



EUROPEAN COMMISSION

Brussels, 16.10.2002
C(2002)3736fin

**Subject: State aid NN 51/02 – United Kingdom
Energy Efficiency Best Practice Programme (EEBPP)**

Sir,

1. PROCEDURE

By letter dated 1 March 2002, registered at the Commission on 7 March 2002, the UK authorities notified the scheme “Energy Efficiency Best Practice Programme” to the Commission pursuant to Article 88(3) of the EC Treaty. The scheme had been previously notified to and approved by the Commission (State aid No N364/95, ref SG (95) D/8745) but the approval for the scheme lapsed in March 1998. The UK authorities have continued to operate the scheme since the approval lapsed and now seek a further extension of the scheme until the end of December 2006. The Commission requested additional information by letter dated 8 April 2002, to which the UK authorities responded by letters dated 6 May 2002 and 31 May 2002, registered at the Commission on 8 May 2002 and 31 May 2002 respectively. Finally, the Commission requested further information by letter dated 3 July 2002, which the UK authorities submitted by letter dated 3 September 2002, registered on 6 September 2002.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background

Climate change is the most serious environmental threat today. Moving towards a low carbon economy is essential to protect the environment. Business has a key role to play in tackling climate change. Without business commitment to developing low carbon technologies, long-term reductions in greenhouse emissions will not be achieved. In addition, if the UK can

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contribute to the shaping of the emerging low carbon technology market this could result in substantial gains for the UK economy.

The Carbon Trust has been established by the Department of Trade and Industry to help businesses prepare for a low carbon future and to exploit the commercial opportunities that are on offer. One element of the work of the Carbon Trust will be to administer the support available through the Energy Efficiency Best Practice Programme (EEBPP).

The scheme aims to encourage the development and take-up of energy efficient and low carbon technologies by providing discretionary grants towards research and development projects in these areas, and via the provision of independent authoritative information and guidance on energy efficiency performance measures and technologies and events and seminars for all non-domestic energy users.

2.2. Beneficiaries

There are no restrictions on the size of beneficiaries of the scheme, and applications will be accepted from all fields, including universities and research organisations. Since the scheme came into operation, 200-300 organisations have received grants towards R&D projects and thousands of organisations have benefited from the information and advice on energy use and efficiency. It is estimated that this level of up-take will continue.

To be granted support the beneficiary must be a company registered in the UK (this can include UK subsidiaries of overseas companies) or an organisation based in the UK.

2.3. Aid Instrument

R&D Grants

The EEBPP will provide grants towards projects of research and development of energy efficient and low carbon technologies. Support will be granted to projects for innovative products and processes applicable to industry, buildings and transport. Innovative processes for managing energy use and carbon emissions will also be considered. There is particular interest in proposals for feasibility studies to investigate the potential for longer term, innovative, energy efficient technologies and new forms of technology that will not emit carbon into the atmosphere as a by-product.

Support **is not** available for development of renewable resources (support for development of this sort is available under another UK programme) or for “end of pipe” solutions such as carbon sequestration technologies.

For projects to be eligible for support they must meet a number of criteria. The applicants must show that the idea is novel and that the work represents a significant advance. The project should meet the following criteria:

- it should have the potential to stimulate significant primary energy savings,

- it should have no negative environmental disadvantages,
- the team running the project must be technically competent to carry out the project,
- the technical and commercial risks of the project must be clearly identified in the project proposal,
- the applicants should show that there is a clear route to successful exploitation of results in the UK market (except in the case of fundamental research, which must not be linked to industrial or commercial objectives),
- the award of grant will only be made where it can be demonstrated that without support the project would not go ahead, or proceed as quickly or as well without support, and
- the ratio of annual national energy savings to direct government cost **should exceed 10:1**

The companies/organisations who carry out the R&D will own the results in question. The beneficiaries will be required to publish the results and the EEBPP will normally promote and disseminate the results and encourage replication so that the energy saving benefits from the R&D can be realised by other companies and organisations. The beneficiaries will have the right to licence the results, however, this will be subject to approval by the EEBPP. It is expected that unless it would hinder exploitation in the UK the EEBPP will approve licensing of results. The EEBPP will have the right to publish the results of the work, and to licence the results should they not be exploited within a reasonable time-scale.

Information and Guidance

The scheme also provides support via the provision of independent authoritative information and guidance on energy efficiency performance measures and technologies and by hosting events and seminars for all non-domestic energy users. Contractors and energy efficiency organisations gather and prepare independent, authoritative material on the efficacy of energy efficiency measures and technologies, on the energy efficiency performance of energy users and how to improve it. This information is then made available under the programme to enable energy consumers to improve their energy efficiency. These elements of EEBPP are non-selective measures and all contracts that are undertaken in association with these parts of the scheme are competitively tendered and, as a result, are at market rates.

