



EUROPEAN COMMISSION

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**Subject: State aid No N 812/06 – Germany
Investment programme "Wastewater NRW"**

I. PROCEDURE

1. By letter dated 04.12.2006, registered on the same day, the German authorities notified to the Commission pursuant to Art 88(3) of the EC-Treaty the above-mentioned aid measure. The notified measure is granted within "The investment guidelines on aid for wastewater disposal in Nordrhein-Westfalen - Investitionsprogramm Abwasser NRW"¹.
2. The Commission asked for additional information concerning the notification in its letter from 12.01.2007. Germany sent the requested information in a letter on 27.02.2007.

II. DESCRIPTION OF THE MEASURE

Objective

3. The measure aims at improving waters in Land Nordrhein-Westfalen in Germany. It envisages helping raise current wastewater quality up to those national standards, which exceed the Community wastewater standards.

¹ The aid guidelines to the programme "Investitionsprogramm Abwasser NRW" contain also other measures but only the aid for investments described in points (Förderbereiche) 1.1, 1.2 and 1.3 are subject of the current notification.

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Form of aid

4. The aid supports infrastructural investments in wastewater facilities. The aid is granted either for investments in new technological solutions and its implementation in new products or processes or innovative use of the existing products and processes or for investments in existing state-of-the-art technologies improving wastewater quality.
5. The costs eligible for the aid are the extra investment costs of construction of facilities and installation of equipment necessary to achieve the wastewater quality improvement. Not eligible are replacement investments, operating costs of installations and research and development activities as defined in Community Framework for State aid for Research and Development and Innovation².
6. The legal basis for granting the aid, the points (Förderbereiche) 1.1, 1.2 and 1.3 of "The investment guidelines on aid for wastewater disposal in Nordrhein-Westfalen - Investitionsprogramm Abwasser NRW", describes different forms of aid. Which form of aid the beneficiary is eligible to, depends on the technology applied. Aid for investments in innovative solutions is granted in the form of direct subsidies (point 1.1) or low interest loans from the development bank for North Rhine-Westphalia - NRW.BANK (point 1.2). Aid for investments in existing state-of-the-art technologies is granted only in form of low interest loans (point 1.3).
7. The aid intensity of aid granted in form of a subsidy is:
 - 50% of eligible cost if the aid is granted under the *de minimis* rules of the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid³;
 - or 30% of gross eligible investment costs. In assisted regions the recipient is eligible to a bonus of 5% of gross cost. SMEs are eligible to a bonus 10%. These aid bonuses can be combined but the maximum rate of the aid can never exceed 100% of eligible cost. The SMEs are not entitled to receive a double bonus from the scheme at hand and under provisions applicable for regional aid.
8. The low interest loan can amount to up to 50% of eligible costs but might not exceed the amount of five Million Euro. The interest rate subsidy is three percent and the recipient is required to reimburse the loan over a time span of 10 years of which 2 years are free of redemption. Therefore the overall aid would amount to between 11.1% and 15.7% of the loan and hence would not exceed 30% of eligible costs.

Duration, budget and beneficiaries

9. The scheme will start by the date of approval of the scheme by the Commission and last up to 31.12.2011. The total Budget of the programme "Investitionsprogramm Abwasser NRW" amounts to 250 Mio € However only 25 Mio € i.e. 5 Mio € per annum are granted for the notified forms of aid of points 1.1, 1.2 and 1.3 of the aid guidelines to the programme "Investitionsprogramm Abwasser NRW".

² OJ C 323 of 30.12.2006

³ OJ L 379 of 28.12.2006

10. The scheme is not sector specific and as such open to enterprises of all sizes, municipalities or associations engaged in waste water management in the Land of Nordrhein-Westfalen. The German authorities estimate the number of beneficiaries to be between 101 and 500.

III. ASSESSMENT OF THE MEASURE

Existence of aid within the meaning of Article 87(1) of the EC Treaty

11. The notified aid, in case it is not granted under the regulation on de-minimis aid, constitutes State aid in the meaning of Article 87(1) of the Treaty. The aid in form of subsidies is granted by a Member State and financed through State resources. Insofar as the low interest loans are concerned the interest subsidy is granted from State resources. The measure distorts competition as it selectively favours a limited number of firms only when they invest in measures improving the quality of wastewaters. In this way the beneficiaries of the scheme will get remunerated part of their production costs, which puts them in a favourable position vis-à-vis their competitors. As the measure is open to all firms, the beneficiaries can be active on markets characterised by competition between companies from different Member States and therefore the aid is likely to affect trade between Member States.
12. The aid granted under the de-minimis Regulation does not constitute state aid within Article 87(1), provided it complies with all there specified conditions.

