



EUROPEAN COMMISSION

Brussels, 17.02.2009
K(2009)1155

PUBLIC VERSION
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Subject: State aid No. N 451/2008 – Germany

"Aid for Young Innovative Enterprises in Rheinland-Pfalz"

Sir,

1. PROCEDURE

- (1) By letter of 8 September 2008, registered at the Commission on the same day, the German authorities notified the Commission, according to Article 88 (3) of the EC Treaty, of the above mentioned aid measure. The basis for the assessment of the measure is the Community Framework for State aid for research and development and innovation¹ (hereinafter: R&D&I Framework).
- (2) Since the information received was not sufficient to assess the aid scheme's compatibility with the common market, the Commission considered the notification to be incomplete. Therefore, by letter of 5 November 2008, the Commission asked Germany for supplementary information. The German authorities responded by letters of 3 December 2008 and 20 January 2009, registered at the Commission on the same day.

¹ OJ C 323, 30.12.2006, p. 1.

Seine Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
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10117 BERLIN
DEUTSCHLAND

2. DESCRIPTION OF THE AID SCHEME

2.1. Objectives of the Aid Scheme

- (3) The purpose of the aid scheme is to improve R&D&I in Rheinland-Pfalz through the build-up of young innovative enterprises.

2.2. Legal basis

- (4) The legal basis is the Landeshaushaltsordnung Rheinland-Pfalz vom 20. Dezember 1971, zuletzt geändert durch Euro-Anpassungsgesetz Rheinland-Pfalz vom 6. Februar 2001 und Verwaltungsvorschrift zum Vollzug der Landeshaushaltsordnung vom 20. Dezember 2002.

2.3. Granting authority

- (5) Aid is granted by the

*Investitions- und Strukturbank Rheinland-Pfalz (ISB) GmbH
Holzhofstr. 4
D-55116 Mainz,*

respectively its subsidiaries.

2.4. Aid instrument

- (6) The aid is awarded in the form of direct grants, reimbursable grants, silent participations, soft loans and/or through risk capital.

2.5. Budget and duration

- (7) The total projected support will amount to € 70 million, or about € 10 million annually, funded by the budget of Rheinland-Pfalz and cofinanced by the European Regional Development Fund ERDF.
- (8) The measure will run for a period of about 7 years starting from the date of approval by the Commission until 31 December 2015. German authorities will not approve any applications prior to the final approval of the measure by the Commission.

2.6. Beneficiaries

- (9) The measure is aiming at young innovative enterprises that have a site or branch in the Land Rheinland-Pfalz. Germany expects 51-100 beneficiaries throughout the duration of the measure.
- (10) Firms in difficulty according to the Community Guidelines on State aid for rescuing and restructuring firms in difficulty² are excluded; the same is valid for companies active in shipbuilding, fishery, coal- and steel-industry as foreseen in Annexe 1 of the EC Treaty.

² OJ C 244, 1.10.2004, p. 2.

2.7. Activities to receive public support

2.7.1. Eligibility criteria of young innovative enterprises

- (11) Only small enterprises in the Commission definition³ that have been in existence for less than 6 years before the granting of the aid are eligible for aid under the scheme.
- (12) Moreover, the enterprise applying for aid will in the foreseeable future develop products, services or processes which are technologically new or substantially improved compared to the state of the art in its industry in the Community, and which carry a risk of technical failure as stated by an external expert. In the alternative the enterprise applying for aid can prove that the R&D expenses of the enterprise represent at least 15 % of its total operating expenses in at least one of three years proceeding the granting of the aid or in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.
- (13) The aid for young and innovative enterprises may not be higher than EUR 1 million in non-assisted areas; EUR 1.5 million in regions eligible for the derogation in Article 87 (3) (a) of the EC Treaty; and EUR 1.25 million in regions eligible for the derogation in Article 87 (3) (c) of the EC Treaty. In case of loans and silent participations, the grant equivalent of aid will be calculated in line with the Communication from the Commission on the revision of the method for setting the reference and discount rates.⁴
- (14) The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise. The R&D&I activities must not have commenced prior to their aid application.