General

Annual reports will be submitted on the operation of the scheme.

The UK authorities have undertaken to notify all individual projects where the total costs of the project exceeds €25m and the proposed aid has a gross grant equivalent of more than €5m.

The scheme will be extended until December 2006.

The budget of the scheme is approximately £17m per annum (about €27m).

2.4. Eligible costs and maximum aid intensities

Support will be available for the following stages of R&D:

1. Fundamental research – activities designed to broaden scientific and technical knowledge, not linked to industrial or commercial objectives.

2. Industrial research – planned research of critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services.

3. Pre-competitive development – the shaping of the results of industrial research into a plan, arrangement of design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype that could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. This **does not** include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.

4. Definition Stage or Feasibility Studies – Technical feasibility studies preparatory to either industrial research or pre-competitive development activity (as defined above) may also be supported.

The UK authorities have submitted examples of projects that have been supported under the scheme. One feasibility study concerned the development of a multi-stage process intensification (PI) plant for industrial chemical production. The study served to identify a number of potential equipment suppliers, in conjunction with which the beneficiary would carry out the follow-on industrial R&D project to develop the technology. Another project, which was fully at the precompetitive development stage, involved the development of a prototype of a novel gas turbine powered central heating combination boiler, and the testing of it in an independent test laboratory. An example of a project that constituted mainly industrial research, but also precompetitive research, was the development of a process design toolbox for energy efficiency.

Eligible costs that may supported comprise the following:

- Personnel costs - cost of researchers, technicians and other supporting staff employed solely on the research activity.
- Cost of instruments, equipment and land and premises used solely and on a continual basis for the research activity.
- Cost of consultancy and equivalent services used exclusively for the research activity. This can include the acquisition of technical know-how, licences and patents from third parties.
- Additional overheads incurred directly as a result of the research activity
- Other operating expenses – such as the cost of materials, supplies and similar products. Must be incurred directly as a result of the research activity.

Aid will be granted as a percentage of the eligible costs as defined above. The maximum aid intensities applicable will vary depending on the stage of R&D. Below is a table of the relevant maximum aid intensities:

Stage of R&D	Maximum aid intensity
Fundamental research	100%
Industrial research	50%
Precompetitive development	25%
Feasibility study for industrial research	75%
Feasibility study for precompetitive development	50%

As regards the aid intensity granted, no distinction will be made between the level of assistance that may be given to projects where academic institutions are involved in industrial collaboration, and those that are not.

Bonuses

Where the beneficiary is an SME the maximum aid intensity may be increased by an additional 10%. Where the beneficiary is located in an 87(3)(a) area the maximum aid intensity may be increased by an additional 10% and where the beneficiary is located in an 87(3)(c) area the maximum aid intensity may be increased by an additional 5%.

The UK authorities may also apply the top-up of 15% available where a project is in accordance with a specific project or programme undertaken as part of the Community's current framework programme for R&D. This top-up may be increased to 25% where the project also involves effective cross-border cooperation between firms and public research bodies or between at

least two independent partners in two Member States and where its results are widely disseminated and published, whilst observing intellectual and industrial property rights. The UK authorities have undertaken only to grant this top-up to companies participating in research which has possible multisectoral applications and pursues – in accordance with the fundamental aims of the framework program for R&D – a multidiscipline approach and, in addition, is associated with the specific goals, tasks and technical goals which are set out in the relevant parts of the framework program. The UK authorities will include in the annual reports detailed descriptions of the particular conditions under which any such top-ups were granted.

Where research projects are not in accordance with the objectives of a specific project or programme under the current R&D framework programme the maximum aid intensities allowable can be increased by an additional 10% where at least one of the following is satisfied:

- the project involves effective cross border cooperation between at least two independent partners in two Member States, particularly in the context of coordinating national RTD policies;
- the project involves effective cooperation between firms and public research bodies, particularly in the context of coordinating national RTD policies;
- the project's results are widely disseminated and published, patent licences are granted or other appropriate steps are taken under conditions similar to those for the dissemination of Community RTD results (Article 130j of the EC Treaty).

The award of all bonuses is subject to the applicants demonstrating that they are eligible to receive the bonus. The award of all bonuses will be further subject to the total maximum aid, including bonuses, not exceeding 75% in the case of industrial research and 50% in the case of pre-competitive development.

2.5. Cumulation of aid

The UK authorities have undertaken to comply with the rules governing the combination of aids, whether such combination involves aid for different purposes (OJ No C 3 of 5.1.1985) or aids for the same purpose under schemes adopted by the same entity or by different entities (central, regional and/or local). In the latter case, the combined aid will not exceed the highest ceiling for the different schemes introduced.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State Aid within the meaning of Article 87(1) EC

R&D grants

Where support is granted to public, non-profit-making higher education or research establishments, point 2.4 of the R&D guidelines highlights that this

is not normally covered by Article 87(1) of the Treaty. Where the results of such research are made widely available on a non-discriminatory basis the Commission will assume that the support does not constitute State aid. As stated in paragraph 2.3 above, beneficiaries will be required to publish the results and the EEBPP will normally promote and disseminate the results.

