁽¹²⁾ specify that the Commission is normally favourably disposed towards aid:

— for the unemployed,

and

— to create new jobs (net creation) in SMEs and in regions eligible for regional aid,

or

— to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market, at national level; in this case there is no need for net job creation, provided that the post falls vacant following voluntary departure and not redundancy.

(72) The guidelines also stipulate that the Commission must make sure that 'the level of aid does not exceed that which is necessary to provide an incentive to create jobs' and that the job is a stable one.

(73) The Community guidelines also stipulate that the Commission may also approve aid to maintain jobs provided that it is limited to areas eligible for exemption under Article 87(3)(a) and satisfies the conditions laid down for operating aid. The rules specify that this type of aid must be limited in time, degressive and designed to overcome structural handicaps and to promote lasting development, in accordance with the rules governing sensitive sectors.

(74) On the basis of the information obtained in the course of these proceedings, the Commission considers that aid for employment under training and work experience contracts has the following features:

— it is not aimed solely at the recruitment of persons seeking their first job or still unemployed after losing their previous job, as this is not required by Italian law,

— it is not aimed at the net creation of new jobs within the meaning of the Community guidelines on aid to employment⁽¹³⁾, even though the firms must not have dismissed any staff over the preceding period,

— it is aimed at the employment of specific categories of workers experiencing difficulties entering or

⁽¹⁾ Judgment of 13 July 1988 in Case 102/87 [1988] ECR 4067.

⁽¹²⁾ See footnote 5.

⁽¹³⁾ See footnote 5.

re-entering the labour market. In view of the very high age limit (32), it is necessary to determine whether the observations of the Italian authorities and of other interested parties concerning the definition of 'disadvantaged' categories are consistent with the guidelines on employment aid. The definition of the age limits for 'young persons' is thus essential from the standpoint of compatibility of the scheme with the common market.

percentages provided by Confindustria for the two age groups do not correspond to the data it provided (Table 2). According to Table 2 but Table 12, the percentage of jobseekers seems, on the contrary, to fall considerably in the 25 to 29 age group compared with those aged 20 to 24. This trend is discernible throughout the country and is confirmed by other statistics which compare unemployment rates in Italy with the European average (Table 1).

- (75) The aid scheme in question is intended to assist workers aged 16 to 32 who, according to the Italian authorities, should be regarded as including disadvantaged persons experiencing difficulties entering or re-entering the labour market, either because they fall within the 'young persons' category or because they are long-term unemployed.
- (76) The Commission notes that the guidelines do not stipulate any age limit for young persons. However, as already stated when the Article 88(2) procedure was initiated⁽¹⁴⁾, the Commission notes that measures to assist young people at both Community and Member State level concern young people under the age of 25⁽¹⁵⁾. The guidelines are confirmed by the International Labour Office, which, in its report on employment and young people, defines the latter as belonging to an age group ranging from 15 to 24⁽¹⁶⁾. The report states that the operational definition of young people varies considerably from one country to another, according to cultural and institutional factors. In industrialised countries and in eastern European countries with an economy in transition, the lower limit generally corresponds to the end of compulsory schooling. The upper limit, however, is more variable⁽¹⁷⁾.
- (77) The statistics provided by the Italian authorities and Confindustria show that unemployment levels in Italy are high, even after the age of 20 to 24.
- (78) Although unemployment is highest in southern Italy, it cannot be said that the percentage of jobseekers is higher in the 25 to 34 age group than in the 15 to 24 age group. The Commission also notes that the
- (79) The data supplied by the Italian authorities (Table 7) show that there is a higher percentage of registered jobseekers in the 25 to 32 age group than in the 19 to 24 age group. They also give percentages of registered unemployed that are higher than the rates calculated by Eurostat (Table 1). The difference is due to the fact that the statistics compiled by Eurostat are based on the ILO definition of unemployment, which is based on three criteria: persons must be unemployed, be actively seeking employment and be prepared to start work in two weeks. These criteria, however, are not applied for inclusion in the registers of jobseekers, which generally include persons who are not actively seeking employment (e.g. students who have not yet completed their studies).
- (80) In the opinion of the Commission, the data on unemployment rates, even as regards their distribution over time, must be compared with other data, such as the average time spent by unemployed persons seeking employment and the average age at which a university degree is obtained.
- (81) With regard to the first factor, i.e. average jobseeking time, it is worth noting that this increases with age, to reach 37 months in the 30 to 39 age group (Table 6). These data go some way towards explaining the structural nature of unemployment. The Italian authorities pointed up this characteristic of the Italian labour market, especially as it is more marked in the south, where unemployment is higher (Table 11). As regards average jobseeking time in the different age groups, the Italian authorities referred to the results of ISTAT's Second Report on youth for 1997 (see recital 48). The report shows in particular that 65% of unemployed persons aged 15 to 24 stated that they had been seeking employment for over a year (long-term unemployed); that figure rose to 68% for those aged 25 to 34. On the basis of that information, the Commission therefore concludes that the trend should be examined from the standpoint of structural unemployment and in terms of the raising of the age limit for the definition of 'young persons'.

⁽¹⁴⁾ See footnote 1.

⁽¹⁵⁾ Point 12.3 of the Commission letter of 17 August 1998 (see footnote 1).

⁽¹⁶⁾ International Labour Office Report on youth employment drawn up for the Conference of Ministers responsible for youth, 8 to 12 August 1998, Lisbon, point 1.1.

⁽¹⁷⁾ Ibid.

- (82) Long-term unemployment (more than a year without a job) is one of the most important characteristics of structural unemployment and it was taken into account in the guidelines on aid to employment. Together with young people, the long-term unemployed are one of the most underprivileged categories referred to in the guidelines. The large number of young people available for work and their — in many cases — advanced level of education (university degree) further complicates the situation of the long-term unemployed, who, being often less skilled or possessing increasingly obsolete skills, find themselves at a disadvantage on the labour market in comparison with young, often more skilled jobseekers.
- (83) According to the data presented by the Italian authorities and Confindustria, young graduates obtain their degrees at a relatively advanced age. The statistics on the age at which a first degree (laurea) is obtained show that the percentage of persons obtaining a degree increases up to the age of 25 and falls after the age of 26 (Table 8). Most are awarded their degrees at the ages of 24 (11,8%), 25 (18,8%), 26 (18,7%) or 27 (14,3%). The relatively advanced age at which a degree is obtained results in late entry to the labour market. A comparison of the Italian situation with that in other Member States reveals an average age of 26,8 in Italy against a European average of 25,7.
- (84) If the maximum age for young persons is taken as 24, then clearly a large number of university graduates cannot benefit from the labour market incentives aimed at them. Only those obtaining their (long-cycle) degree at 23 or under, i.e. 4%, would benefit from measures limited to persons up to the age of 24. On the other hand, those obtaining their (long-cycle) degree at 24, i.e. 11,8%, will have very little time to benefit from those measures. It is worth noting in this connection that the Italian authorities stated that the average age of graduates entering the labour market is 27. Entry means the age at which they started their first job, the labour market access period being the period between obtaining a degree and finding employment for the first time. The jobseeking period is thus more than one year for those obtaining their degree under the age of 23, 24, 25 and 26. This phenomenon has relatively serious consequences for the professional life of the young graduate owing to the fact that, as stressed by the ILO, a prolonged period of unemployment at the start of working life can have a lasting effect on future work prospects. The views of the ILO relate to entry to the labour market of 'young persons' of up to 24 years of age and are based on the fact that unemployment at the start of a career can damage productive potential permanently⁽¹⁸⁾. Taking account of the age at which the degree is awarded, that 'critical' age shifts in the case of graduates and no longer corresponds to the 20 to 24 age group.
- (85) In view of the foregoing, the Commission considers that, solely as regards university graduates, the statistics and the institutional factors relating to the length of studies justify the structural nature of the unemployment affecting the 25 to 29 age group.
- (86) The Commission notes that aid for employment under training and work experience contracts makes two positive contributions to an Italian labour market experiencing severe structural and youth employment difficulties. The first consists in the training provided for in the contracts, whilst the second consists in the condition attached to the scheme that employment on training and work experience contracts is not authorised where a firm has not retained in employment at least 50% of workers whose training and work experience contracts expired in the preceding 24 months. The condition is apparently intended as a further incentive to firms to maintain the jobs for longer.
- (87) The compensatory contribution in the form of training provided by the employer must be taken into account in assessing the intensity of the aid granted to him. It represents a financial and organisational input which must not, however, be viewed as an initial investment. The latter is defined in the guidelines on national regional aid as 'an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment'⁽¹⁹⁾. Aid to job creation linked to the carrying-out of an initial investment project is one of the forms of investment aid provided for in the guidelines on national regional aid.
- (88) In addition, the condition imposed in the guidelines on aid to employment, namely that 'the post falls vacant following voluntary departure and not redundancy'⁽²⁰⁾, is met inasmuch as the Italian legislation under examination makes it a condition that there be no

⁽¹⁸⁾ Report drawn up by the ILO for the conference of Ministers responsible for youth, 8 to 12 August 1998, Lisbon, point 1.5 (see footnote 16).

⁽¹⁹⁾ OJ C 74, 10.3.1998, p. 9.

⁽²⁰⁾ See footnote 5.

redundancies. Accordingly, as stated in the guidelines, 'there is no need for net job creation' in the case of underprivileged categories.

(89) With regard to the selective nature of the aid, the Commission notes that the differential part of the aid exceeding 25% of the reduction in social security contributions is granted by the Italian authorities only to certain types of firm. Such firms are differentiated from the others by sector and size. In addition, the aid intensity varies according to location in Italy. The aid is granted at varying intensities, according to the region concerned, to firms in the commercial and tourism sector with a minimum of 15 employees, to craft industries and to all firms located in areas with unemployment levels higher than the national average. Such measures cannot be regarded as general measures as they do not apply uniformly to the economy as a whole and they favour specific firms and specific sectors⁽²¹⁾.

