

COMMISSION

COMMISSION DECISION

of 6 December 2006

on the aid scheme for research and development in the aircraft industry implemented by Belgium

(notified under document number C(2006) 5792)

(Only the French and Dutch versions are authentic)

(Text with EEA relevance)

(2007/199/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in 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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 7 thereof,

Having regard to the Commission Decision of 22 June 2006 ⁽²⁾ initiating the procedure laid down in Article 88(2) of the EC Treaty in respect of aid C 27/2006 (ex NN 22/2004),

Having called on interested parties to submit their comments pursuant to that Article,

Whereas:

(2) By letter of 22 June 2006, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid.

(3) By letter of 11 September 2006, registered as received on the same date, Belgium submitted its comments to the Commission.

(4) By letter of 2 October 2006, the Commission asked Belgium for additional information which was provided by letters of 23 and 24 November 2006, registered as received on the same dates.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments.

(6) The Commission received no comments from interested parties.

1. PROCEDURE

(1) By letter of 13 February 2004, registered as received by the Commission on 18 February, Belgium notified the Commission of an aid scheme for research and development (R & D) in the aircraft industry. By letters of 23 December 2004 and 1 July 2005, registered as received by the Commission on 3 January and 5 July 2005 respectively, it provided the Commission with further information.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 196, 19.8.2006, p. 7.

2. DESCRIPTION OF THE AID

2.1. Objective, legal basis, duration and budget

(7) The aim of the scheme is to boost the technological capabilities of Belgian enterprises taking part in a civil aircraft development programme and to safeguard and create jobs in this industry. The Belgian authorities believe that the scheme may lead to the creation of between 2 500 and 3 000 new jobs over the next 20 years.

⁽³⁾ See footnote 2.

(8) On 1 December 2000 the Belgian Cabinet decided to grant financing for an aid scheme for research and development in the aircraft industry. The aid is granted by the Federal Government under an agreement concluded by it with the regional authorities on 20 November 2001 on the basis of budget law (Law of 27 July 2001 on the first adjustment of the 2001 general expenditure budget, published in the Belgian Official Gazette on 14 May 2002).

(9) Under this scheme, the State can pay advances to the beneficiary enterprises between 2002 and 2006. According to the Belgian Cabinet's decision of 1 December 2000, the overall budget of EUR 195 038 000 has been distributed as follows: EUR 112 457 000 for the airframe manufacturers, EUR 41 307 000 for the component manufacturers and EUR 41 274 000 for the engine manufacturers.

2.2. Beneficiaries, research activities and eligible costs

(10) The scheme is open to enterprises established in Belgium which are partners or subcontractors of suppliers of engines or components for a civil aircraft development programme. These enterprises must have a technology that is of interest to the constructor or to the constructor's partners for the type of aircraft concerned.

(11) The aid granted by the Belgian Government is to be used towards the costs of industrial research (IR) and pre-competitive development (PCD) within the meaning of Annex I to the Community framework for State aid for research and development ⁽⁴⁾ (R & D framework).

(12) The eligible R & D costs are those directly associated with the project, with the exception of all the commercial and/or marketing costs that have to be incurred in order to obtain contracts, provided that these costs were incurred after 1 December 2000, that they are substantiated by the enterprise and controlled and accepted by the Federal Government and that they are necessary to carry out R & D work as defined above. These costs must be eligible costs as defined in Annex II to the R & D framework. Certification costs are excluded.

2.3. Aid instrument, intensity and cumulation of aid

(13) The aid is granted in the form of repayable advances by way of payments to the Government that are linked to sales of the products or technologies concerned, up to a maximum of 75 % of the IR costs (a basic 60 % plus any applicable bonuses, but never more than 75 %) plus a maximum of 50 % of the PCD costs (a basic 40 % plus any applicable bonuses, but never more than 50 %).

(14) The advance is repayable in full in the form of a proportion of the turnover generated by the project. The standard model agreement between the Belgian Government and the beneficiary enterprise stipulates that the company will not under any circumstances have to pay interest on the amount advanced. Repayments cease when the advance principal has been reimbursed.

(15) The Belgian authorities undertake to comply with the rules on cumulation with other schemes and to limit the aid intensity to the maximums specified in the R & D framework. No state aid other than that granted by the Federal Government will be granted for the same project.

