



EUROPEAN COMMISSION

Brussels, 13.2.2009
C(2009) 1073 final

Subject: **State aid No N 65/2009 – Germany**
 Temporary budget increase and extension of the R&D&I-scheme
 'Zentrales Innovationsprogramm Mittelstand', in the framework of the
 German Government's Second Economic Stimulus Package
 (Zeitweilige Aufstockung und Erweiterung des Zentralen
 Innovationsprogramms Mittelstand im Rahmen des Konjunkturpakets II
 der Bundesregierung)

Sir,

1. PROCEDURE

- (1) By letter dated 5 February 2009, registered at the Commission on the same date, the German authorities notified, according to Article 88(3) of the EC Treaty, a substantial modification to the existing State aid scheme '*Zentrales Innovationsprogramm Mittelstand*'¹.
- (2) By e-mail dated 9 February 2009, registered the same day, Germany informed the Commission that, taking into account the urgency of the matter, it exceptionally waives its prerogative of obtaining the decision text in German.

2. OBJECTIVE OF THE NOTIFIED SCHEME:

- (3) On 13 January 2009, the German government adopted its 'Second Economic-Stimulus Package' (*Konjunkturpaket II*). The objective of that broad policy package is mitigating the impact of the financial and economic crisis in Germany. The package provides for a variety of instruments, among them the notified measure.

¹ State aid case N 91/2008; approved by the Commission on 27.5.2008; OJ C 229, 6.9.2008, p. 7.

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- (4) The notified measure is meant to address the crisis-induced demand for increased R&D-funding for mid-sized enterprises² of up to 1,000 employees. Germany considers eligible R&D-projects of one to two-year duration to be market-effective. The German authorities hope that mid-sized enterprises would thus maintain their level of R&D and remain competitive on the global market.

3. DESCRIPTION OF THE EXISTING AID SCHEME N 91/2008 – BASIC CHARACTERISTICS

3.1. Objective

- (5) The principal objective of '*Zentrales Innovationsprogramm Mittelstand*' (thereinafter "the existing scheme") is Research and Development and Innovation (R&D&I). That aid scheme is implemented at the federal level.
- (6) According to the existing scheme's funding guidelines, the aid shall be granted in accordance with the Community Framework for State aid for Research and Development and Innovation (thereinafter "the R&D&I-Framework")³. The scheme also allows for *de minimis* aid⁴, for network-management activities of SMEs.

3.2. Legal basis

- (7) The existing scheme's legal base is:
- the Federal Budget Implementation Regulation (*Bundeshaushaltsordnung*) and related administrative provisions (*darauf aufbauende Verwaltungsvorschriften*);
 - Draft Amendment to the Funding Guidelines (*Änderung der Richtlinie zum Zentralen Innovationsprogramm Mittelstand (ZIM) - Entwurf*).
 - Draft Law on Securing Employment and Stability in Germany (*Gesetz über Sicherung der Beschäftigung und Stabilität in Deutschland - in Vorbereitung*).

3.3. Implementing authorities

- (8) The scheme will be implemented under the responsibility of the Federal Ministry of Economic Affairs and Technology (*Bundesministerium für Wirtschaft und Technologie*).

3.4. Beneficiaries

- (9) Under the approved scheme, SMEs falling within the Community SME-definition⁵ are eligible for aid. Undertakings in difficulty within the meaning of the

² The term 'mid-sized enterprises', in German '*Mittelstand*', does not necessarily correspond with the Community SME-definition, OJ L 124, 20.5.2003, p. 36. An extract from this recommendation is an Annex to Commission Regulation (EC) No 364/2004.

³ OJ C 323, 30.12.2006, p. 1.

⁴ With reference to Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid; OJ L 379, 28.12.2006, p. 5.

⁵ OJ L 124, 20.5.2003, p. 36.

Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁶ are excluded from the scheme's ambit. Research organisations may also apply for aid for collaboration projects with SME under the scheme. The existing scheme is not sector-specific.

3.5. Aid instrument and Budget

- (10) Aid is provided in the form of non-repayable direct grants. The existing aid scheme is funded from the German Federal Budget. When the Commission approved the scheme, its total estimated budget was EUR 2 billion.
- (11) With the present notification, Germany informed the Commission that in December 2008, the Parliament had reduced that budget to EUR 1.5 billion when adopting its resolutions on the Budget Act 2009 (*Bundeshaushaltsgesetz 2009*) and on the 2010-2012 intermediate financial planning (*Mittelfristige Finanzplanung 2010-2012*).

