



EUROPEAN COMMISSION

Brussels, 23-VIII-2007
K(2007) 4057

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

**Subject: State aid N 278/2007 - Germany (Sachsen-Anhalt)
Guideline for the granting of aid to support the protection and the
exploitation of innovations (Promotion of Patents)**

Dear Sir,

1. PROCEDURE

- (1) By letter dated 18 May 2007, registered at the Commission on 21 May 2007, the German authorities notified, according to Article 88(3) of the EC Treaty, the above mentioned aid scheme (*Richtlinie über die Gewährung von Zuwendungen zur Förderung des Schutzes und der Verwertung von Innovationen (Patentförderung)*).
- (2) The scheme was notified on the basis of the Community Framework for State aid for research and development and innovation (hereinafter "Framework")¹.
- (3) In order to ensure the scheme's compatibility with the common market, the Commission requested further information on 21 June 2007, which Germany provided on 5 July 2007.

¹ OJ C 323 of 30.12.2006, page 1.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

2. DESCRIPTION OF THE AID SCHEME

2.1. Objective

- (4) The main purpose of the scheme is the promotion of research and development (hereinafter "R&D"). More precisely, the scheme aims at the promotion of patent protection for inventions of small enterprises in *Sachsen-Anhalt*.
- (5) Currently, the number of patent applications in *Sachsen-Anhalt* is significantly lagging behind in comparison to the rest of Germany: In 2005, *Sachsen-Anhalt* was ranking on place 15 out of 16 *Länder*. Especially small enterprises often do not have the financial capacity to acquire IP rights; rights which may encompass access to new markets and which can foster further economic growth.

2.2. Legal basis

- (6) Legal basis of the scheme is:
 - Programme guidelines: *Richtlinie über die Gewährung von Zuwendungen zur Förderung des Schutzes und der Verwertung von Innovationen (Patentförderung)* (draft version);
 - Framework implementing provisions: *Verwaltungsvorschriften zu § 44 der Landeshaushaltsordnung*;
 - Acts on administrative procedures: *Verwaltungsverfahrensgesetz Sachsen-Anhalt* in conjunction with the *Verwaltungsverfahrensgesetz*;
 - Act on the promotion of medium-sized business: *Mittelstandsförderungsgesetz*.

2.3. Implementing authority

- (7) The scheme will be implemented by the *Investitionsbank Sachsen-Anhalt*.

2.4. Beneficiaries

- (8) Beneficiaries will be
 - (a) small and micro enterprises² in the meaning of the Community definition³ which have their legal domicile (*Sitz*) or a place of business (*Betriebsstätte*) in *Sachsen-Anhalt*;
 - (b) non-university research organisations which have their legal domicile or a place of business in *Sachsen-Anhalt*, and which are closely linked to economy. They are beneficiaries in the meaning of State aid rules and must fulfil the Community definition of a small or micro enterprise.
- (9) The foreseen number of beneficiaries is between 101 and 500, of which about 40 are the aforementioned research organisations.

² Comprising the so-called "free inventors" (*Freie Erfinder*).

³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124 of 20.5.2003, page 36.

- (10) The scheme is not sector specific.
- (11) No aid can be granted to enterprises in difficulty within the meaning of the Community Guidelines on State aid for rescue and restructuring undertakings in difficulty⁴.

2.5. Duration

- (12) The aid scheme is limited to 31 December 2013. It will only be launched after the approval of the Commission. The German authorities insofar declared that the implementing authority – *Investitionsbank Sachsen-Anhalt* – had been instructed to issue funding decisions only after the Commission approval is on hand.

2.6. Budgetary resources

- (13) The overall budget is about EUR 4.2 million, evenly spread over the whole duration of the scheme.

2.7. Eligible costs, aid amounts and aid instruments

- (14) Eligible costs are:
 - (a) All costs proceeding the grant of an industrial property right in the first legal jurisdiction, including those costs relating to the preparation, filing and prosecution of the application (excluding costs for research), as well as costs incurred in renewing the application before the right has been granted;
 - (b) Translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;
 - (c) Costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.
- (15) Eligible costs must be higher than EUR 1,600 and must arise in the context of a
 - (a) Priority application (*Stammanmeldung*) in Germany. The aid amount is limited to EUR 2000;
 - (b) European patent application. The aid amount is limited to EUR 4000;
 - (c) PCT-application. The aid amount is limited to EUR 4000;
 - (d) Validation of a European patent in the designated countries⁵. The aid amount is limited to EUR 6,000 and for exceptional cases to EUR 12,000;

⁴ OJ C 244 of 1.10.2004, page 2.

⁵ This wording not only includes the validation of a European Patent in the designated Member States, but also the extension of a European patent application or a European patent granted in respect of it to all non-

- (e) PCT-application that enters the European or the National Phase. The aid amount is limited to EUR 6,000 and for exceptional cases to EUR 12,000.
- (16) In case (a), (b), and (c) the aid will be granted as direct grant.
- (17) In case (d) and (e) the aid will be granted as an advance repayable in case of success. Success is defined as revenues directly deriving from the patent right or economic advantages deriving from the use of the invention.

2.8. Eligible inventions

- (18) An invention only is eligible for aid under the scheme if the following conditions are met:
- (a) It has been proven that a research was done on the patentability of the invention.
 - (b) The invention has been sufficiently disclosed to the implementing authority.
 - (c) The invention is technically and economically new.
 - (d) The *ESA Erfinderzentrum Sachsen-Anhalt GmbH* has issued a positive opinion on the selection.
 - (e) The potential beneficiary must demonstrate that the invention has the capacity to be economically successful and to be exploited on the market.