2.4. Incentive effect of the aid and commitments

(16) Aid granted under the scheme must be necessary and must have an incentive effect. To be eligible, projects must involve a degree of technical and/or financial risk that prevents the enterprise from financing the project in full. The enterprise must submit a complete technical and financial dossier before the aid is granted. All dossiers must be individually analysed by the ministry responsible for the economy and scientific policy. The Belgian authorities also undertake to assess the incentive effect of the aid through surveys of the beneficiary firms and to provide evidence of this effect in annual reports to the Commission.

(17) Under point 4.7 of the R & D framework, the authorities must notify the Commission of individual grants of aid to major projects. They have notified the Commission of the aid granted to the company Techspace Aero for the low-pressure part of the GP7000 engine (Aid C 28/2006 — ex NN 23/2004).

⁽⁴⁾ OJ C 45, 17.2.1996, p. 5.

2.5. Grounds for initiating the procedure

- (18) In its decision of 22 June 2006 the Commission examined the aid in the light of the R & D framework and raised doubts regarding its compatibility with this framework.
- (19) The Commission noted that the aid was granted in the form of an advance repayable on the basis of sales of the product resulting from the research activity. Advances of this kind, repayable in the event of a successful outcome of research activities, are very common in the aircraft industry.
- (20) Point 5.6 of the R & D framework makes specific provision for this type of advance. It indicates that the allowable level of aid intensity for such aid instruments (25 % for PCD and 50 % for IR) may be increased based on a case-by-case assessment of the repayment conditions.
- (21) Since the entry into force of the R & D framework, the Commission has received notification of numerous cases of aid in the form of advances repayable in the event of a successful outcome. It has developed a body of practice for interpreting point 5.6 of the framework ⁽⁵⁾.
- (22) In the cases analysed by the Commission to date, the beneficiary has, in the event of the success of a programme, been required to repay, in addition to the advance principal, interest based on the reference and discount rate set by the Commission for the Member State concerned at the time the aid was granted. For particularly successful programmes, the repayment rates have been even higher.
- (23) Under the circumstances, the Commission's practice has been to limit the advance to a maximum of 40 % of eligible costs for PCD activities and 60 % for IR activities. These basic rates may be exceeded by the extra percentage points (bonuses) provided for in point 5.10 of the R & D framework.
- (24) In the aid scheme in question, however, the Commission notes that the Belgian authorities have applied these

maximum levels of 40 % and 60 % (plus the possible bonuses provided for in point 5.10 of the R & D framework), whereas the arrangements for repayment of the advance do not envisage payment of any interest, even in the event of the success of the programme.

- (25) Thus, the arrangements for repaying of the aid in question are considerably more favourable for the enterprises benefiting from it than the traditional arrangements for aid beneficiaries in the cases hitherto examined by the Commission. Since they do not have to pay any interest, the beneficiary companies are guaranteed to benefit from the aid whatever the outcome of the project, whereas under traditional repayment arrangements the aid may not be granted at all in the event of a successful outcome (and may even be negative in cases of highly successful projects where the enterprise may enable the State to earn money including in real terms).

3. COMMENTS FROM BELGIUM

3.1. Budget for the measure

- (26) Following the decision of 22 June 2006, the Belgian authorities have stated that the aid scheme in question is not intended to finance airframe manufacturers. The Belgian Cabinet's decision of 1 December 2000 drew a distinction between the budget for aid to airframe manufacturers and that for aid to component and engine manufacturers. The procedures for granting aid to the airframe manufacturers are completely distinct from those for aid granted to the component and engine manufacturers. The State aid introduced by the Belgian Cabinet's decision of 1 December 2000 concerns only the component and engine manufacturers.

3.2. Adaptation of the State aid granted to the component and engine manufacturers

- (27) The Belgian authorities have submitted two alternatives for modifying the aid granted to the component and engine manufacturers so as to bring it into line with the model contracts submitted to the Commission on 23 November 2006. Only one alternative has been adopted for each of the projects for which aid is granted.

- (28) The first alternative is to recover part of the aid granted in order to bring its intensity level down to that stipulated by the R & D framework (50 % maximum for IR activities and 25 % maximum for PCD activities, plus any applicable bonuses). The Belgian authorities will recover the surplus amount of the aid by 31 March 2007 and will charge interest on this amount at the Commission's reference and discount rate in force at the time the aid was granted. As provided for in the grant agreement, in the event of the success of the project the Belgian authorities will, in addition to this initial recovery, require repayment, free of interest, of the part of the aid kept by the enterprise.

⁽⁵⁾ See the cases cited in footnote 5 of the Commission decision of 22 June 2006 (OJ C 196, 19.8.2006, p. 7).

Table 1

Advances reduced to aid intensity levels

Beneficiaries	Eligible costs (EUR thousand)		Final intensity		Advance paid (EUR thousand)	Recovery with interest (EUR thousand)	Rate
	IR	PCD	IR	PCD			
Septentrio	[...] (*)	[...]	60 %	35 %	5 454	912	3,95 %
ASCO	[...]	[...]	50 %	25 %	1 473	407	3,95 %
ASCO	[...]	[...]	50 %	25 %	2 434	988	3,95 %
ASCO	[...]	[...]	50 %	25 %	3 308	1 180	3,70 %
LMS	[...]	[...]	50 %	25 %	3 264	782	4,43 %
BARCO	[...]	[...]	50 %	25 %	0	0	—
BARCO	[...]	[...]	50 %	25 %	2 120	575	3,95 %
BARCO	[...]	[...]	50 %	25 %	904	189	4,08 %
Advanced products	[...]	[...]	60 %	35 %	23	8	4,43 %

(*) Business secret.

- (29) The second alternative is to maintain the repayable advance only in the event of the success of the project and to bring repayment of the advance into line with Commission practice. The Belgian authorities have adopted progressive repayment arrangements enabling recovery, once the project has become successful, of the principal and of interest based on the Commission's reference and discount rate in force at the time the aid was granted.

Table 2

Repayment of advances in line with Community practice

Beneficiaries	Eligible costs (EUR thousand)		Intensity		Advance (EUR thousand)	Interest (EUR thousand) ⁽¹⁾	Rate	Success (shipsets sold)
	IR	PCD	IR	PCD				
Eurolasma	[...]	[...]	75 %	50 %	1 262	525	4,80 %	[...]
Eurolasma	[...]	[...]	75 %	50 %	719	290	4,80 %	[...]
Eurolasma	[...]	[...]	75 %	50 %	1 202	362	4,80 %	[...]
Electronic Apparatus	[...]	[...]	70 %	50 %	8 131	3 062	4,08 %	[...]
Samtech	[...]	[...]	70 %	50 %	1 075	305	4,36 %	[...]
XenICS/FOS & S	[...]	[...]	70 %	50 %	8 214	3 482	4,08 %	[...]

⁽¹⁾ Recovered as the advance is repaid.

(30) The commercial success of the projects is measured in terms of sales projections at the time the aid is granted. Total sales are taken into account when calculating repayment of the advance.

(31) Electronic Apparatus et XenICS/FOS & S make fixed repayments linked to each sale. This fixed payment enables both repayment of the principal and payment of the interest.

(32) However, Europlasma and Samtech make variable repayments linked to each sale, broken down as follows:

— a fixed amount corresponding to the principal of the amount advanced spread over the number of sales defining the success of the project, and

— a variable amount based on sales made, which covers the interest on the outstanding principal of the amount advanced.

(33) Europlasma makes straight-line repayments.

(34) Electronic Apparatus makes repayments in stages (five stages of [...] shipsets each). If the programme is interrupted in the middle of a stage before a successful outcome is achieved, the enterprise makes a final repayment in proportion to the sales made since the last stage reached.

(35) Lastly, Samtech and XenICS/FOS & S make 'exponential' repayments in three phases:

— a first phase corresponding to the first third of sales,

— a second phase corresponding to the second third of sales, with repayments twice as high as in the first phase,

— a third phase corresponding to the last third of sales, with repayments three times as high as in the first phase.

(36) Since the aid was granted recently, the Belgian authorities have set 31 December 2018 as the final date for repayment for all the contracts listed in Table 2, with the exception of the contract with Samtech, for which the final date is 31 December 2021.