(90) The total aid per firm is directly dependent on the number of workers recruited. The Italian authorities have estimated that the maximum amount of aid (overall reduction of 100% in social security contributions, i.e. 25% as general measures applicable throughout the territory and 75% maximum as a subsequent reduction) per annum and per worker employed, net of training costs, amounts to ITL 9 707 256 (EUR 5 013,38). Firms benefiting from the subsequent maximum reduction of 75% would receive ITL 7 280 442 (EUR 3 760,03), whilst firms benefiting only from a subsequent reduction of 15% would receive ITL 2 426 814 (EUR 1 253,34), i.e. an aggregate figure of 40% (see recital 12).

(91) The Commission notes that, solely as regards the aid to encourage the use of training and work experience contracts for workers with particular difficulties in entering or re-entering the labour market, i.e. young people under 25, young graduates up to the age of 29 and the long-term unemployed (out of work for more than a year) or the aid intended to create new jobs, total aid does not exceed the amount needed to promote the creation of new jobs, taking account of the mandatory training content of training and work experience contracts and of the particularly serious unemployment situation in Italy. The Commission also concludes that the amount of aid does not exceed the amount required

to encourage job creation in view of the proportionality between the social security contributions qualifying for the reduction and the remuneration of the workers and in view of the fact that the measures meet the needs of the regions concerned.

(92) On the basis of the foregoing, the Commission concludes that only the aid to the creation of new jobs and that specified in the preceding paragraph comply with the relevant guidelines and may therefore qualify for the exemptions laid down for that type of aid.

(93) On the other hand, the Commission takes the view that aid for employment under training and work experience contracts constitutes aid to maintain employment where it is not intended either for the employment of workers experiencing particular difficulties in entering or re-entering the labour market, i.e. persons under 25, graduates under 29 and the long-term unemployed (more than one year without employment), or for the creation of new jobs.

(94) Whilst it is true that, according to the employment aid guidelines, aid to maintain jobs means 'support given to a firm to persuade it not to lay off its workers'⁽²²⁾, the aid in this case is not in fact paid to firms to encourage them not to dismiss workers since the aid is granted for employment under training and work experience contracts. As the scheme does not require new jobs to be created but, on the contrary, expressly stipulates that there must be no redundancies, the aid may encourage firms to replace natural wastage. It therefore encourages firms to maintain its workforce without creating new jobs. Thus the aid can be regarded as aid to maintain jobs, which the guidelines on aid to employment treat as similar to operating aid.

(95) Such aid can be authorised only if, under Article 87(2)(b) of the Treaty, it is intended to make good the damage caused by natural disasters or exceptional occurrences. Under certain conditions, aid to maintain jobs may be authorised in regions qualifying for exemption under Article 87(3)(a), i.e. aid to promote the economic development of regions where the standard of

⁽²¹⁾ According to the first survey on State aid in the European Community (1989), 'general measures comprise any interventions that apply uniformly across the economy and which do not favour certain enterprises or sectors', (COM(88) 945).

⁽²²⁾ See footnote 5.

living is abnormally low or where there is serious underemployment.

determine whether they are compatible with the common market under Article 87(2) and (3).

(96) The Commission notes in the first place that the aid is not restricted to the areas eligible for exemption under Article 87(3)(a) of the Treaty, as it applies to the country as a whole. It is not degressive or limited in time. As to whether it is likely to help firms overcome structural handicaps and promote lasting development, the Commission has repeatedly warned the Italian Government of the risks of such generalised measures. Its negative stance is based on its conviction that this type of measure has very harmful effects on competition and trade which are not effectively counterbalanced by the Community interest in terms of sustainable development or the removal of structural handicaps.

(100) As regards the applicability of the exemptions provided for in the Treaty, the comments in point V.1.(b) of this Decision (see recitals 69 to 96) are also applicable to this aid since the measures are similar.

(101) The guidelines on employment aid state that aid to create jobs 'provides employment for workers who have never had a job or who have lost their previous job' and that job creation means 'net job creation, i.e. the creation of an additional job in relation to the (average) workforce (over a period of time) of the firm concerned'.

V.2. Aid for the conversion of training and work experience contracts into open-ended contracts

(102) The same guidelines also state that the Commission will scrutinise the terms of an employment contract, in particular compliance with the obligation to hire workers for an indefinite period or for a sufficiently long period.

V.2.(a) *Assessment of the aid content of the measures to convert training and work experience contracts into open-ended contracts*

(103) The conversion of fixed-term training and work experience contracts into open-ended contracts does not create new jobs as these jobs already exist; they are not, however, stable jobs.

(97) Since the measures concern a one-year extension of the same aid provided for training and work experience contracts and since the aid is even more selective, being limited to Objective 1 areas only, the aid assessment contained in point V.1.(a) is even more relevant to these measures.

(104) As already stated by the Commission⁽²³⁾, measures concerning the conversion of fixed-term contracts and training and work experience contracts into open-ended contracts cannot be regarded as measures either to create new jobs or to maintain jobs, in view of their particular characteristics relating to the stabilisation of temporary employment. The added value is therefore constituted by the 'net creation of stable jobs' which did not previously exist.

(98) Accordingly, it is clear that the measures in question are liable to affect trade between Member States. In view of the aid contained in the measures, it must be concluded that they are caught by Article 87(1) of the EC Treaty and Article 62(1) of the EEA Agreement inasmuch as they constitute State aid which distorts competition to an extent liable to affect intra-Community trade and can be regarded as being compatible with the common market only if they qualify for one of the derogations laid down.

(105) The Commission notes that, whilst the guidelines on aid to employment do not provide for such measures, they refer to the concept of stable employment as a positive factor. It therefore assesses the provisions of employment contracts and takes a favourable view only if they guarantee a certain degree of stability of employment.

V.2.(b) *Compatibility with the common market*

(106) In certain cases, therefore, the Commission takes a favourable view of aid to convert fixed-term jobs into open-ended ones. However, as stipulated in the

(99) Having ascertained the aid content of the measures in question under Article 87(1), the Commission must

⁽²³⁾ See State aid N 692/97.

guidelines, a favourable view is subject to a twofold obligation:

- the firm must not have dismissed any employees in the 12 months preceding the conversion,
- the number of jobs must be increased in relation to the number of existing jobs in the six months preceding the conversion, not including the jobs being converted.

(107) The Commission is thus able to ascertain that the aid not only stabilises precarious jobs but brings the added value of a net creation of stable jobs which did not previously exist and hence to verify that it is not simply a matter of replacing an employee made redundant or who has retired.

(108) In view of the foregoing, the Commission concludes that, in the present case, the net job creation requirement is applicable only if the number of employees does not include those in jobs created through fixed-term contracts or jobs not providing sufficient stability of employment.

(109) Accordingly, the Commission considers that only aid for the conversion of training and work experience contracts into open-ended contracts which comply with the obligation to increase the number of jobs in relation to existing jobs in the firm (average over a period preceding the conversion) complies with the guidelines on employment aid and hence qualifies for exemption. The workforce must be calculated excluding staff recruited on fixed-term contracts or jobs not providing sufficiently stable employment.

(110) The Commission considers that the aid intensity should be calculated on the basis of aid granted in the period preceding the conversion. During that period, employers benefited from aid granted for the same workers whose contracts were subsequently converted. Thus, aid was granted in total for three years for each job created. The Commission notes that only in the cases described above was the intensity in proportion to the objective, taking account of the fact that the jobs created are open-ended and unemployment in the areas concerned is particularly severe. For the same reasons as those given above in connection with aid for training and work experience contracts, the Commission considers

that the amount of aid does not exceed that which is necessary to provide an incentive to create jobs.

(111) The Commission regards the other cases of aid for the conversion of training and work experience contracts into open-ended contracts which do not comply with the net job creation requirement as aid to maintain employment. As stated in the employment guidelines, such aid constitutes operating aid. For the reasons already given concerning aid for training and work experience contracts, the Commission considers that such aid does not satisfy the conditions for the granting of operating aid.

VI. CONCLUSIONS

(112) The Commission concludes that Italy has infringed Article 88(3) by granting non-notified aid for employment under training and work experience contracts that was provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94 and has been granted since November 1995.

(113) On the basis of the analysis set out in points V.1.(a) and V.1.(b) of this Decision, the Commission considers that only the aid granted for the employment of workers who, at the moment of recruitment, had not yet found employment or who had lost their jobs and who, as a result of being recruited, contributed to the net creation of new jobs in the firms concerned is compatible with the common market.

(114) The aid granted to workers experiencing difficulties entering or re-entering the labour market, i.e. after having lost their job, is also incompatible with the common market. The persons concerned are those who, because of their particular characteristics, are in a weak position on the labour market. This is true in particular of persons under 25, graduates up to the age of 29 and the long-term unemployed (unemployed for more than a year). However, in order to benefit from the aid, employers must not have dismissed any staff in the preceding 12 months and must also have retained (on open-ended contracts) at least 60% of the workers whose training and work experience contract ended in the preceding 24 months.

(115) The measures which comply with the *de minimis* rule⁽²⁴⁾ are not covered by Article 87. Under that rule, the total

⁽²⁴⁾ Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996).

amount of aid granted to firms employing persons on training and work experience contracts must not exceed EUR 100 000 over a three-year period. The same notice specifies that the rule does not apply to the industries covered by the ECSC Treaty, to shipbuilding, to transport or to aid towards expenditure in connection with agriculture or fisheries.

(116) All aid for employment on training and work experience contracts which does not comply with the conditions set out in recitals 113 to 115 is incompatible with the common market and must therefore be recovered.

(117) The Commission concludes that Italy has infringed Article 88(3) by granting the aid provided for in Article 15 of Law No 196/97 for the conversion of training and work experience contracts into open-ended contracts.

(118) For the reasons set out in points V.2.(a) and V.2.(b), recitals 97 to 111 of this Decision, the Commission notes that only aid for the conversion of training and work experience contracts into open-ended contracts which complies with the net job creation requirement in the period preceding the conversion is compatible with the common market. The total workforce should be calculated net of workers on contracts that are open-ended or that do not offer sufficiently stable employment (see recital 106).

(119) Measures which comply with the *de minimis* rule⁽²⁵⁾ are not covered by Article 87. The same considerations as those given in respect of training and work experience contracts also apply to these measures (see recital 115).

(120) All the aid for the conversion of training and work experience contracts into open-ended contracts which does not comply with the conditions referred to above is incompatible with the common market and must therefore be recovered.