Legality of the aid

13. The Commission notes that German authorities have complied with the requirement under Article 88(3) EC and have notified the aid measure before it has been introduced. The measure's entry into force is subject to the Commission's approval.

Compatibility of the aid

14. Article 87(3)(c) provides for an exemption from the prohibition of aid contained in Article 87(1) for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Aid for environmental protection may be justified on the basis of this Article. The Commission has laid down rules for its assessment of environmental aid in its Community guidelines on State aid for environmental protection⁴ (hereinafter "the Environmental Aid Guidelines"). As the objective of the notified aid is the protection of the environment, the Commission assessed it under these Guidelines.
15. Point 29 of the Environmental Aid Guidelines specifies the conditions under which the aid may be authorised in case when it enables firms to improve on the Community standards applicable. The rationale of this rule, as explained in point 20 of the guidelines, is that public support can be justified if it targets to give incentives to the firms to achieve levels of protection which are higher than those required by Community standards, when such levels cannot be achieved without support. The aid reduces part of the cost for the company, but the other part will nevertheless be internalised in the company's cost structure. Point 29 is applicable, because the aid is granted to achieve the German

⁴ OJ C 37 of 3.2.2001

wastewater standards only when they are stricter than the applicable Community standards or in the case of absence of a relevant Community standard as described below.

16. In this respect the German authorities explained that the Community standards on municipal and industrial wastewater (e.g. the Directives 91/271/EEC⁵ or 2006/11/EC⁶) are implemented in Germany by the law “Abwasserverordnung” (AbwV). The annexes to this law specify for each industrial sector the state-of-the-art wastewater standards which equal or are higher than the Community standards. Moreover, the law specifies for some industries state-of-the-art wastewater standards in absence of Community standards. For each discharge of wastewater the authorities in Nordrhein-Westfalen issue permits which require compliance of the wastewater quality with standards specified in the AbwV.
17. The measure supports only investments that improve on the Community standards specified in the AbwV or investments that aim to achieve those AbwV standards which are specified in absence of Community standards. In addition, the aid is only granted if investments improve the performance of the plant in terms of wastewater quality. Hence, investment aid for installations improving on the quality of wastewater treatment above the Community standards under the proposed scheme may be justified in accordance with point 29 of the Environmental Aid Guidelines. Public support for such measures will encourage firms to incur additional expenditures improving on the Community standards that they would not bear in the absence of the aid.
18. In line with point 29, the aid intensity for all three measure forms will not exceed 30% of eligible costs. The intended SME and regional bonuses are allowed under points 33 to 35 of the environmental aid guidelines. As regards the regional bonuses, Germany confirmed that the bonuses of the regional aid for the years 2007-2013 as approved by the Commission Decision N459/2006⁷ apply. Regarding the SME bonus, the European Commission takes into account that the point 1.1 of the aid guidelines to the programme "Investitionsprogramm Abwasser NRW" contains a regulation which is in line with the currently applicable Community SME definition⁸.
19. The investments concerned are investments in construction of facilities and buildings which are necessary equipment to increase water quality and therefore in line with point 36. The costs eligible for aid are the extra costs of the investment concerned, in comparison to the reference investment, necessary to achieve wastewater quality which is higher than the Community standards. Hence the definition of eligible costs in the scheme complies with the definition of eligible cost given in point 37 of the Environmental Aid Guidelines. As regards the method of calculation of eligible costs and the implementation of the principle to grant aid for eligible costs only, German authorities committed themselves to follow the principle of calculating extra investment costs as described in point 37. The German authorities developed an approach of information gathering requiring from the beneficiaries explicit description of the technology used before and after the investment and of the environmental benefits that are expected. The information provided by the beneficiaries is examined by the authorities. The authorities are obliged to follow the principle of granting the aid for extra investment costs by an administrative ordinance.

⁵ OJ L 135 of 30.5.1991

⁶ OJ L 64 of 4.3.2006

⁷ OJ C 295 of 5.12.2006

⁸ The applicable SME definition in force has been published in OJ L 124, 20.5.2003

20. Following the analysis above the European Commission considers that the notified points (Förderbereiche) 1.1, 1.2 and 1.3 of "The investment guidelines on aid for wastewater disposal in Nordrhein-Westfalen - Investitionsprogramm Abwasser NRW" complies with the Environmental Guidelines.

IV. DECISION

21. The Commission has accordingly decided not to raise objections to the notified measure at hand as the State aid can be found compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty, since it respects the conditions laid down in the environmental aid guidelines.
22. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within 15 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://ec.europa.eu/community_law/state_aids

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General of Competition
State Aid Registry
B-1049 BRUSSELS
Telefax n°: + 32-2-296-12 42

Please, mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission