

COMMISSION DECISION

of 28 February 2001

on the aid scheme 'investment allowance 1999', which Germany is planning to implement for certain undertakings in the new *Länder*, including Berlin

(notified under document number C(2001) 668)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/780/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in the particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions⁽¹⁾, and having regard to their comments,

Whereas:

I. PROCEDURE

(1) On 13 October 1997, following its adoption by the lower house of the German Parliament (Bundestag) and its approval by the upper house (Bundesrat), Germany notified the investment allowance 1999 for the new *Länder* provided for in the Law on the Continuation of Economic Assistance in the new *Länder* of 18 August 1997 (Gesetz zur Fortsetzung der wirtschaftlichen Förderung in den neuen Ländern). The case was registered under number N 702/97. At a meeting in Bonn on 16 January 1998 and at meetings in Brussels on 28 May and 7 July 1998, and by memoranda dated 26 and 27 January, 19 June and 22 July 1998, Germany provided further information on the scheme, including studies running to several hundred pages on the socio-economic situation in the new *Länder*.

(2) By letter dated 30 December 1998, the Commission informed Germany that it had decided to initiate Article 88(2) of the EC Treaty proceedings in respect of certain aspects of the scheme (aid C 72/98) and to approve other aspects of the Law provided that proceedings on appropriate measures pursuant to Article 88(1) of the Treaty were completed by 1 January 2000.

(3) The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.

(4) The comments which the Commission received from interested parties were forwarded to Germany, which gave its reactions to them by letter dated 18 December 2000.

(5) Germany put forward its own comments by letters dated 8 April 1999, 26 April 1999, 28 May 1999, 14 July 1999, 25 October 1999, 14 February 2000, 27 April 2000, 18 January 2001 and 14 February 2001 and at meetings held on 11 and 12 May 1999, 10 December 1999, 27 March 2000, 5 June 2000, 30 October 2000 and 18 January 2001.

(6) By letter dated 25 October 1999, Germany submitted a new notification (which was registered under N 671/99). This concerned an increase in the aid rates for certain types of initial investment begun after 31 December 1999.

(7) The notification was supplemented, initially on 10 December 1999, by two letters which were handed over at the meeting in Brussels and, subsequently, by letters dated 27 January and 14 February 2000. By letter dated 9 November 2000, the notification was amended once again and the assistance rates in certain border areas increased.

(8) At meetings held on 27 March 2000, 5 June 2000 and 30 October 2000 and by letters dated 27 April 2000, 29 August 2000, 6 October 2000, 20 November 2000, 11 January 2001, 18 January 2001 and 14 February 2001, Germany provided additional information requested by the Commission.

⁽¹⁾ OJ C 76, 19.3.1999, p. 2.

⁽²⁾ See footnote 1.

(9) During these proceedings, Germany amended the text of the original Law which had prompted the Commission to initiate proceedings (Article 1 of the Law on the Continuation of Economic Assistance in the new *Länder* of 18 August 1997, published in the *Bundesgesetzblatt* 1997, Part I, No 59 of 25 August 1997, the 'Investment Allowance Law 1999') by means of two new Laws (Article 8 of the Tax Adjustment Law 1999, published in the *Bundesgesetzblatt* 1999, Part I, No 59 of 29 December 1999, which amended the Investment Allowance Law 1999, and Article 1 of the Law of 20 December 2000 amending the Investment Allowance Law 1999, published in the *Bundesgesetzblatt* 2000, Part I, No 58 of 27 December 2000) ⁽³⁾.

(10) In agreement with Germany, the Commission will not deal here with aid being granted after 2003 (i.e. after the period of validity of the German regional aid map has expired).

II. DETAILED DESCRIPTION OF THE MEASURE FOLLOWING THE AMENDMENTS MADE BY GERMANY IN THE CONTEXT OF THE FORMAL INVESTIGATION PROCEEDINGS (C 72/98), THE APPROPRIATE MEASURES (E 5/98) AND THE NEW NOTIFICATION (N 671/99)

(11) Under the Law, a tax allowance on investment is granted for the acquisition and production of equipment and buildings in firms established in the five new *Länder* and Berlin ⁽⁴⁾.

(12) The measure is a tax measure which in principle (see recitals 14, 15 and 16) gives firms in all branches of the economy entitlement to the granting of the investment allowance.

(13) The budget is set at EUR 2 to 2,5 billion a year.

(14) Firms in certain branches of the economy governed by specific rules are eligible only if the relevant Community

rules are complied with. This applies to the following sectors: ECSC sectors, shipbuilding, motor vehicle industry, synthetic fibres, agriculture, fisheries and aquaculture, and transport ⁽⁵⁾.

(15) The granting of the investment allowance to firms in difficulty will be notified individually if the recipient firm:

- does not meet the definition of SMEs,
- has received restructuring aid as a firm in difficulty,
- is in a restructuring phase ⁽⁶⁾.

(16) The investment allowance in respect of investment coming under the multisectoral framework on regional aid will be determined only when the Commission has laid down the maximum authorised aid intensity ⁽⁷⁾.

(17) Investment allowances may be granted to:

- firms involved in manufacturing industry or production-related services ⁽⁸⁾,
- craft firms with no more than 250 employees ⁽⁹⁾,
- firms operating in the distributive trades in a town centre with no more than 50 employees ⁽¹⁰⁾.

(18) An investment allowance may be granted for the acquisition and production of equipment ⁽¹¹⁾ and buildings ⁽¹²⁾. The investment may be either initial investment or replacement investment (see recitals 20, 25, 26 and 27).

(19) In all cases, investment may receive assistance only if ⁽¹³⁾:

- it was begun after 24 August 1997,

⁽³⁾ References to the individual articles in the Investment Allowance Law 1999 are given in the footnotes; a single asterisk or two asterisks indicate whether the articles were adjusted by the first or second amending Law.

⁽⁴⁾ Article 1(2).

⁽⁵⁾ Article 2(2) and (3), Annex 1* and**.

⁽⁶⁾ Article 6(2)**.

⁽⁷⁾ Article 6(2)*.

⁽⁸⁾ Article 2(2)(1) and (3)(1).

⁽⁹⁾ Article 2(2)(2) and (3)(2).

⁽¹⁰⁾ Article 2(2)(3) and (3)(3).

⁽¹¹⁾ Article 2(2).

⁽¹²⁾ Article 2(3).

⁽¹³⁾ Article 2(4)*.

— it was completed after 31 December 1998,

— it is completed before 31 December 2005 where the firm is involved in manufacturing industry or production-related services,

— it is completed before 31 December 2002 where the firm is a craft firm with no more than 250 employees or a firm operating in the distributive trades in a town centre with no more than 50 employees.

(20) The only buildings eligible are those which comply with the definition of initial investment ⁽¹⁴⁾ ⁽¹⁵⁾.

(21) The investment allowance amounts to:

— 10 % of the assessment basis in the case of initial investment begun before 1 January 2000 ⁽¹⁶⁾,

— 12,5 % of the assessment basis in the case of initial investment begun after 31 December 1999 ⁽¹⁷⁾,

— 5 % of the assessment basis in the case of initial investment begun after 31 December 2000 in certain border areas adjacent to the Czech Republic and Poland (Interreg III) which do not form part of the Berlin labour market region ⁽¹⁸⁾.

(22) In all instances, economic goods to which the investment allowance applies must remain in the firm for five years or, if shorter, for their normal useful life ⁽¹⁹⁾.

(23) As noted in recitals 17 and 18, a distinction is made, in the case of equipment, between initial investment and replacement investment, firms involved in manufacturing industry and firms involved in production-related services with no more than 250 employees and other recipient firms.

(24) Equipment investment begun after 31 December 1999 is eligible only if the equipment remains in the

firm for five years or, if shorter, for its normal useful life ⁽²⁰⁾.

(25) Initial investment

Different groups of recipients		
	— firms involved in manufacturing industry and production-related services with more than 250 employees — craft firms with no more than 250 employees — firms operating in the distributive trade in a town centre with no more than 50 employees	firms involved in manufacturing industry and production-related services with no more than 250 employees
Begun before 1 January 2000	10 % ⁽²¹⁾	20 % ⁽²²⁾
Begun after 31 December 1999 in the Berlin labour market region	12,5 % ⁽²³⁾	20 % ⁽²⁴⁾
Begun after 31 December 1999	12,5 % ⁽²³⁾	25 % ⁽²⁵⁾
Begun after 31 December 2000 in certain border areas adjacent to the Czech Republic and Poland (Interreg III) not forming part of the Berlin labour market region	15 % ⁽²⁶⁾	27,5 % ⁽²⁷⁾

⁽²¹⁾ Article 2(6)(1)*.

⁽²²⁾ Article 2(7)(1)*.

⁽²³⁾ Article 2(6)(2)*.

⁽²⁴⁾ Article 2(7)(2)* and Article 10(4)**.

⁽²⁵⁾ Article 2(7)(2)*.

⁽²⁶⁾ Article 2(6)(3)**.

⁽²⁷⁾ Article 2(7)(3)**.

⁽¹⁴⁾ First sentence of Article 2(3)*.

⁽¹⁵⁾ The term initial investment is defined in Article 2(8)*.

⁽¹⁶⁾ Article 2(6)(1)*.

⁽¹⁷⁾ Article 2(6)(2)*.

⁽¹⁸⁾ Article 2(6)(3)** and Annex 2.

⁽¹⁹⁾ First sentence of Article 2(2)(3)*.

⁽²⁰⁾ Article 2 (1) and 2 (1)(2) and (2)(2) and (2)(3)*.

(26) Replacement investment

Different groups of recipients		
	— firms involved in manufacturing industry and production-related services with more than 250 employees	firms involved in manufacturing industry and production-related services with no more than 250 employees
	— craft firms with no more than 250 employees	
	— firms operating in the distributive trade in a town centre with no more than 50 employees	
Completed before 1 January 2002	5 % ⁽²⁸⁾	10 % ⁽²⁹⁾
Completed after 1 December 2001 and before 1 January 2005	0	5 % ⁽³⁰⁾

⁽²⁸⁾ Article 2(6)(4)**.⁽²⁹⁾ Article 2(7)(4)**.⁽³⁰⁾ Article 2(7)(4)**.

(27) It should be noted that, in the case of replacement investment in the *Land* of Berlin, the allowance is granted only in respect of investment completed before 1 January 2000 in East Berlin (operating aid is allowed only in that part of Berlin) ⁽³¹⁾.

(28) With the exception of investment begun after 31 December 1999 in the Brandenburg municipalities of the Berlin labour market region, the allowance may be granted in all five new *Länder*.

(29) The investment allowance is granted in respect of the acquisition and production costs of investment projects completed in the relevant year, including advance payments and partial production costs incurred in the year. Eligibility extends only to investment which was begun after 24 August 1997 and completed before 1 January 2005, in so far as the costs were incurred after 31 December 1998. The investment must be completed before the end of 2005, and, in certain cases, before the end of 2002 ⁽³²⁾.

⁽³¹⁾ Article 10(3)(2)*.⁽³²⁾ Article 2(5)*.

(30) The investment must have been begun after 24 August 1997 and completed no later than 31 December 2003 ⁽³³⁾.

(31) Investment is deemed to have been begun at the time when the economic goods were ordered or a start was made on producing them. Investment is deemed to have been completed when the economic goods have been acquired or produced ⁽³⁴⁾.

(32) Aircraft and cars are not eligible ⁽³⁵⁾.

III. SUMMARY

1. **The doubts as to the compatibility of the originally notified scheme with the common market which prompted the Commission to initiate the informal investigation procedure.**

2. **The appropriate measures proposed in the Commission letter of 30 December 1998.**

(33) The proceedings initiated by the Commission related to the following aspects of the Law (aid C 72/98):

(a) initial investment in Berlin after 31 December 1999 (no Commission decision had recognised Berlin as eligible under Article 87(3)(a) or (c) of the EC Treaty);

(b) replacement investment. Here, the rules specifying that operating aid must be degressive and limited in time were not complied with. In addition, it was unclear whether Berlin qualified after 1999 for the derogations provided for in Article 87(3)(a) of the EC Treaty or whether West Berlin qualified in 1999 for the derogations provided for in Article 87(3)(c) and whether accordingly operating aid could be deemed lawful;

(c) compliance with the special rules on the granting of investment aid for firms in sectors to which specific Community rules apply or which, under the criteria set out in the multisectoral framework on regional aid, have to be notified individually;

⁽³³⁾ Article 2(4)(2)* in conjunction with Article 10(1)*.⁽³⁴⁾ Article 2(4)(2)*.⁽³⁵⁾ Article 2(1).

- (d) investment begun before publication of the Law on 25 August 1997 (there was at that time no apparent need for the aid).

(34) The Commission authorised certain components of the Law, including aid for initial investment in the five new *Länder* up to the end of 2004 and for initial investment in Berlin in 1999, in so far as the investment was begun after 25 August 1997 and was not subject to special Community rules or to the multisectoral framework.

(35) Such authorisation was given subject to the condition that appropriate measures pursuant to Article 88(1) of the EC Treaty be implemented so as to bring the scheme into line with the new regional aid guidelines as from 1 January 2000, particularly as regards:

- (a) the maintenance of the investment for a period of five years;
- (b) compliance with the German regional aid map as from 1 January 2000;
- (c) the requirement that there be an appropriate contribution from the recipient amounting to 25 %;
- (d) the definition of the concept of initial investment.

IV. COMMENTS FROM INTERESTED PARTIES AND COMMENTS FROM GERMANY

(36) The Commission received comments from several interested parties.

(37) The main point made was that the notified scheme did not take account of the specific features of certain industries (breakfast cereals, synthetic fibres etc.); in some cases, specific examples of investment projects in the new *Länder* were given to illustrate that the granting of aid in these sectors has to be notified individually or completely ruled out.

(38) Germany pointed out in its comments that the original draft had been amended in order to take account of the special Community rules governing certain industries.

(39) It was also emphasised that the Law represented a reasonable compromise between the obligations imposed by Community competition law and the requirements of regional policy.

V. ACCEPTANCE OF THE COMMISSION'S COMMENTS AND INCORPORATION OF ALL NECESSARY AMENDMENTS IN THE LAW BY GERMANY

(40) The amendments concern:

- (a) the inclusion of an explicit reference to the individual notification requirement provided for in the multisectoral framework;
- (b) the inclusion of an explicit reference to the specific Community rules applicable to the so-called sensitive sectors;
- (c) the exclusion of aid for replacement investment carried out in Berlin after 31 December 1999;
- (d) the restriction of the aid to investment begun after 25 August 1997;
- (e) compliance with the requirement that operating aid be degressive and limited in time;
- (f) the granting of aid for investment begun after 31 December 2003 to be subject to approval of the regional aid map by the Commission for the subsequent period, and any aid granted must comply with the regional aid map approved.

VI. ASSESSMENT OF THE MEASURE FOLLOWING THE AMENDMENTS MADE BY GERMANY IN THE CONTEXT OF THE FORMAL INVESTIGATION PROCEDURE (C 72/98), THE PROPOSED APPROPRIATE MEASURES (E 5/98) AND THE NEW NOTIFICATION (N 671/99)

(41) Existence of aid

(42) The investment allowances provided for in the scheme constitute state aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, since they assist investment by the recipient undertakings, including undertakings operating in sectors in which there is trade between Member States. The investment allowances affect trade between Member States and distort or threaten to distort competition by favouring certain undertakings and the production of certain goods.

(43) They are intended in particular for investment in the new *Länder* and in Berlin and thus constitute regional aid.

- (44) Lawfulness of the aid
- (45) By adopting the Law subject to approval by the Commission as regards the State aid rules and by notifying the scheme prior to its entry into force, Germany has complied with its obligations under Article 88(3).
- (46) It must be examined whether the scheme is compatible with Article 87(3)(a) and (c) of the EC Treaty in conjunction with the guidelines on national regional aid ⁽³⁶⁾.
- (53) Where the investment allowance is combined with other public assistance under the joint Federal Government/*Länder* scheme, the aid application must show whether any other State financing has been applied for or granted. The investment allowance is explicitly mentioned. The amount applied for or already approved is taken into account so that the aid ceiling is not exceeded. The provision of incorrect information is punishable, and partial repayment may be required as a result of *ex post* checks ⁽⁴⁰⁾.
- (54) Where the investment allowance is combined with strictly regional aid, each of the relevant *Länder* has given an undertaking to the Commission that it will comply with the cumulation ceilings and will if necessary provide supplementary explanations.

1. Aid for initial investment

- (47) This component of the scheme concerns initial investment within the meaning of point 4.4 of the guidelines. What is involved is therefore investment-related aid.
- (48) The requirements laid down in the Commission decisions on the German regional aid map are complied with.
- (49) The investment must have been started after 24 August 1997 and no later than 31 December 2003 ⁽³⁷⁾.
- (50) In agreement with Germany, the Commission will not express an opinion here on aid granted after 2003 (i.e. after the period of validity of the German regional aid map has expired). Aid will be granted for investment begun after 31 December 2003 only after approval of and in line with the regional aid map for the period subsequent to that date (the German map was approved only up to the end of 2003) ⁽³⁸⁾.
- (51) As regards investment begun after 31 December 1999 and before 31 December 2003, it should be noted that the maximum intensities for investment aid provided for in the German regional aid map are complied with. Since 1 January 2000, the maximum aid rate in Berlin and in the Brandenburg municipalities of the Berlin labour market region is 20 % net and in the other new *Länder* 35 % net ⁽³⁹⁾.
- (52) The rules on the cumulation of aid are complied with.
- (55) Aided investment begun after 31 December 1999 must remain for at least five years in the recipient firm; however, if the normal useful life of the relevant asset is shorter, such shorter period applies.
- (56) The requirement that the recipient must make a minimum contribution of his own is complied with, since all the other aid schemes in the new *Länder* contain this provision.
- (57) The special Community rules applicable to specific sectors are complied with, as is the multisectoral framework and the rules applicable to firms in difficulty.