(121) Where aid that is incompatible with the common market has been granted unlawfully, the Commission may require the Member State concerned to recover the

amount in question from the recipients⁽²⁶⁾ in order to restore the status quo. This is the case with regard to the aid which is deemed incompatible with the common market in this Decision and which must be repaid by the recipients.

(122) The aid must be recovered in accordance with the procedures and provisions of Italian law and must include interest from the date on which the aid was granted until the date it is actually repaid, with the rate applied being the reference rate used to calculate the net grant equivalent of regional aid,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted unlawfully by Italy since November 1995 for employment under the training and work experience contracts provided for in Laws Nos 863/84, 407/90, 169/91 and 451/94 is compatible with the common market and the EEA Agreement provided that it concerns:

- the creation of jobs in the recipient firm for persons who have not yet found employment or have lost their previous employment within the meaning of the guidelines on aid to employment,
- the employment of workers experiencing particular difficulties in entering or re-entering the labour market. For the purposes of this Decision, workers experiencing particular difficulties in entering or re-entering the labour market shall mean young persons under the age of 25, persons up to the age of 29 and the long-term unemployed, i.e. out of employment for more than one year.

2. Aid for training and work experience contracts which does not satisfy the conditions set out in paragraph 1 is incompatible with the common market.

Article 2

1. The aid granted by Italy under Article 15 of Law No 196/97 for the conversion of training and work experience

⁽²⁶⁾ Commission notice of 24 November 1983 (OJ C 318, 24.11.1983, p. 3). See also the Court of Justice judgments in Cases 70/72 of 12 July 1973 *Commission v Germany* [1973] ECR 813 and 310/85 of 24 February 1987 *Deufil v Commission* [1987] ECR 901.

⁽²⁵⁾ See footnote 24.

contracts into open-ended contracts is compatible with the common market and the EEA Agreement provided that it complies with the net job creation requirement as defined in the Community guidelines on aid to employment.

The workforce employed by a firm shall be calculated without taking account of jobs resulting from the conversion and jobs created through fixed-term contracts or not guaranteeing sufficiently stable employment.

2. Aid for the conversion of training and work experience contracts into open-ended contracts which does not satisfy the requirement laid down in paragraph 1 is incompatible with the common market.

Article 3

Italy shall take all necessary measures to recover from the recipients the aid which does not satisfy the conditions of Articles 1 and 2 and has already been unlawfully paid.

Repayment shall be made in accordance with the procedures of Italian law. The amounts to be repaid shall bear interest

from the date on which the aid was paid until the date on which it is effectively recovered. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid.

Article 4

Italy shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 May 1999.

For the Commission
Karel VAN MIERT
Member of the Commission

COMMISSION DECISION

of 20 July 1999

on State aid implemented by the Federal Republic of Germany for Lautex GmbH Weberei und Veredlung

(notified under document number C(1999) 3026)

(Only the German version is authentic)

(Text with EEA relevance)

(2000/129/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 27 January 1997, registered as received on the same day, Germany informed the Commission that it had implemented aid measures for Lautex GmbH Weberei und Veredlung ('Lautex'). The case was registered as N 90/97. By letter dated 15 April, the Commission informed Germany that it had decided to initiate an investigation procedure in respect of this state aid. The case was re-registered as C 23/97. Germany replied by letter of 20 May, which was received by the Commission on 21 May. On 2 June Germany asked for certain passages to be deleted from the Commission's letter of 15 April before it was published in the *Official Journal of the European Communities*. 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 measures.
- (2) The Commission received comments from interested parties. It forwarded them by letter dated 14 August 1997 to Germany, which was given the opportunity to react. Its comments were received on 10 September.

The matter was discussed by Commission representatives and the German authorities at a meeting in Berlin in December. Further comments were submitted on 27 January 1998. By letter dated 6 March, Germany submitted details of the amended aid package to be granted in connection with the privatisation of Lautex. By letter dated 17 August, the Commission informed Germany of its decision to extend the procedure to the new aid package and in an official letter called upon it to provide information.

- (3) The Commission decision to extend the procedure was also published in the *Official Journal of the European Communities*⁽³⁾. The Commission invited interested parties to submit their comments on the aid measures.
- (4) The Commission received comments from the Maron Group (see recital 11) by letter dated 1 March 1999, registered as received on 2 March. During a meeting in Brussels on 2 March, at which the case was discussed with the Commission, these comments were presented to the German representatives. Comments were also received from the Daun Group (see recital 10) by letter dated 18 March, registered as received on 22 March. These comments were forwarded to the German authorities by letter of 14 April, to which they did not react.
- (5) The German authorities submitted further particulars by letters of 25 September, 27 November and 9 December 1998, and 19 March and 12 April 1999, registered as received respectively on 28 September, 30 November and 10 December 1998, and 23 March and 13 April 1999.
- (6) The Commission also received a letter from the German authorities on 23 June 1999 indicating that an investor had dropped out. By fax dated 15 July, the withdrawal of an investor (the Daun Group) was confirmed and it was announced that a new restructuring plan was being developed for Lautex and that information on this plan

⁽¹⁾ OJ C 192, 24.6.1997, p. 11.

⁽²⁾ OJ C 192, 24.6.1997, p. 11.

⁽³⁾ OJ C 387, 12.12.1998, p. 4.

would be provided. The letter and the fax reached the Commission after 7 May 1999, the final deadline (following several extensions) for replying to the official letter requesting information.

II. RELEVANT UNDERTAKINGS

Lautex

- (7) The aid recipient, Lautex, is a textile firm with its registered office in Saxony, Germany⁽⁴⁾. Lautex has weaving and warehousing facilities at its Neugersdorf site and finishing facilities at Leutersdorf. It employed some 360 people in 1998, and the projected turnover for 1998 was some DEM 56,9 million (the most recent outturn figure of DEM 57,029 million is for 1997). The 1997 balance-sheet figures show assets of DEM 89,921 million. Lautex does not therefore satisfy the Commission's criteria for small- and medium-sized enterprises (SME) laid down in the Community guidelines on State aid for SMEs⁽⁵⁾.
- (8) Lautex succeeded Lautex AG, a holding company set up in 1990 to incorporate Oberlausitzer Textil GmbH, Neugersdorf, Ostsächsische Textil GmbH, Zittau, and Spreetextilien GmbH, Neusalza-Spremberg. In 1990 Lautex AG had 10 200 employees, nine spinning mills, 32 weaving mills, six finishing plants, seven industrial power plants, three fleece processing plants and printing works. In 1991 the number of weaving mills was reduced by two. In 1992 Lautex AG was split into Lautex (610 employees) and TGO Textil GmbH (808 employees).
- (9) On 6 November 1997 Lautex was privatised by sale to the Daun Group. On 22 April 1998 another investor, the Maron Group, acquired half the share capital in Lautex.

Daun Group

- (10) The first investor, the Daun Group, is a conglomerate based in Germany in which Mr Claus E. Daun, a businessman, has interests. It operates in several geographic and product markets, including textiles. The Group has some 11 600 employees and an annual turnover of DEM 1,4 billion. Its subsidiaries include Lauffenmühle GmbH (with which, according to one version of the restructuring plan, Lautex was to cooperate). This firm is based in Baden-Württemberg, has some 450 employees, achieved a turnover of some DEM 125 million in 1998 and is engaged in spinning, weaving and finishing.

⁽⁴⁾ The unemployment rate in the region concerned is 22,1%. If the secondary employment market is also included, this figure is 6,1% higher.

⁽⁵⁾ OJ C 213, 27.7.1996, p. 4.

Maron Group

- (11) The second investor, the Maron Group, is a group of companies in which Mr Elard Maron, a businessman, has a controlling interest. It operates in the textile sector and includes the former Erba GmbH, a producer of shirt and blouse fabrics based in Forchheim, western Germany. Erba GmbH succeeded the failed Erba AG (insolvency proceedings were started in 1992), a large spinning and weaving firm which employed some 3 000 people. Erba GmbH was declared insolvent in 1996. The Maron Group acquired the weaving mill and incorporated it into Mileta AS, another member of the Maron Group with its registered office in the Czech Republic. In 1997 it took over the production of shirt and blouse fabrics from the former Erba GmbH. It also owns a dye works in the Czech Republic, Milerba SRO, where the Erba Lautex fabrics are dyed. It is not known what further interests the Maron Group has. No data have been provided on the numbers employed by the Maron Group or on its turnover or assets. It is not known whether and to what extent the Maron Group is active in other product or geographic markets.

III. PRIVATISATION

- (12) The Daun Group was selected as an investor by management consultants KPMG acting on behalf of the German authorities. According to the German authorities, KPMG conducted an extensive research for potential investors. Four bids were submitted for the entire Lautex company and two for selected assets. No quantitative comparison of the bids was provided by Germany.
- (13) On 6 November 1997, the company was privatised by sale at a price of DEM 434 783, with Beteiligungs-Management-Gesellschaft Berlin GmbH ('BMGB'), a successor organisation to the Treuhandanstalt, transferring 90% of the shares to Daun & Cie AG and the remaining 10% to Mr Claus E. Daun. The Daun Group agreed to increase the Lautex share capital of DEM 50 000 by DEM 6 million, of which DEM 2 million was actually paid in. When the privatisation and the sale to the Daun Group was notified, Germany made no reference to another investor.
- (14) On 22 April 1998, the Maron Group, through Mr Elard Maron, acquired DEM 3 million of the Lautex share capital, of which DEM 2 million was paid in. In addition, assets of Erba GmbH, part of the Maron Group, were transferred to Lautex. Lautex then changed its name to Erba Lautex GmbH Weberei und Veredlung but retained its legal personality (hereinafter the term

'Lautex' also includes the name Erba Lautex GmbH Weberei und Veredlung). Mr Elard Maron and Mr Hans-Jürgen Hyrenbach were appointed joint managing directors of Lautex; Mr Hyrenbach is also the managing director of Laufenmühle GmbH, a member of the Daun Group. The German authorities provided no reasons for the involvement of another investor or information as to how the Maron Group was selected to be the second investor in Lautex.

representatives was planned for the markets in Europe, North America and Asia;

- (b) the physical manufacturing base was improved in particular by the expansion of the dyeing facilities and the replacement of obsolete plant in the weaving mills. The weaving preparation facility was extended, while yarn feed controls and energy-saving systems were introduced. Improvements were made to the finishing operation, production bottlenecks were removed and new technologies were introduced.