Where beneficiaries of the scheme are economic undertakings however the support must be considered in terms of Article 87(1). The award of grants from State resources under the scheme is discretionary, beneficiaries must demonstrate the need for the funding, and therefore the award of grant will provide a selective advantage to these undertakings. This advantage has the potential to distort competition and affect trade between Member States, thereby fulfilling the criteria of Article 87(1) of the EC Treaty. As such any support of this sort constitutes state aid.

Information and guidance

The Commission notes the provision of independent authoritative information and guidance on energy efficiency performance measures and technologies, and the events and seminars for all non-domestic energy users constitute non-selective measures as the information and guidance is available to all interested parties on a non-discriminatory basis. Further they do not provide any advantage as all contracts awarded associated with this part of the scheme are competitively tendered and therefore are at market rates. Therefore these measures are not state aid within the meaning of Article 87(1) of the EC Treaty.

3.2. Compatibility with the common market under Article 87(3)(c) EC

The scheme under scrutiny was previously notified and approved by the Commission in 1995 (ref SG (95) D/8745) under the old Research and Development guidelines, however this approval lapsed in April 1998. Point 4.6 of the current Community guidelines on State aid for Research and Development¹, (hereafter referred to as the R&D guidelines) states that extensions to schemes, with or without budgetary increases, where there is no change in the conditions for implementing the approved scheme need be renotified to the Commission only from the fifth year following expiry of the validity of the original scheme. However, Member States are required to inform the Commission of such extensions in advance and to continue submitting annual reports on the application of such schemes. In this case, the scheme was approved under the previous R&D framework and has never been assessed for compatibility with the current R&D guidelines. Therefore, it cannot be presumed that it is in conformity with the current framework. Further, the UK authorities failed to inform the Commission that they intended to continue operating the scheme beyond the expiry of the original approval and did not submit annual reports on activity under the scheme for the period March 1998 to March 2002. As such, point 4.6 of the R&D

¹ OJ C 45 17.2.1996, p.5.

guidelines does not apply to this case and the scheme must be subject to a full assessment.

The UK authorities have continued to operate the scheme, from April 1998 without notifying the scheme and without Commission approval, and are therefore in breach of Article 88(3) EC. The UK authorities have given the Commission a commitment that, since the date that the previous approval lapsed (March 1998), the scheme has been operated as described in point 2 above.

Only the award of R&D grants under the scheme constitutes a State aid and must therefore be assessed in terms of compatibility with Article 87(3)(c) of the EC Treaty. The compatibility of the scheme is assessed on the basis of the R&D guidelines. In carrying out this assessment, the Commission must consider several factors, including the beneficiaries and incentive effect, the types of research, the eligible costs and the aid intensities.

Beneficiaries and incentive effect

There are no sectoral or size restrictions on beneficiaries of the scheme. Where the beneficiary is an SME the incentive effect can be presumed (point 6.4 of the R&D guidelines). In addition, the award of grant is conditional on the beneficiaries demonstrating that the project would not go ahead, or proceed as quickly or as well, without the provision of support. This will ensure that aid is only awarded in cases where it is acting as a real incentive and will not be operational aid.

Types of Research

The types of research that will qualify for the scheme are fundamental research, industrial research, precompetitive development and feasibility studies preparatory to either industrial research or precompetitive development activities. These stages of R&D comply with those detailed in Annex I of the R&D framework.

Eligible costs

The eligible costs for the scheme, as detailed in paragraph 2.4 above, all fall within the categories set out as acceptable in Annex II of the R&D framework.

Aid intensities

The maximum aid intensity applicable under the scheme will vary depending on the stage of R&D activity carried out.

The maximum aid intensities allowed by the R&D framework are:

- 100% for fundamental research (point 5.2)
- 50% for industrial research (point 5.3)

- 25% for pre-competitive development (point 5.5)
- 75% for technical feasibility studies preparatory to industrial research activities and 50% for technical feasibility studies preparatory to precompetitive development studies (point 5.4)

Further, paragraph 5.10 of the R&D guidelines allows for additional bonuses to be granted where the beneficiaries meet certain criteria. The maximum aid intensities available under the scheme are within the maximum limits permitted by the R&D guidelines.

In light of the information above, the Commission finds that the scheme fulfils the criteria necessary to be considered compatible with Article 87 (3)(c) of the EC Treaty.

4. CONCLUSION

The Commission regrets that the United Kingdom put the aid in question into effect, in breach of Article 88(3) of the Treaty. However, it has decided, on the basis of the forgoing assessment, to consider the aid compatible with the EC Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids. Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

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