3.6. Duration

- (12) The existing scheme will expire on 31 December 2013. Approval of applications received until that date and disbursement of related funding may last until 30 June 2014.
- (13) An overview of the scheme's structure is presented in the table hereunder:

<i>'Zentrales Innovationsprogramm Mittelstand'</i>		
R&D-aid	Innovation-aid	<i>De-minimis</i>-support
Aid for R&D-projects: industrial research and experimental development	Aid for innovation advisory services and innovation support services	External management of SME-networks

- (14) When assessing the existing scheme, the Commission found that *de-minimis* aid under *'Zentrales Innovationsprogramm Mittelstand'* does not meet the State aid criteria of Article 87 (1) of the EC Treaty.
- (15) In its decision on the existing aid scheme, the Commission found that it is in line with the R&D&I-Framework. The Commission therefore decided not to raise objections to the scheme, as it is compatible with the common market, pursuant to Article 87(3)(c) of the EC Treaty.

⁶ OJ C 244, 1.10.2004, p. 2.

- (16) The Commission also concluded that the support granted to research organisations under the existing scheme does not constitute State aid within the meaning of Article 87 (1) of the EC Treaty.

4. NOTIFIED TEMPORARY MODIFICATIONS TO THE EXISTING STATE AID SCHEME, APPLICABLE UNTIL 31 DECEMBER 2010:

- (17) The existing scheme will temporarily be extended to large enterprises, of up to 1,000 employees.

- (18) The maximum aid intensity applicable to industrial research and experimental-development projects for large enterprises will be 35% of the eligible costs.

- (19) Basic aid intensities applicable to large enterprises:

- Up to 30 % for industrial research;
- Up to 25% for experimental development.

- (20) A bonus of 5 percentage points may be granted,

- if the project involves effective collaboration between at least two undertakings which are independent of each other. No single undertaking must bear more than 70 % of the eligible costs of the collaboration project. As a further condition, the project must involve collaboration with at least one SME or be cross-border, that is to say, the research and development activities are carried out in at least two different Member States;
- if the project involves effective collaboration between an undertaking and a research organisation, particularly in the context of co-ordination of national R&D policies. Eligible projects must fulfil the following conditions:
 - the research organisation bears at least 10 % of the eligible project costs;
 - the research organisation has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation.

For the purposes of the abovementioned collaboration projects, *'Zentrales Innovationsprogramm Mittelstand'* does not consider subcontracting to be effective collaboration.

- only in case of industrial research, if the results of the project are widely disseminated through technical and scientific conferences or published in scientific or technical journals or in open access repositories (databases where raw research data can be accessed by anyone), or through free or open source software.

- (21) In cases where a project spans both eligible categories of research, the aid intensity will be calculated based on the weighted average of each task. According to the

German authorities, all eligible projects will consist of experimental development (approximately 75% of eligible activities) and 25% industrial research (approximately 25% of eligible activities). The maximum aid intensity applicable to large enterprises under the notified measure is 35% of the eligible costs.

Eligible project	Maximum aid intensity applicable to large enterprises, as a percentage of eligible costs
Single project (exclusively experimental development)	25%
Single project with a share of at least 25% industrial-research activities	30%
Collaborative project (exclusively experimental development)	30%
Collaborative project with a share of at least 25% industrial-research activities	35%

- (22) Further temporary alterations consist of the suspension, firstly, of funding constraints for R&D-projects by firms in certain German *Länder*, and secondly of the eligibility of so-called entry projects (*Einstiegsprojekte*). Germany asserted that only the scheme's extension to large enterprises a described above (17) is under the reserve of the Commission's approval.
- (23) The scheme's budget will be supplemented by EUR 450 million annually, being EUR 900 million in total for the two-year duration of the alteration. The new total budget of the scheme will therefore amount to EUR 2.4 billion.
- (24) The notified temporary modification will only apply in 2009 and 2010. Germany expressly ensured that after 2010, funding under the scheme will again be granted under the conditions as previously approved for the existing scheme. The German authorities will notify the Commission any alterations to the initially approved scheme, in case new findings would require such alteration.
- (25) As regards aid to large enterprises, the implementing authority will *ex ante* examine the incentive effect of the aid in order to ensure that the aid will serve as an incentive to undertake the R&D&I activities in addition to the enterprises' normal day-to-day activities. When applying for aid, enterprises will have to demonstrate the incentive effect by reference to an increase in scope and speed of the R&D-project, and to the aid's effect on safeguarding the enterprise's R&D-potential during the crisis.
- (26) For all aid granted under the scheme to large undertakings, Germany will explain in the annual reports to the Commission how the incentive effect has been respected for aid given to such undertakings. In such reports, Germany will use quantitative

and qualitative indicators mentioned in section 6 of the R&D&I-Framework, namely the increase in scope of a project and the increase in speed of a project.