IV. RESTRUCTURING

- (15) The information concerning the restructuring of Lautex after privatisation has been amended by Germany on several occasions, in particular in May 1997, March, September, November and December 1998 and even subsequently. The changes to the restructuring plan and the resulting altered information are presented in stages below.

- (16) The German authorities state that the problems faced by Lautex were due to the transition from a centrally planned to a social market economy, the loss of markets in the former Comecon States, the need to find new markets, general neglect and the need to meet new environmental standards. Additional inefficiencies resulted from the fact that Lautex operated at several sites. These circumstances are cited as reasons for Lautex never having made a profit.

- (17) It is unclear from the information submitted by the German authorities when the current restructuring of Lautex began. A restructuring plan was allegedly drafted in 1993, but the plan which was to form the basis of the restructuring was radically changed in 1995. Germany has neither justified the changes nor indicated their extent. A few measures were implemented between 1993 and 1995, when the current plan took effect. Since the German authorities have not provided more precise information and in view of the supposedly radical changes made that year, the Commission assumes that the current restructuring began in 1995.

- (18) By 1994 the following changes had been made at Lautex on the basis of the 1993 restructuring plan:

- (a) at company management level, computer systems were introduced to plan production. In addition, the acquisition of an independent sales department in Berlin led to the building up of a marketing network, and the creation of a network of sales

- (19) In January 1997, Germany presented the restructuring plans for Lautex as modified in 1995. They involved expansion of the sales network, simplification of the product range and extension of the dyeing and processing facilities for viscose fibres such as Polynosic and Tencel. The purpose of additional investment was to improve flexibility and quality in both the weaving and finishing operations. At the same time, unspecified improvements would be made to meet environmental and work safety requirements. Supplementary information in March 1998 confirmed that in 1996 substantial investment had been undertaken to restructure the finished products warehouses, expand the hank-dyeing facilities, acquire new finishing machines and build a new finishing hall in Leutersdorf.

- (20) In addition, the future market strategy was outlined. At that time Lautex was concentrating on the production of shirt and blouse fabrics, outer fabrics, workwear fabrics and raw fabrics. It was hoping for profits from the growth in non-iron shirt and blouse fabrics, where it intended to concentrate on producing mid- to high-priced fashion products for the European market. According to the German authorities, the new capacity for processing viscose fibres would give Lautex access to new markets. A strategic alliance was sought to consolidate the outward processing operation.

- (21) In May 1997, in response to the opening of the procedure, the German authorities provided the following information:

- (a) at management level, new works managers were to be recruited for the weaving and finishing plants. At the distribution level, part of the Berlin sales operation had been sold off. The original plan to use sales representatives in Germany was abandoned in favour of a sales team directly employed by the company;

- (b) at production level, improvements to the internal logistics had resulted in increased throughput times in the weaving and finishing plants. These measures,

together with the replacement of the obsolete weaving machines and the lengthening of the working week to 144 hours, meant that productivity could be increased by 45 %⁽⁶⁾;

- (c) as regards market strategy, a reduction in raw fabric production capacities and in outward finishing capacities was announced. The production of outer fabrics was also to be reduced.

(22) Further information was submitted in March 1998 in connection with the privatisation. The modifications to the restructuring plan included steps to incorporate Lautex into the Daun Group and other changes which were intended to put an end to the failure of previous plans (projected sales and cost levels had not been attained):

- (a) at management level, the administrative functions of Lautex and Lauffenmühle GmbH would be merged. As regards sales, Lautex would use the Daun Group's sales network, in particular that of Lauffenmühle GmbH. The intention was that part of the Lautex sales team would be taken over by Lauffenmühle GmbH;

- (b) at production level, a new cutting machine would eliminate bottlenecks in weaving preparations. The existing outdated looms were to be replaced by modern ones. The introduction of a new quality control system and unspecified investment in the finishing sector were also mentioned. Air-conditioning was also to be installed in the weaving mill in order to avoid production stoppages and improve quality;

- (c) as regards market strategy, Lauffenmühle GmbH would concentrate on the production of homogeneous mass-produced fabrics, whereas Lautex would primarily produce fashionable short-run products. The main market for Lautex would be the shirt and blouse sector, and the finishing of outer fabrics and workwear would be discontinued. Outward processing capacity would also be reduced.

(23) The modified plan also envisaged unspecified cooperation with an unnamed east European partner and cooperation at management level with a competing firm, Erba GmbH, which at that time had no connection

with Lautex. The intention was for the finishing capacities of Erba GmbH to be concentrated at Lautex.

(24) In September 1998 the German authorities provided information of further changes to the Lautex restructuring plan which were attributable to the involvement of the Maron Group:

- (a) at management level, Mr Elard Maron, the former managing director of Erba GmbH, would join Mr Hans-Jürgen Hyrenbach, managing director of Lauffenmühle GmbH, as joint managing director of Lautex. The employment of a new expert in the production area was expected to lead to cost reductions. As regards purchasing operations, the proven bargaining power of the Daun Group should result in further cost savings;

- (b) at production level, unspecified plant and machinery from the failed Erba GmbH would be transferred to Lautex. It also appeared that the Erba GmbH design team would also be transferred to Lautex (although this is not clear from the employee figures cited). Unspecified synergies with the Daun Group would take up unused finishing capacity. The yarn dyeing operation would be transferred to Milerba SRO;

- (c) as regards market strategy, the reputation of Erba GmbH in the relevant markets is said to justify the expected increase in Lautex sales in the area of high-quality shirt and blouse fabrics. The German authorities note that the number of other firms operating in this sector in the Community has been reduced from 10 to three within eight years. This sector is described as a market niche in which Lautex can escape the competitive pressure of low-cost foreign suppliers. The market for high-quality products is also said to justify the significant price increases by Lautex.

(25) In November 1998 further substantial investment of over DEM 22 million up to 2002 was announced. This information was, however, only to be gleaned from table headings: a fuller description of the type of measures and the need for them was not provided.

(26) The Commission finds that the latest information from Germany does not make it clear whether there will be further additions to the present restructuring plan or whether a new restructuring plan will be developed after the withdrawal of the Daun Group.

(27) No precise information is provided as to the impact of the restructuring on Lautex production capacity.

⁽⁶⁾ The information received in November 1998 contradicts this, referring to a reduction of the working week from 168 hours to 144 hours.

According to the information provided by the German authorities in September 1997, weaving mill capacity had already been reduced in the period 1990 to 96 (from 100 million running metres in 1990 to nine million running metres in 1996). Finishing capacity is also said to have been reduced, but it is not stated by how much. No details were given as to when and how the capacity reductions had occurred. It was asserted that no further reduction in capacity was possible.

(28) In November 1998 the German authorities stated that between 1996 and 1998 capacity had been reduced from 9,14 million running metres a year to 7,2 million running metres a year. This had been achieved despite the acquisition of new machines, the complete technological overhaul of the firm, the elimination of bottlenecks and the reorganisation of the lower capacity. The German authorities stated that there were methodological difficulties in quantifying finishing capacity.

(29) According to the information submitted in April 1999, Lautex also reduced capacity in 1998. By scrapping 20 looms, capacity was reduced from 7,67 million running metres in 1996 to 7,618 million running metres in 1999. The looms were said to have been 'irreversibly scrapped'. However, the Lautex publicity material presented at the March 1999 meeting with the German authorities and the investor states that Lautex has an annual output of 9 million running metres⁽⁷⁾.

Restructuring costs

(30) In its letter announcing the opening of the procedure and in that announcing its extension, the Commission referred to the lack of information on the overall restructuring costs.

(31) The letter of 27 November 1998 contained tables listing the overall costs of restructuring Lautex⁽⁸⁾ and

information as to how those costs were to be financed. However, the tables were produced in 1992, when the current restructuring process had not yet begun. The following table summarises those submitted by the German authorities, but only for the relevant period 1995 to 2002⁽⁹⁾:

RESTRUCTURING COSTS

1995 to 2002

(in DEM million)

Investment	34,406
Loss cover	75,433
Debt servicing	28,097
Total current assets	28,341
Total current account	9,850
Increase in reserves	32,093
Total	208,220

(32) The need for the individual items in the table was not explained (except for investment, which was shown as the only company cost). No more detailed information was provided as to how these items were calculated or as to how the organisational restructuring of the firm was taken into account. The figure for loss cover does not tally with earlier information, which shows losses of DEM 59,672 million for 1995 to 2002⁽¹⁰⁾. As regards debt servicing, the German authorities stated that Lautex's external liabilities were taken over by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) and that on privatisation the latter waived repayment of all the financial assistance it had granted. However, debt servicing is envisaged for 1995 to 98 and 2001-2, with no explanation given as to the origin or the size of the liabilities involved. The remaining headings relate to financial restructuring measures but no information has been provided as to how they arose or how the amounts were calculated.

V. FINANCING THE RESTRUCTURING

(33) The intention is that the restructuring of Lautex will be financed from both public and private sources. The subsidisation from public funds relates to the restructuring aid originally notified in January 1997 and subsequently modified.

⁽⁷⁾ The company's publicity material contained in the brochure 'Innovation TEXTIL Oberlausitz' gives an annual output of 9 million metres. It should also be noted that the Lautex website at <http://www.erba-lautex.de/engFrame.htm> gives a capacity of 10 million metres.

⁽⁸⁾ At a meeting in Brussels on 2 March 1999, the German representatives were made aware of the lack of precise information concerning the overall costs of the restructuring and were informed that the Commission would be calculating them on the basis of the tables contained in the letter of 27 November 1998. The information subsequently submitted referred on this point to the letter of 9 December 1998; however, that letter contained no information on this subject.

⁽⁹⁾ Assuming that the present restructuring of Lautex started in 1995.

⁽¹⁰⁾ See below: 'Restoration of long-term viability'.