2.8. Cumulation of aid

- (15) Germany has confirmed to respect the cumulation rules set in point 5.4 and in section 8 of the R&D&I Framework. Through the application process and the evaluation process it will be ensured that the beneficiary may only receive State aid other than R&D&I aid and risk capital aid only three years after the granting of the young innovative enterprise aid.

2.9. Further commitments

- (16) The German authorities have confirmed to submit the annual reports in compliance with the requirements of the R&D&I Framework.
- (17) The German authorities will publish the full text of the aid measure on this website:

www.isb.rlp.de/wirtschaftsfoerderung_a-z.html

³ OJ L 124, 20.5.2003, p. 39.

⁴ OJ C 14, 19.1.2008, p.6.

- (18) The German authorities undertook to maintain detailed records regarding the granting of aid under the measure for 10 years.

3. ASSESSMENT

3.1. Legality

- (19) By notifying this measure before implementing it, the German authorities have fulfilled their obligations under Article 88 (3) of the EC Treaty. Given the scope of the notified measure, the Commission has analysed the presence of aid and its compatibility in accordance with the rules established in the R&D&I Framework. The present decision does not prejudice the Commission's approval in relation to the relevant structural funds regulations.

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

3.2.1. Direct State aid to undertakings

- (20) The notified measure allows a limited number of young and innovative enterprises that have a site or branch in the *Land Rheinland-Pfalz* to receive financial means, by means of State resources. There is no element suggesting that the capital market would provide to those enterprises the same resources at the same conditions as those provided by the public authorities. Consequently, the scheme grants a selective advantage to those enterprises. Products and services of benefiting enterprises are or might be subject to intra-Community trade. The aid strengthens the competitive position of the enterprises in relation to their competitors in the Community and therefore has potentially distorting effects on competition and trade between Member States.
- (21) The Commission comes therefore to the conclusion that the notified measure constitutes State aid within the meaning of Article 87 (1) of the EC Treaty.

3.3. Compatibility criteria

3.3.1. Young and innovative enterprises

- (22) Point 5.4 (a) of the R&D&I Framework requires beneficiaries to be small enterprises in existence of less than 6 years at the time of the grant. As described in recital (11) of this decision, this condition is met.
- (23) Point 5.4 (b) of the R&D&I Framework requires an expert confirmation to show that the young innovative enterprise will develop in the foreseeable future a new or substantially improved products, services or process. Alternatively, a young innovative enterprise should have R&D expenses of at least 15% of its operating costs based on the current year or one of the three preceding years. As described in recital (12), this condition is met.
- (24) Point 5.4 (c) of the R&D&I Framework requires the aid not to exceed certain maximum levels. As described in recital (13), this condition is met.

3.4. Incentive effect

- (25) Section 6 of the R&D&I Framework reads: " ... If the aided R&D&I-project has not started before the application, the Commission considers that the incentive

effect is automatically met for the following aid measures: ... aid for young innovative enterprises." As described in recital (14), projects must not have started before the application. Hence the Commission does not require that Germany demonstrates the incentive effect.

3.5. Cumulation

- (26) The Commission finds that the confirmation by Germany concerning the cumulation rules, as stated under point 2.8 above, meets the conditions laid down in the R&D&I Framework; therefore, the conditions related to cumulation are satisfied and the measure complies with point 5.4 and section 8 of the R&D&I Framework.

3.6. Annual reports, access to the full text of the scheme, information sheets

- (27) The German authorities have committed to fulfil the requirements for reporting and monitoring pursuant to point 10.1 of the R&D&I Framework. The Commission therefore considers the conditions related to reporting and monitoring are satisfied.

4. CONCLUSION

- (28) In consequence, the Commission considers that the aid measure is compatible with the EC Treaty in application of its Article 87 (3) (c).
- (29) The Commission reminds the German authorities that all plans to alter or modify this aid measure have to be notified to the Commission.

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http://ec.europa.eu/community_law/state_aids/index.htm

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

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B – 1049 Brussels
Fax No.: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie Kroes
Member of the Commission