2. Aid for replacement investment

- (58) The requirements laid down in the Commission decisions on the German regional aid map are complied with.
- (59) The investment must have been commenced after 24 August 1997 and no later than 31 December 2003 ⁽⁴¹⁾.
- (60) It should be emphasised here that, in agreement with Germany, the Commission will not at present express any view on aid granted after 2003.

⁽³⁶⁾ OJ C 74, 10.3.1998, p. 9.

⁽³⁷⁾ Article 2(4)(2)* in conjunction with Article 10(1)*.

⁽³⁸⁾ Article 10(1)*.

⁽³⁹⁾ Article 2(6) and (7)* and **.

⁽⁴⁰⁾ Point 2.5.1 of the 29th Framework Plan and point 2.5 of the 28th Framework Plan of the joint Federal Government/*Länder* scheme for improving regional economic structures; points 7 and 3.8.1 of the declaration form.

⁽⁴¹⁾ Article 2(4)(2)*.

- (61) Aid will be granted for investments commenced after 31 December 2003 only following approval of and in line with the German regional aid map for the subsequent period (the current regional aid map was approved only up to the end of 2003) ⁽⁴²⁾.
- (62) In the case of replacement investment carried out in Berlin, the aid is restricted to investment completed before 1 January 2000 in East Berlin (operating aid is allowed only in that part of Berlin) ⁽⁴³⁾.
- (63) The operating aid will now be provided in such a way as to be degressive and limited in time (up to the end of 2004).
- (64) It should be noted in particular that the Federal Government gave an assurance, in a letter dated 16 February 2001, that the granting of the investment allowance in respect of replacement investment by firms with no more than 250 employees will not be extended beyond the investment completed before 1 January 2005. In the same letter, the Federal Government confirmed that the granting of the investment allowance in respect of replacement investment by firms with more than 250 employees will remain limited to investment which was completed before 1 January 2002.
- (65) In its decision to initiate the formal investigation procedure, the Commission recognised the difficult socio-economic situation which continues to exist in the new *Länder*; it noted that the aid seemed justified in the light of other economic indicators (GDP, unemployment rate, export ratio and labour productivity).
- (66) As the Commission has acknowledged in a number of its decisions, the main handicap for East German firms is their significant lack of equity resources.
- (67) It should also be noted that the aid intensities are well below those granted in the case of initial investment and consequently the part of the budget allocated to replacement investment will probably be much smaller than that for initial investment.
- (68) In its decision to initiate the formal investigation procedure, the Commission did not raise any objections regarding the nature or contribution of the aid to regional development.
- (69) As far as the contribution to regional development and the nature of the aid granted are concerned, operating aid is granted only in the form of aid for replacement investment carried out in one of the new *Länder*.
- (70) It is thus ensured that:
- (a) the aid relates to an activity actually carried out in the region and is proportionate to that activity,
 - (b) the aid is not directed at all firms, but only at those which invest in the renewal or modernisation of the regional productive apparatus, i.e. the only firms which need aid,
 - (c) any impact of the aid in terms of prompting the relocation of firms established in other Community regions should remain insignificant.
- (71) The special Community rules applicable to specific sectors are complied with, as are the multisectoral framework and the rules applicable to firms in difficulty.

VII. CONCLUSION

- (72) The Commission finds that the doubts as to the compatibility of the originally notified measure with the common market have been dispelled as a result of the changes made since the initiation of the formal investigation procedure.
- (73) The Commission finds that the measure as renotified (and registered under number N 671/99) does not give rise to any doubts as to its compatibility with the common market.
- (74) The scheme is therefore compatible with the common market under Article 87(3)(a) of the EC Treaty in the case of the five new *Länder* and under Article 87(3)(c) in the case of the *Land* of Berlin,

⁽⁴²⁾ Article 10(1)*.

⁽⁴³⁾ Article 10(3)(2)*.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Federal Republic of Germany.

Article 1

The State aid scheme 'investment allowance 1999' which Germany is planning to implement is compatible with the common market within the meaning of Article 87(3) of the EC Treaty until 31 December 2003.

Implementation of this aid scheme is accordingly authorised for the period up to 31 December 2003.

Done at Brussels, 28 February 2001.

For the Commission

Mario MONTI

Member of the Commission