State aid measures specified in the original notification

- (34) The January 1997 notification covered the following measures to assist the restructuring of Lautex:
- (a) a DEM 5,202 million interest-free shareholder loan from the BMGB, to run until 31 March 1998;
 - (b) a DEM 8,7 million shareholder loan from the BMGB, with interest payable at 7,33%, to run until 31 March 1998;
 - (c) a DEM 6,5 million BMGB guarantee, at a charge of 0,5%, to run until 31 March 1999;
 - (d) the extension to 31 March 1999 of a DEM 3,5 million guarantee granted in 1992, at a charge of 0,5%.
- (35) The total aid amounts to DEM 24 million. In its March 1998 letter, Germany conceded that part of the aid had been disbursed in 1997 without Commission approval and that repayment was waived on privatisation. However, no indication was given as to the value that was put on these aid measures in the context of privatisation.

Amended measures, details of which were provided in March 1998

- (36) Upon privatisation, the measures notified in 1997 were amended as follows:
- (a) the granting of an additional sum of DEM 30,9 million to cover losses from 1997 to 2000;
 - (b) a discharge from bank liabilities of DEM 22,389 million;
 - (c) a repayment waiver in respect of DEM 159,27 million;
 - (d) a repayment waiver in respect of the guarantee charge of DEM 0,312 million.
- (37) According to Germany's letter of March 1998, total aid for Lautex amounted to DEM 212,871 million. However, it is unclear whether or not this figure includes any or all of the aid granted in 1997.
- (38) A final analysis of all the documentation submitted to the Commission by Germany shows that Lautex was granted the following aid in 1996 and 1997:

(in DEM million)

1996		1997		Privatisation	
Form	Amount	Form	Amount	Form	Amount
Loans	0,531	Loans	0,217	Loans	12,700
Grants	0,969	Guarantee (extension)	(3,500) ⁽¹⁾	Grants	30,900
Loans	0,117			Discharge from bank liabilities	22,389
<i>Total</i>	1,617	<i>Total</i>	0,217	<i>Total</i>	65,989
Grand total					67,823

⁽¹⁾ This amount must be disregarded because it represents the prolongation of a measure deemed to have been awarded at 100% intensity under an approved aid scheme.

- (39) In detail, the measures specified in the above table for 1996 consist of the following aid from BMGB to Lautex:
- (a) loans of DEM 0,531 million in support of the redundancy programme;
 - (b) loans of DEM 0,117 million to promote vocational training;
 - (c) grants of DEM 0,969 million to promote employment (measures under the Employment Promotion Law).

- (40) For 1997 the following aid measures are involved:
- (a) loans of DEM 0,217 million to promote vocational training;
 - (b) extension of an existing guarantee of DEM 3,5 million, at a charge of 0,5%.
- (41) In the privatisation contract the BvS agreed to the following measures:

- (a) loans of DEM 12,7 million to cover losses for 1997⁽¹¹⁾, of which DEM 3,988 million was interest-free and DEM 8,712 million carried interest at 5,54%. These loans were disbursed in instalments;
- (b) grants of DEM 30,9 million, paid in instalments (DEM 8,9 million on 31 December 1997, two instalments of DEM 8 million each on 30 June 1998 and 31 December 1998, and DEM 6 million on 30 June 1999);
- (c) a discharge from bank liabilities of DEM 22,389 million⁽¹²⁾.
- (42) In the period 1996-97 Lautex received an investment allowance (Investitionszulage) of DEM 0,226 million from the *Land* of Saxony. For the period 1998 to 2000 further investment allowances totalling DEM 5,693 million are being made available by the *Land* of Saxony.
- (43) The privatisation contract waived the obligation to repay several of the abovementioned aid measures. The following waivers totalling DEM 159,583 million were agreed by the BvS:
- (a) loans of DEM 110,636 million (DEM 75,176 million from 1991, DEM 16,527 million from 1994 and DEM 3,24 million and DEM 15,693 million from 1995);
- (b) loans of DEM 46,13 million (DEM 22,872 million and DEM 10,558 million from 1995 and DEM 12,7 million from 1997);
- (c) loans of DEM 0,334 million (DEM 0,117 million from 1996 and DEM 0,217 million from 1997) to promote vocational training;
- (d) loans of DEM 2,171 million for the 1996 redundancy programme (DEM 1,64 million from 1992 and DEM 0,531 million from 1996);
- (e) waiver of claims from a guarantee of DEM 0,312 million.
- (44) After 1995 the firm was granted aid totalling DEM 73,742 million. (This amount does not include the repayment waiver of DEM 159,583 million⁽¹³⁾).

Aid measures falling under Treuhand schemes

- (45) According to the notification of 27 January 1997, aid measures falling under Treuhand schemes totalled DEM 174,4 million. Of this amount DEM 124,9 million had allegedly been granted up to 1994 and, according to information received, a further DEM 49,5 million was approved in 1995 and disbursed in 1995 and 1996. According to the information from Germany, i.e. after the procedure was initiated in May 1997, financial aid granted to Lautex between 1990 and the end of 1995 and falling under Treuhand schemes totalled DEM 173,658 million:

- (a) loans of DEM 33,43 million;
- (b) guarantees totalling DEM 26,335 million;
- (c) various grants and loans totalling DEM 113,893 million.

- (46) At a meeting in Brussels on 2 March 1999, the representatives of the German authorities admitted that they would have to check which of the aid measures disbursed in 1996 actually fell under the relevant Treuhand schemes, the last of which expired on 31 December 1995. According to the information submitted in April 1999, an amount of DEM 177,794 million was involved. This also includes the aid granted in 1996⁽¹⁴⁾. Since no explanation was given as to why the aid measures granted after 1995 are included in this sum, the Commission will take them into account for the period 1996 to 2002.

- (47) An analysis of the information provided by the German authorities shows that Lautex was granted the following aid by the THA/BvS/BMGB in the period 1991 to 1995:

⁽¹¹⁾ According to the letter of 27 November 1998, losses amount to DEM 5,202 million. No explanation has been given as to why this loan exceeds losses by DEM 7,498 million.

⁽¹²⁾ No information was provided on these bank liabilities. It is not clear whether the discharge relates to private or public bank liabilities.

⁽¹³⁾ These waivers relate to measures implemented since 1991.

⁽¹⁴⁾ In particular grants of DEM 0,531 million for the 1996 redundancy programme.

(in DEM million)

1991		1992		1994		1995	
Form	Amount	Form	Amount	Form	Amount	Form	Amount
Loans	75,176	Loans	1,640	Loans	16,527	Loans	15,693
		Guarantee	18,295			Loans	10,558
		Guarantee	4,875			Loans	22,872
		Guarantee	4,887			Loans	3,240
		Guarantee	3,500				
<i>Total</i>	75,176	<i>Total</i>	33,197	<i>Total</i>	16,527	<i>Total</i>	52,363
Grand total							177,263

- (a) On 17 December 1991, Lautex AG was granted a loan of DEM 75,176 million.
- (b) On 1 July 1992 Lautex received loans totalling DEM 1,64 million for the redundancy programme. Also in 1992, several guarantees were taken over for the firm:
- (i) on 8 April 1992 two guarantees of DEM 18,295 million and DEM 4,875 million were taken over to secure investments;
- (ii) another guarantee of DEM 4,887 million, also to secure investments, was taken over on 15 December 1992;
- (iii) a guarantee of DEM 3,5 million was taken over on 10 December 1992.
- (c) In 1994 the firm received loans of DEM 16,527 million to cover losses in 1995.
- (d) In 1995 Lautex was granted four different types of loans totalling DEM 52,363 million:
- (i) a loan of DEM 15,693 million on 3 July 1995 to cover losses in 1995;
- (ii) a loan of DEM 10,558 million on 3 July 1995 to cover losses in 1996;
- (iii) a loan of DEM 22,872 million on 3 July 1995 for restructuring measures in 1996⁽¹⁵⁾;
- (iv) a loan of DEM 3,24 million on 8 September 1995 to cover losses in 1994.
- (e) In the period 1992 to 1995 the firm also received investment allowances (Investitionszulagen) of DEM 1,018 million from the *Land* of Saxony⁽¹⁶⁾.
- (48) Consequently, between 1991 and 1995 Lautex received aid totalling DEM 178,281 million.

Private financing

- (49) The first private financing operation for Lautex took place at the time of privatisation. According to the letter of March 1998, the investor acquired Lautex for DEM 0,435 million, waived various claims totalling DEM 0,26 million and was to make a cash injection of DEM 6 million. After the merger of Erba and Lautex, this capital sum was divided between the investor groups, so that each would contribute DEM 3 million. In fact, the investors have paid in DEM 2 million each. The remaining DEM 2 million will become due if the Commission takes a positive decision. This has been confirmed several times by Germany. Therefore, the investor contribution might total DEM 6,695 million.
- (50) The Commission would point out that, at a meeting on 2 March 1999, Mr Elard Maron stated that the assets of Erba GmbH, amounting to DEM 9,686 million, should also be considered as a capital contribution by the investor. This statement is confirmed by the German authorities in their latest letter of 12 April 1999. A table contained in the same letter presents for the first time two more amounts as investor contributions: one of DEM 3,465 million to cover bank liabilities in

⁽¹⁵⁾ These loans were paid in instalments throughout 1996.

⁽¹⁶⁾ DEM 0,313 million in 1992, DEM 0,175 million in 1993, DEM 0,82 million in 1994 and DEM 0,448 million in 1995.

accordance with the privatisation contract, and one of DEM 8,795 million, which is described as investment. The letter gives no further details about the two amounts. It is not known whether these additional contributions will be made by only one investor or both of them, and in what proportions.

VI. RELEVANT MARKET

(51) Lautex operates in the textile industry. It weaves and finishes outer fabrics, shirt and blouse fabrics, and workwear. The Daun Group, through its production facilities in Lauffenmühle and subsidiaries in South Africa and Zimbabwe, also operates in the textile industry. The Maron Group has production facilities in the Czech Republic. Because of the lack of information from Germany as regards the investor groups, nothing is known about their interests in other textile firms. The Commission notes that at the beginning of 1998 Lautex exported 4,6% of its output to third countries and 17,7% to other EU Member States, with the rest being sold within Germany.