- (27) Germany declared that all other conditions of the existing scheme will not be altered. Germany further declared it regards all commitments, undertaken in the context of the previous decision on State aid N 91/2008, as binding for the prolonged programme.

5. ASSESSMENT

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

- (28) The Commission maintains the reasoning set out in its previous decision on State aid case N 91/2008, which concluded that the aid scheme constitutes aid that is compatible with the EC Treaty.
- (29) The alteration to the existing scheme consists of a temporary extension of its funding provisions, in order to grant aid for R&D projects to large enterprises, too. Such extension will be combined with a EUR 900 million budget increase. The extension of the existing scheme to large enterprises is a substantial amendment.
- (30) The programme's rules not subject to the notified alteration will remain unchanged, namely as regards beneficiaries other than large enterprises, aid intensities, aid instruments, eligible activities, eligible costs, cumulation of aid, monitoring and reporting.
- (31) The Commission notes that *de minimis* aid under the scheme will continue to be granted in accordance with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (see further above recital (6)). Consequently, the Commission finds that *de minimis* support under the altered aid scheme does not meet the State aid criteria of Article 87 (1) of the EC Treaty.

5.2. Lawfulness of the aid

- (32) The Commission notes that the German authorities have complied with the requirement under Article 88(3) of the EC Treaty and have notified the substantial alteration to the existing aid scheme before it has been implemented. The measure's entry into force is subject to the Commission's approval.

5.3. Applicable Community Rules

- (33) The Commission notes, firstly, that the scheme's R&D&I-objective will be maintained. Secondly, the R&D&I-Framework has not changed since the approval of the existing scheme. Hence, the Commission based its assessment of the altered scheme on the R&D&I-Framework.

5.4. Compatibility criteria

- (34) The basic aid intensities and bonuses applicable to aid for R&D projects granted to large enterprises, as described above in recitals (19) to (21) are in line with those established in points 5.1.2 and 5.1.3 of the R&D&I-Framework.
- (35) The German authorities, as stated above in recital (25), have committed to grant individual aid under the approved aid scheme only after they have verified that an incentive effect is present and to submit annual reports on the implementation of the scheme. . The Commission therefore considers the conditions related to the incentive effect are satisfied and the measure complies with section 6 of the R&D&I Framework.
- (36) The German authorities, as stated above in recital (26), have committed to explain in the annual reports how the incentive effect has been respected for aid given to large undertakings. The Commission therefore considers that the measure complies with point 10.1.1 of the R&D&I Framework.
- (37) The text of the amendment will be published on the funding authority's web site⁷. The scheme will only be applied after the Commission has cleared it and the information on the amendment has been published on the internet.
- (38) All other funding conditions applicable under the existing scheme, and as approved by the Commission, will remain unchanged.

5.5. Conclusion

- (39) Based on the above reasoning, the Commission concludes that the temporary alterations to the existing scheme are in line with the Community Framework for State aid for Research and Development and Innovation. As all other funding conditions will remain unchanged, the existing scheme, as temporarily altered by the notified measure, continues to comply with the R&D&I-Framework.

6. DECISION

- (40) The Commission concludes that the notified State aid scheme N 65/2009 is compatible with the common market, pursuant to Article 87(3)(c) of the EC Treaty. It accordingly decided not to raise objections to the temporary alteration to the existing State aid scheme N 91/2008.
- (41) The Commission notes that Germany has waived its language prerogative. Hence, the English-language version of this decision is legally binding.
- (42) The Commission reminds the German Government that, in accordance with Article 88 (3) of the EC Treaty, all plans to refinance, alter or change this aid scheme have to be notified to the Commission.

⁷ www.zim-bmwi.de; www.foerderdatenbank.de

- (43) The Commission further reminds the German Government to submit annual reports on the implementation of the notified programme which comprise the information demonstrating the incentive effects of aid granted to large firms.

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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

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Member of the Commission