3.3. Commitments

(37) The Belgian authorities undertake:

— to amend the initial contracts by 31 December 2006 to bring them into line with the model contracts submitted on 23 November 2006 and the repayment conditions laid down in paragraphs 28 to 36 of this Decision,

— to submit the amended and signed contracts by 31 December 2006,

— to comply with Commission practice as regards repayment conditions if further advances are granted before 31 December 2006 with higher intensities than those specified in the R & D framework,

— to take the appropriate measures if new aid were to be granted under this scheme after the entry into force of the Community framework on State aid for research, development and innovation.

4. ASSESSMENT

4.1. Existence of State aid

(38) The scheme is financed by the Belgian Federal Government. It confers an advantage on certain component and engine manufacturers in the aircraft industry. The advances are repaid only in the event of the commercial success of the product being researched, and in some cases repayments are free of interest. This makes the advances more advantageous than loans at market rates. Lastly, given that component and engine manufacturers from other Member States operate in this industry, the scheme may distort competition and affect trade between Member States. It therefore meets the cumulative criteria for determining the existence of State aid as defined in Article 87(1) of the EC Treaty.

(39) The total volume of State aid granted under the scheme in question amounts to EUR 82 581 000, broken down into EUR 41 307 000 for component manufacturers and EUR 41 274 000 for engine manufacturers.

4.2. Unlawfulness of the State aid

(40) The individual aid provided under the scheme was granted under agreements between the State and the beneficiary enterprises. The model agreement submitted by the Belgian authorities does not have a suspension clause whereby payment of the advances is subject to analysis of the scheme by the Commission in accordance with Community State aid rules. Since the scheme has already been implemented, it must be considered to be unlawful within the meaning of Article 1(b) and (f) of Regulation (EC) No 659/1999.

4.3. Compatibility of the State aid

- (41) Modification of the aid scheme in accordance with the first alternative described in recital 28 takes away the advantage initially conferred on the beneficiaries by reducing the aid intensity to the level stipulated in the R & D framework (50 % for IR activities and 25 % for PCD activities, plus any applicable bonuses). In addition to recovery, with interest, of the surplus aid, repayment of the remaining aid goes beyond the requirements of the R & D framework. The aid thus modified is therefore compatible with that framework.
- (42) Modification of the aid in accordance with the second alternative, which is described in recitals 29 to 36, brings the arrangements for repayment of the advances into line with Commission practice: repayment is progressive and, in the event of success, is increased to the amount of the principal of the advance plus the accrued interest. The aid thus modified is therefore in line with Commission practice.
- (43) Tables 1 and 2 list the enterprises that have benefited from the scheme so far. The Belgian authorities undertake to take away the additional advantage temporarily granted to these enterprises relative to the beneficiaries of aid in the form of repayable advances in the cases hitherto examined by the Commission. Furthermore, the Belgian authorities undertake to comply with Commission practice as regards arrangements for repayment if, prior to 31 December 2006, further advances are granted with higher intensities than those specified in the R & D framework for grants. They also undertake to take the appropriate measures if new aid is granted under this scheme after the entry into force of the Community guidelines on State aid for research, development and innovation.

5. CONCLUSION

- (44) The Commission notes that Belgium has unlawfully implemented the R & D aid scheme for the aircraft industry, under which it has granted aid for component and engine manufacturers in breach of Article 88(3) of the EC Treaty. However, Belgium undertakes to adapt this State aid by 31 December 2006 so as to bring it into line with the Community framework on State aid for research and development and with Commission practice,

HAS ADOPTED THIS DECISION:

Article 1

The aid implemented by Belgium for component and engine manufacturers under the aid scheme for research and development in the aircraft industry is compatible with the common market subject to the conditions spelt out in Article 2.

Article 2

Belgium shall require the beneficiaries of the scheme referred to in Article 1 to repay the advances in accordance with one of the two methods described in recitals 28 to 36.

To this end, Belgium shall amend, by 31 December 2006, its contracts with the beneficiaries of the aid scheme referred to in Article 1 so as to bring them into line with the model contracts submitted to the Commission by the Belgian authorities on 23 November 2006, which incorporate the new repayment arrangements described in recitals 28 to 36.

The amended and signed contracts shall be submitted to the Commission by 31 December 2006.

Article 3

Belgium shall inform the Commission within two months of receipt of this Decision of the measures taken to comply with it.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 6 December 2006.

For the Commission

Neelie KROES

Member of the Commission