(52) Markets for woven and finished fabrics are to be found throughout the Community. When it initiated the procedure, the Commission found that the textile industry was suffering from recession and overcapacity. Germany also indicated that overcapacity existed in the sector in which Lautex operated⁽¹⁷⁾. This view was also held by third parties who submitted comments in response to the notice announcing the opening of the procedure. In December 1998 Germany revised its statement concerning overcapacity, maintaining that as from 1997 there was no longer any overcapacity on the Community textile market.

(53) By nature, the textile industry is capital intensive. Nevertheless, keen competition exists from low-wage countries with less stringent rules on environmental protection. Forecasts for Community manufacturers were and still are pessimistic⁽¹⁸⁾. Since the procedure was initiated, there have been signs that in the period 1994 to 1995 the situation had generally improved on the textile market. However, it is unclear whether this positive trend is continuing. One report suggests that the improvement may have been short-lived, with growth decelerating in 1996 to well below the longer-term trend value before registering some improvement in 1997. Further capacity rationalisation is expected in the German textile industry in particular.

The industry is continuing to restructure in the face of lacklustre global demand and intense price competition⁽¹⁹⁾. In addition, several firms have left the market in which Lautex operates.

(54) It is noted that Lautex is geared exclusively to producing for the clothing market. Its market strategy, despite the numerous changes it has undergone, is directed solely at this area. The assessment of this downstream market is important for determining competitive pressures in that part of the upstream textile market geared to supplying it. According to information available to the Commission, the downstream market is characterised by intense competition; in addition, in the near future employment is expected to decrease and growth is expected to be slight. Demand has declined annually by 2% since 1990. The clothing industry will continue to face difficult economic conditions in Europe and consumption is not expected to improve significantly⁽²⁰⁾. The impact of overproduction on textile markets is potentially catastrophic for both textile and clothing producers throughout the world⁽²¹⁾.

VII. INITIATION AND EXTENSION OF THE PROCEDURE

(55) When initiating the procedure, the Commission found that the measures notified constituted aid within the meaning of Article 87(1) of the EC Treaty. Since the aid was intended as restructuring aid, it had to be assessed on the basis of Article 87(3)(c) and the Community guidelines on state aid for rescuing and restructuring firms in difficulty ('the guidelines')⁽²²⁾.

(56) In its letter of 15 April 1997, the Commission expressed doubts as to the cogency of the proposed restructuring measures and the correctness of the assumptions made. It also doubted whether undue distortion of competition by the proposed aid measures could be avoided since, despite the structural overcapacity in the industry, no permanent capacity reduction was proposed. In view of the misgivings as to whether the restructuring measures were appropriate, the Commission was unable to take a view on proportionality. Finally, there was doubt as to whether the rescue plan was being fully implemented. Given the lack of conclusiveness of the restructuring plan and the

⁽¹⁷⁾ See letter of September 1997.

⁽¹⁸⁾ See 'Business trends survey', August 1996, European Observatory for Textiles and Clothing; 'Textile Outlook International: Asian crisis — the impacts spread far and wide', Economist Intelligence Unit (1 July 1998).

⁽¹⁹⁾ See 'World Textile Fibers to 2001', Freedonia Industry and Business Research Studies, The Freedonia Group Inc., Ohio, USA.

⁽²⁰⁾ See 'Panorama of EU Industry 97', European Commission, report prepared by the European Observatory for Textiles and Clothing, NACE (Revision 1) 17, Vol. I, 4-17 to 4-23.

⁽²¹⁾ See 'Textile Outlook International: World', Economist Intelligence Unit, 1 July 1998.

⁽²²⁾ OJ C 368, 23.12.1994, p. 12.

absence of a private investor, the Commission was concerned that a privatisation carried out in the course of the restructuring plan might result in it being amended.

- (57) Privatisation involved new aid measures for Lautex, and the information subsequently submitted did not allay the abovementioned concerns. The restructuring plan was amended but the individual steps in the restructuring process were not described and no analysis of the firm's difficulties was provided. The 1997 targets proved to have been overoptimistic and the achievement of an operating profit was postponed from 1998 until 2000. A capacity reduction was now also supposed to be carried out, although no explanation was given as to how this was suddenly possible, and the issue of permanence was not addressed. Since overall restructuring costs were not known, the Commission could not assess the proportionality of the measures. Lastly, the privatisation of the firm did not dispel the doubts concerning full implementation of the recovery plan. The procedure was therefore extended.

VIII. COMMENTS FROM INTERESTED PARTIES

- (58) The publication of the letter to the German Government in the *Official Journal of the European Communities*⁽²³⁾ elicited complaints from a European trade association and a British trade association. An unsolicited letter from a western German competitor was sent in April 1997 alleging predatory pricing. Reference was also made to overcapacity on the market. Copies of these letters were forwarded to the German authorities for comment. They replied in September 1997, denying that predatory pricing had occurred.
- (59) After it was announced that the procedure was being extended, the Daun Group and the Maron Group submitted comments to the Commission. The Maron Group letter contained information on the merger between Erba and Lautex and on Erba's activities. In its letter the Daun Group expressed its dissatisfaction with the privatisation process, described the firm's unsatisfactory situation and stated that it was withdrawing from the privatisation contract. These comments were also forwarded to Germany, which was given the opportunity to react. By letter of 22 April, registered as received by the Commission on 29 April, the Germany authorities asked for the deadline by which they had to submit their comments to be

extended until 7 May. The Commission agreed by letter dated 3 May, but there was no reaction from Germany.

IX. ASSESSMENT ON THE BASIS OF THE INFORMATION AVAILABLE

- (60) On 17 August 1998 Germany was required by the Commission to furnish it within one month with sufficient information to enable it to assess the measures under investigation. At Germany's request, this deadline was extended. In spite of several requests the information submitted as a reaction to the official letter was misleading, often contradicted previous statements and was insufficient to dispel the doubts expressed by the Commission when initiating and extending the procedure. In accordance with Article 13(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty⁽²⁴⁾, the Commission therefore bases the following assessment on the information available.

X. AID MEASURES TO BE ASSESSED

- (61) The Commission also finds that Germany's most recent letter, which refers to information to be communicated in the future, arrived after expiry on 7 May 1999 of the final extension of the deadline stipulated in the official letter requesting information. Should a new restructuring plan be notified in the future, the Commission reserves the right to assess this separately. The announcement that at a later date information will be communicated on a future, as yet undeveloped, blueprint or plan in no way affects the assessment of the present situation.
- (62) The financial assistance for Lautex constitutes aid within the meaning of Article 87(1) of the EC Treaty since it is paid out of public funds and entails advantages for Lautex which a firm in difficulty would not have received from a private investor. Furthermore, in the sector concerned it may affect trade between Member States and therefore distort competition in the common market. Some of these measures constitute new aid, which has to be assessed by the Commission. Lautex has not yet made a profit and is a firm in difficulty.

⁽²³⁾ See footnote 2.

⁽²⁴⁾ OJ L 83, 27.3.1999, p. 1.

Aid covered by Treuhand schemes

(63) According to Germany's latest letter, aid totalling DEM 177,794 million is covered by Treuhand schemes. An analysis of the information provided showed that Lautex received aid totalling DEM 178,281 million from 1991 to 1995. On the basis of the information provided, the Commission made the following assessment:

(a) Loans totalling DEM 75,176 million and made to Lautex in 1991 are covered by an approved aid scheme, Treuhand scheme NN 108/91⁽²⁵⁾, and meet its conditions⁽²⁶⁾.

(b) As regards the loans of DEM 1,64 million for the redundancy programme granted on 1 July 1992, the Commission takes the view that the obligations which a firm has under employment legislation or collective agreements to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. This being so, any contribution by the State to these costs must be counted as aid. However, these loans are covered by Treuhand scheme E 15/92⁽²⁷⁾ and therefore do not need to be assessed here. The same scheme covers both the guarantees of DEM 31,557 million granted in 1992 and the loans of DEM 16,527 million granted in 1994 to cover losses in 1995. These measures meet the conditions of this scheme⁽²⁸⁾.

(c) The loans of DEM 52,363 million granted in 1995, allegedly in accordance with Treuhand scheme N 768/94⁽²⁹⁾, which had been approved by the Commission, exceed the threshold laid down by DEM 2,363 million. This aid should have been notified to the Commission⁽³⁰⁾ and therefore has to be assessed as ad hoc aid.

(d) The investment allowances of DEM 1,018 million granted in the period 1992 to 1995 are based on the Investment Allowance Law (Investitionszulagengesetz)⁽³¹⁾, an approved aid scheme, and therefore do not need to be assessed by the Commission. If it is assumed that the firm's restructuring began in 1995, an allowance of DEM 0,57 million had already been granted. Consequently, the amount of DEM 0,448 million granted in 1995 has to be taken into account when proportionality is assessed.

(64) The list shows that aid measures totalling DEM 124,9 million are covered by Treuhand schemes. A further sum of DEM 1,018 million is based on an approved aid scheme. This leaves an amount of DEM 52,363 million that has to be assessed as ad hoc aid.

Aid granted after 1 January 1996

(65) The information set out shows that since 1996 Lautex has received aid totalling DEM 73,742 million. The Commission's assessment of this aid is as follows:

(a) According to point 3.2.5 of the guidelines, the loans of DEM 0,531 million granted for the redundancy programme are to be regarded as aid, and an examination must therefore be made of whether they satisfy the criteria laid down in the guidelines.

(b) With regard to the loans of DEM 0,117 million for vocational training granted in 1996, the Commission notes the absence of information on their purpose and use. They are not therefore to be regarded as general measures paid direct to employees without the company being involved. Such a measure, which assists a firm by reducing the costs it normally has to bear if it wishes to train its employees in a way which is relevant to its work or if it wishes to give its employees the opportunity of undergoing training themselves must be regarded as aid.

(c) The grants of DEM 0,969 million to promote employment (AFG-Maßnahmen) are based on the Employment Promotion Law (Arbeitsförderungsgesetz), which is an approved aid scheme and therefore does not need to be assessed by the

⁽²⁵⁾ SG(91) D/175825, 26 September 1991.