2.9. Aid intensities

- (19) For patent applications arising from industrial research the aid intensity is up to 70% of the eligible costs and for those arising from experimental development it is up to 45 % of the eligible costs.
- (20) These intensities include a 20 % bonus for small enterprises.
- (21) These intensities apply to both, the direct grant and the repayable advance.

2.10. Cumulation

- (22) Cumulation of aid under the scheme with aid from other State or Community resources for the same eligible costs is excluded.
- (23) The German authorities assured that no cumulation with *de-minimis* support in respect of the same eligible expenses will take place in order to circumvent the maximum aid intensities laid down in the R&D&I Framework.

2.11. Incentive effect

- (24) The projects to be financed will only start after an application for aid has been made to the *Investitionsbank Sachsen-Anhalt* as implementing authority.

2.12. Further commitments

- (25) The German authorities undertook to submit annual reports on the implementation of the notified aid scheme.
- (26) The German authorities will publish the full text of the aid scheme on the following website: www.sachsen-anhalt.de.
- (27) Detailed records, which will contain all information necessary to establish that the eligible costs and maximum allowable aid intensity have been observed, will be maintained for 10 years from the date on which the aid was granted.

3. ASSESSMENT

3.1. Existence of State aid in the meaning of Article 87 (1) of the EC Treaty

- (28) The notified scheme allows a limited number of enterprises to be relieved, by means of State resources, of a part of the R&D costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens the position of the enterprises in relation to their competitors in the Community and therefore has potentially distorting effects on competition. Products of benefiting enterprises are or might be subject to intra-Community trade and therefore the aid is likely to affect trade between Member States.
- (29) The Commission therefore comes to the conclusion that the notified scheme constitutes State aid within the meaning of Article 87 (1) of the EC Treaty.

3.2. Lawfulness of the aid

- (30) By notifying the aid scheme before its implementation, the German authorities complied with their obligation under Article 88 (3) of the EC Treaty.

3.3. Compatibility of the aid

- (31) The Commission has assessed the compatibility of the measures under the notified aid scheme in the light of the R&D&I Framework which specifies the general provision of Article 87 (3) (c) of the EC Treaty in the field of R&D&I. The Commission arrives at the following findings:
- (32) Point 5.3. of the Framework lays down the eligible costs for aid for industrial property rights costs for SMEs: Eligible are all costs preceding the grant of the right in the first legal jurisdiction, costs for the granting or validation of the right in other legal jurisdictions, and costs defending the validity of the right.

The eligible costs under the scheme correspond to these provisions and are hence in line with point 5.3. of the Framework.

- (33) Point 5.3. of the Framework furthermore defines the applicable aid intensities for aid for industrial property rights costs for SMEs: They are possible up to the same level that would have been possible as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

Point 5.1.2. of the Framework defines the aid intensities for said research activities: For industrial research an aid intensity of 50% and for experimental development an aid intensity of 25% is permitted. Point 5.1.3. a) of the Framework allows for an additional bonus for small enterprises of 20 %.

The scheme addressed to small or micro enterprises foresees an overall maximum aid intensity of 70 % for industrial property rights with preceding industrial research and of 45% for industrial property rights with preceding experimental development. It is hence in line with the provisions of point 5.3. in conjunction with point 5.1.2. and 5.1.3.a) of the Framework.

- (34) Point 8 of the Framework sets out the cumulation rules for aid under the Framework and allows for cumulation under certain conditions. Firstly, it has to be noted that cumulation of aid granted under the notified scheme with any other aid received from local, regional, national or Community sources to cover the same costs is not possible. Secondly, the cumulation rules in respect of *de-minimis* support as provided for in point 8 last paragraph of the Framework are respected.

In order to verify these requirements, beneficiaries are requested to communicate to the German authorities *ex ante* all aid they received for the same project. The German authorities also carry out an *ex post* control and recover any aid that has been erroneously granted beyond the thresholds.

On the basis of the above, the Commission comes to the result that the cumulation rules applied under the scheme are in line with those set out in point 8 of the Framework.

- (35) According to point 6 of the Framework State aid must have an incentive effect, which means that the aid recipient must increase its level of R&D&I activity. As regards aid for industrial property rights costs for SMEs, the Commission considers according to point 6 of the Framework that such incentive effect is automatically met if the aided project has not started before the application for aid. The scheme stipulates that aid can only be granted to projects that have not started before an application for aid has been submitted to the implementing authority. Hence the scheme is in line with point 6 of the Framework.
- (36) Point 10.1.1. of the Framework lays down that Member States have to submit annual reports to the Commission. Such reports must include the following information: the name of the beneficiary, the aid amount per beneficiary, the aid intensity and the sectors of activity where the aided projects are undertaken. The German authorities undertook to submit such annual reports on the implementation of the notified scheme and thus comply with the provisions of point 10.1.1. of the Framework.
- (37) Point 10.1.3. second paragraph of the Framework requests that detailed records regarding the granting of aid for all R&D&I measures are maintained for at least 10 years from the date on which the aid was granted. The German authorities

undertook to comply with this rule. The scheme is hence in line with point 10.1.3. of the Framework.

4. CONCLUSION

- (38) The Commission finds that the aid granted on the basis of the aid scheme in question is compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty and has accordingly decided not to raise objections to the notified measure.
- (39) The Commission further reminds the German authorities to submit annual reports on the implementation of the aid scheme.
- (40) The Commission reminds the German authorities that, in accordance with Article 88 (3) of the EC Treaty, all plans to refinance, alter or change the aid scheme have to be notified to the Commission.

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://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