⁽²⁶⁾ Treuhand scheme NN 108/91 covers loans and guarantees granted by the Treuhand to firms undergoing privatisation.

⁽²⁷⁾ SG(92) D/17613, 8 December 1992.

⁽²⁸⁾ See point 3 of Treuhand scheme E 15/92, which provides that the granting of loans and guarantees has to be notified if the firm employs more than 1 500 workers and the total commitment (Gesamtobligo) exceeds DEM 150 million. The aid measures fall within the limits laid down in the scheme and were thus covered by it.

⁽²⁹⁾ SG(95) D/1062, 1 February 1995.

⁽³⁰⁾ Treuhand scheme N 768/94 states that all loans in excess of DEM 50 million which are granted to firms with over 250 employees must be notified to the Commission.

⁽³¹⁾ Measures under this Law qualify as regional investment aid in accordance with Article 87(1) of the EC Treaty and were approved by the Commission as a derogation from Article 87(3)(a) of the EC Treaty (approved aid scheme N 494/A/95).

Commission. Nevertheless, they will be taken into account when proportionality is assessed.

respect of these measures does not constitute additional aid.

- (d) Of the measures taken in 1997 to assist Lautex, the vocational training loans of DEM 0,217 million count as aid which has to be examined by reference to the criteria laid down in the guidelines. The extension of the guarantee of DEM 3,5 million relates to a 1992 guarantee covered by Treuhand scheme E 15/92. Since this measure forms part of an approved scheme and was considered to have an intensity of 100% of the amount guaranteed, the Commission does not consider the extension to be additional aid. As a result, that amount can be disregarded.
- (e) The measures taken from 7 November 1997 onwards, to which the BvS agreed under the privatisation contract and which comprised loans of DEM 12,7 million, grants of DEM 30,9 million and a discharge from bank liabilities of DEM 22,389 million⁽³²⁾, are considered to be new aid measures. In this case an examination has to be made of whether a derogation under Article 87(3)(c) of the EC Treaty is applicable.
- (f) The investment allowances of DEM 5,919 million made available by the *Land* of Saxony are based on an approved aid scheme and do not therefore need to be assessed by the Commission; however, they must be taken into account when proportionality is assessed.
- (g) Part of the waiver of DEM 159,583 million agreed on privatisation, namely DEM 93,665 million⁽³³⁾, relates to aid covered by Treuhand schemes. The waiver of DEM 65,928 million relates to measures not covered by approved aid schemes and repayment of which had never been intended, given the firm's difficult situation. Since aid for the rescue and restructuring for firms in difficulty has an intensity of 100%, the waiver of repayment in
- (66) This list shows that since 1992 Lautex has clearly received aid totalling DEM 252,023 million⁽³⁴⁾. Of this total, DEM 123,26 million is covered by Treuhand schemes. This aid and the investment allowances totalling DEM 0,57 million were granted in 1995 before the current restructuring started, so that they will be disregarded by the Commission when proportionality is assessed. This means that the aid of DEM 126,553 million granted since 1995 needs to be evaluated. Of this, DEM 7,336 million was granted under approved aid schemes and do not therefore need to be assessed by the Commission. However, these sums are to be taken into account when proportionality is assessed. Measures totalling DEM 119,217 million count as new aid measures and have to be assessed by the Commission.
- (67) The Commission also notes the lack of precise information on the circumstances in which the investors were selected and therefore reserves the right to comment on additional, as yet unquantified aid elements which may have been granted during the privatisation process.

XI. ASSESSMENT OF THE RESTRUCTURING AID

- (68) According to Article 87(1) of the EC Treaty, State aid granted to certain undertakings which distorts or threatens to distort competition is, in so far as it affects trade between Member States, incompatible with the common market. In view of the nature of the aid in question and the condition of the textile industry, it is clear that the aid package in question falls within the scope of Article 87(1). Such aid is generally incompatible with the common market unless it qualifies for one of the derogations in Article 87(2) or (3). In this case, Article 87(3) is relevant because it allows the Commission to approve State aid in certain circumstances. These include, according to Article

⁽³²⁾ No information was presented as to whether these were private or public funds or as to what purpose was served by the liabilities discharged on privatisation.

⁽³³⁾ The loans of DEM 75,176 million granted in 1991 and of DEM 16,527 million granted in 1994 are covered by Treuhand schemes. Since the Commission has no knowledge of guarantees granted outside the Treuhand schemes, the waiver of claims from a guarantee clearly relates to the guarantee assumed under Treuhand scheme E 15/92.

⁽³⁴⁾ The Commission notes that the financial measures designed to cover overall restructuring costs, which are contained in a table submitted on 27 November 1998, exceed the total amount of aid indicated as having been granted to Lautex plus the investors' contribution, which is given as DEM 6 million in the table. Since no explanation was provided on whether these measures were financed from public or private sources, the Commission cannot discount the possibility that Lautex may have benefited from additional aid.

87(3)(c), aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The guidelines lay down the preconditions for a positive exercise of discretion by the Commission.

(69) On the basis of Article 87(3)(a), the Commission may approve aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. This provision is applicable to the new German *Länder*⁽³⁵⁾. In the present case, however, the main purpose of the aid is to restructure a company in difficulty and not to promote the economic development of an area. Even if a successfully restructured company may contribute to the development of the area, the aid should be assessed under Article 87(3)(c) and not under Article 87(3)(a).

(70) The notification made by Germany in January 1997 was concerned with restructuring aid. If the measures notified are to be considered compatible with the common market, they must meet the conditions laid down in point 3.2 of the guidelines. The Commission doubts whether the aid meets all those conditions.

XII. RESTORATION OF LONG-TERM VIABILITY

(71) The restructuring plan must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions. In order to assess the soundness of the plan, the Commission needs information on the firm's present difficulties, the proposed internal measures and their expected effect.

(72) The Commission notes that, in response to its letter announcing the opening of the procedure, Germany provided additional information concerning the restructuring measures. However, there was no indication as to how these measures could resolve the as yet unidentified problems of the firm, how much they would cost, when they were likely to be implemented and whether they were necessary.

(73) The main explanation given for the problems which eventually led to the difficulties indicated by Germany in November 1998 is the firm's transition from a centrally planned economy to a market economy. Lautex was originally a bulk producer whose traditional markets were in the eastern bloc countries. When those markets collapsed, the firm was compelled in 1992 to change its strategy and make substantial job cuts. This gave rise to costs for the redundancy programme, the firm's restructuring and the necessary investment.

(74) The November 1998 letter contained information on the restructuring measures, although they were described only in vague terms. The information related mainly to objectives without explaining the individual steps to be taken in order to achieve them. Hardly any reference was made to the expected financial impact and no timetable was provided.

(75) The restructuring plan for Lautex has undergone several fundamental changes. In addition, Germany has constantly modified information previously supplied, and this has simply given rise to further questions⁽³⁶⁾.

(76) The Commission notes that the original 1993 plan for Lautex, which was amended in mid-1995, envisaged an operating profit by 1998. In the letter of May 1997, this was postponed until 1999. According to the amended version submitted in March 1998, an operating profit could not be expected until 2000. According to more recent information, the firm will achieve an extremely modest operating profit only in 2001. It must also be noted that targets set by the firm for particular product areas were frequently not achieved.

(77) These constant amendments make the plan seem unreliable. The firm is going through a continuous restructuring process for which apparently large sums of aid are being used, without the firm ever having made a profit. The aid seems to be keeping the firm artificially alive, in breach of the 'one time, last time' principle. The steadily deteriorating results achieved by the firm throughout the restructuring process raise serious doubts as to its long-term viability.

⁽³⁵⁾ See Commission decision on Case N 464/93.

⁽³⁶⁾ For example, the information on the development of capacity, the transfer of plant and machinery to Lautex from Erba GmbH and the description of Lautex as an outward processor has been changed on several occasions.

Overview ⁽³⁷⁾

(in DEM million)

	1995	1996	1997 ⁽¹⁾	1998	1999	2000	2001	2002
Turnover	61,571	64,998	57,029	70,787	71,943	80,688	81,554	82,379
Cost of materials	40,987	50,767	45,583	53,972	50,389	53,803	53,132	52,142
Manpower costs	14,983	18,857	17,446	17,213	16,795	16,692	17,022	17,362
Depreciation expenditures	5,464	3,083	2,338	2,832	3,402	4,004	3,927	3,950
Other operating costs	10,221	10,759	7,620	6,550	6,265	6,663	6,790	6,946
Operating result	-10,084	-18,468	-15,958	-9,780	-4,908	-0,474	0,683	1,979

⁽¹⁾ Final figures.

(78) The supporting figures submitted are also being constantly changed. The figures for both turnover and operating results have been constantly revised downwards in the above period. The latest information anticipates a turnover of DEM 56,7 million and losses of DEM 11,3 million for 1998 ⁽³⁸⁾, which are respectively much lower and much higher than the original figures.

(79) Accordingly, the Commission has doubts as to the credibility of both the original and the amended information. It also notes that the restructuring period has been gradually lengthened.

XIII. UNDUE DISTORTION OF COMPETITION

(80) Under the guidelines, a further condition of restructuring aid is that measures are to be taken to offset as far as possible adverse effects on competitors. Otherwise, the aid would be 'contrary to the common interest'.

(81) As far as the production capacity of an aid recipient is concerned, this means that aid may generally not be used to increase capacity as part of a restructuring process. Furthermore, where there is a structural excess of production capacity in a relevant market in the Community served by the recipient, the restructuring plan must make a contribution, proportionate to the

amount of aid received, to the restructuring of the industry by irreversibly reducing capacity. A genuine contribution is made when, as part of reduction of capacity, assets leave the sector concerned; this may also mean that they are physically destroyed. Should further restructuring aid be granted, an appropriately modified restructuring plan must meet the same conditions.

(82) The segment of the textile market on which Lautex operates seems to be in difficulties and to be on the brink of excess capacity ⁽³⁹⁾. The Commission notes that the view expressed by Germany in December 1998 is clearly based on the methodology set out in the multisectoral framework on regional aid for large investment projects ⁽⁴⁰⁾. Point 1.4 of that framework explicitly states that it does not apply to restructuring aid cases. For this reason, the Commission does not accept Germany's revised view that there is no excess capacity in the segment of the textile market on which Lautex operates. This means that Lautex should reduce capacity in proportion to the aid granted, although this condition may be less strictly applied in an Article 88(3)(a) area, or should at least demonstrate that capacity is not being or has not been increased.

(83) The Commission notes the many contradictory statements by the German authorities concerning capacity at Lautex. The fullest details regarding capacity

⁽³⁷⁾ The figures are taken from the letter of 6 March 1998, which gives the latest figures for 1995 and 1996, and from the letter of 27 November 1998, which contains the last amended version and an overview.

⁽³⁸⁾ The most recent consolidated figures relate to 1997.

⁽³⁹⁾ The Commission notes that in two recent decisions (Rawe GmbH & Co., N 394/98, and Palla Creativ Textiltechnik GmbH, NN 57/98) it reached the negative conclusion that it did not have evidence that the textile market was in overcapacity. However, in those cases both firms had carried out capacity reductions, so that it was not necessary to make a positive evaluation of the state of the market.

⁽⁴⁰⁾ OJ C 107, 7.4.1998, p. 7.

were given in the letter of November 1998. However, the calculations purporting to show a capacity reduction are misleading and relate solely to organisational changes. Furthermore, capacity reductions which predate the restructuring are irrelevant.

to how these measures will help to improve performance, it was impossible for the Commission to determine whether the aid was limited to the strict minimum needed to restore the firm to long-term viability.

- (84) The increase in productivity achieved by the removal of bottlenecks and the implementation of modernisation measures suggests that weaving capacity may have been increased. The Commission notes the comments about the difficulties of calculating finishing capacity. However, the thoroughgoing modernisation programme and the installation of additional finishing facilities strongly suggest that productivity has been increased in this area as well. Similar comments apply to the warehousing facilities.
- (85) The information about the investors does not reveal whether they are competitors. If they are, their cooperation in a joint venture could also lead to problems under Article 81 of the EC Treaty.
- (86) The Commission cannot conclude that the aid will not result in an undue distortion of competition.

- (89) The additional details subsequently provided did not remedy the lack of information either. Although a general explanation of the problems which gave rise to the difficulties was finally provided, the overall costs of the restructuring remain unclear. There is no indication of how the costs listed in the table contained in the letter of 27 November 1998 relate to the restructuring measures notified. Several particulars contradict the information submitted to the Commission on an earlier occasion⁽⁴¹⁾. In addition, no information has been provided on the need for the measures or on the calculation of the amounts.
- (90) The Commission notes the lack of clarity as to how the restructuring was financed. If the overall costs of restructuring Lautex since 1995 do indeed amount to DEM 208,22 million as stated in the table submitted by Germany, then according to the information submitted to the Commission the firm has been granted aid totalling DEM 126,553 million since that year and the remaining costs are to be borne by the investors.

XIV. PROPORTIONALITY OF AID

- (87) A further requirement laid down in the guidelines is that the amount and intensity of the aid be limited to the strict minimum needed to enable restructuring to be undertaken and related to the benefits anticipated from the Community's point of view. Therefore, aid recipients will normally be expected to make a significant contribution to the restructuring plan from their own resources. Furthermore, to limit the distortive effect, the form in which the aid is granted must be such as to avoid providing the firm with surplus cash which could be used for market-distorting activities.

Inadequacy of the restructuring finance

- (88) When both initiating the procedure and extending it, the Commission referred to the lack of information regarding the overall costs of the restructuring. Without an exact description of the problems faced by Lautex, without more detail on the specific restructuring steps and the associated costs and without clear indications as

- (91) In view of the above, the information submitted is insufficient to ascertain whether the aid was limited to the strict minimum needed to undertake the restructuring.

Investors' contribution

- (92) According to the letter of March 1998, the investors' contribution amounts to DEM 6,695 million. However, if, as stated in the letter of November 1998, the overall restructuring costs amount to DEM 208,22 million, the investors would bear only some 3,2% of those costs. If this were so, the total amount of aid plus the investors' contribution would not cover those costs. Furthermore, the fact that payment of part of the investors' contribution is made conditional on a positive decision by the Commission calls into question the significant role of the investors in restructuring the firm.

⁽⁴¹⁾ The information on Lautex's losses does not tally with the figures contained in the table submitted on 27 November 1998. A further discrepancy exists between the debt-servicing data and the statement that Lautex's financial liabilities were either taken over by the BvS or waived upon privatisation.

(93) As regards the Erba GmbH assets of DEM 9,686 million, which were listed as a further contribution on the part of the investors, the Commission does not accept it as such for the following reasons:

(a) There is no description of the assets of Erba GmbH or any indication of how the stated value was determined.

(b) Since Erba GmbH was a going concern, with Mr Elard Maron as its managing director, and bearing in mind not only that Mr Elard Maron became a major Lautex shareholder and, together with one other managing director, assumed managerial control of the firm, but also that the financial risk of trading by the legal person of Lautex under another name is eliminated as a result of sufficient aid, the economic reality of the situation is that the transfer of assets to Lautex cannot be seen as such but as a partial takeover by the Maron Group with no additional injection by investors. Accordingly, this transfer does not rank as a contribution by the investors.

(94) Even if this amount were admissible, the investors' share in the overall restructuring costs would amount to DEM 16,318 million, i.e. 7,8% of the costs shown in the table submitted in November 1998. In view of the size of the investors, even this share cannot be considered significant.

(95) As regards the other two new amounts included in the last letter dated 12 April 1999 (DEM 3,465 million for the assumption of bank liabilities and DEM 8,795 million as investments), it is noted that neither amount had been mentioned previously by Germany. The first amount quite clearly contradicts the information provided to date on the liabilities under the privatisation contract. No further explanation of either amount is given in the letter. It is thus unclear whether the additional amounts indicated are from just one investor or from both of them and in what proportion. According to information from Germany, the Daun Group has withdrawn from the privatisation contract. It is, therefore, unlikely that it will make any further contribution to the restructuring costs. This could also mean a reduction in the investors' contribution, although no information in this respect has been provided.

(96) In view of the official letter requesting information, meetings with the German authorities and the extensions of the deadlines for presenting information, the Commission cannot take account of the vague information concerning the contributions indicated and

of unexplained data. For this reason, the Commission cannot consider the investor contribution to the overall restructuring costs to be significant within the meaning of the guidelines.

Form of the aid

(97) The form in which the aid is granted must be such that it cannot easily be used for market-distorting activities. The modified aid package includes a loan of DEM 12,7 million that was disbursed in instalments in 1997 and a grant of DEM 30,9 million. This grant was converted into a loan which is being disbursed in several instalments⁽⁴²⁾. This fact is relevant in view of the comments submitted by one of the interested parties after the opening of the procedure to the effect that Lautex had engaged in predatory pricing.

(98) If 1995 is assumed to be the start of the current restructuring measures, the firm has since received aid totalling DEM 104,164 million⁽⁴³⁾. The fact remains that the total costs of the restructuring are not known, that the restructuring plan has been repeatedly amended and that there are serious doubts as to whether the rescue plan is being implemented in full. Although some of the aid was paid out in instalments, the possibility still exists that Lautex may have been provided with surplus cash that was used for market-distorting activities.

(99) The Commission cannot therefore establish that the condition of proportionality laid down in the guidelines has been met.

XV. FULL IMPLEMENTATION OF RESTRUCTURING PLAN

(100) The firm in receipt of restructuring aid must fully implement the restructuring plan that was submitted to and accepted by the Commission. Although the doubts concerning the full implementation of the plan originally submitted were in part based on the absence of a private investor at the time, the changes in the restructuring plans cannot dispel those doubts even

⁽⁴²⁾ According to the letter dated 27 November 1998, the loan is payable in four instalments: DEM 8,9 million on 31 December 1997, DEM 8 million by 30 June 1998, DEM 8 million by 31 December 1998 and DEM 6 million by 30 June 1999.

⁽⁴³⁾ The discharge of bank liabilities totalling DEM 22,389 million has no effect on liquidity.

today. Because of the vagueness of the plan, the repeated amendments, the absence of a timetable for the individual steps in the restructuring and the repeated extensions of the restructuring period, it is that much harder to ascertain whether the plan is being fully implemented. Furthermore, the letter to the Commission from one of the investors, Daun & Cie AG, stating its intention to withdraw from the privatisation contract has given rise to very serious doubts about the full implementation of the restructuring plan. The clear conclusion to be drawn from the information of 14 July 1999, which confirms the withdrawal of the Daun Group and announces further additions to the restructuring plan or the elaboration of a new restructuring plan for Lautex, is that the present plan will not be fully implemented in its amended form.

XVI. CONCLUSIONS

- (101) The Commission finds that Germany has unlawfully granted aid to Lautex in breach of Article 88(3) of the EC Treaty and that the aid is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany has implemented for Erba Lautex GmbH Weberei und Veredlung, Neugersdorf, amounting to at least DEM 119,217 million (EUR 60 954 684) plus interest, is incompatible with the common market. According to the information available, the aid consists of the following measures:

- (a) loans of DEM 15,693 million to cover losses for 1995, granted on 3 July 1995;
- (b) loans of DEM 10,558 million to cover losses for 1996, granted on 3 July 1995;
- (c) loans of DEM 22,872 million for restructuring measures in 1996, granted on 3 July 1995;
- (d) loans of DEM 3,24 million to cover losses for 1994, granted on 8 September 1995;
- (e) loans of DEM 0,531 million in 1996 for the redundancy programme;
- (f) loans of DEM 0,117 million in 1996 for vocational training;
- (g) loans of DEM 0,217 million in 1997 for vocational training;
- (h) loans of DEM 12,7 million to cover losses for 1997, agreed on privatisation;
- (i) grants of DEM 30,9 million, agreed on privatisation;
- (j) discharge from bank liabilities of DEM 22,389 million, agreed on privatisation.

Article 2

1. Germany shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient as well as all other aid for Lautex which cannot be specified because of missing or unclear information.

2. Recovery shall be effected in accordance with the procedures of national law. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 July 1999.

For the Commission

Mario MONTI

Member of the Commission