

STATE AID

C 84/98 (ex N 100/98)

Germany

(1999/C 80/03)

(Text with EEA relevance)

(Articles 92 to 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning the 27th joint Federal Government/*Länder* programme for improving regional economic structures (27. Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur')

The Commission has sent the German Government the following letter, informing it that it has decided to initiate proceedings pursuant to Article 93(2) of the EC Treaty:

I. THE PROCEDURE

1. By letter dated 5 February 1998, the German authorities notified the Commission of the 27th joint Federal Government/*Länder* programme for improving regional economic structures for the period 1996 to 1999 (2000) pursuant to Article 93(3) of the EC Treaty. Additional information was sent by letters dated 3 April, 28 April, 21 September, 30 September and 23 November 1998.

II. DESCRIPTION OF THE AID

2. The joint Federal Government/*Länder* programme for improving regional economic structures (Gemeinschaftsaufgabe) is the main German regional aid scheme; it is jointly financed by the Federal Government and the *Länder* and administered by the *Länder*. It sets uniform criteria for the grant of regional aid by the Federal Government, the *Länder* and the local authorities and provides investment aid for manufacturing industry and infrastructure projects directly serving industry. The joint programme covers the following points in particular:

- demarcation of assisted areas and setting of maximum aid intensities: the demarcation of assisted areas for the period 1997 to 1999 was approved by the Commission on 18 December 1996 (N 613/96),
- annual determination of budget funds and, where appropriate, amendment of the criteria for granting regional aid.

The Commission last approved the 25th (N 186/96) and 26th (N 123/97) outline plan for the joint programme with the exception, first, of the extended eligibility of the cost of acquiring intangible investment (the subject of a final decision of 6 May 1998: C 37/96) and the eligibility of investment in connection with teleworking (the subject of a final negative decision dated 25 February 1998: C 52/97). The **existing scheme** is therefore the version in the 26th outline plan with the exception of the provisions concerned by Article 93(2) proceedings.

3. The present notification contains the following changes to the existing scheme:

- a change to part II of the scheme (Rules on the conditions, forms and intensity of the aid) in relation to the eligibility of rented or leased economic goods (gemietete oder gepachtete Wirtschaftsgüter),

- technical changes to the list in Annex 8 of the scheme,

- the budget for the period 1998 to 2001.

The other provisions of the existing scheme are unchanged.

- 3.1. **Eligibility of rented or leased economic goods (gemietete oder gepachtete Wirtschaftsgüter)**

Under the **present notification**, eligible costs are to be extended to rented or leased economic goods (gemietete oder gepachtete Wirtschaftsgüter) which are part of the necessary plant or buildings in the context of an initial investment and which are shown as assets of the financial investor, i.e. the

owner and lessor (Vermieter) of the economic good. Under this arrangement, economic goods purchased by the firm may be sold to the financial investor, who subsequently leases them back to the firm (sell-and-rent-back) if the following conditions are met:

- eligibility applies only to the costs of acquiring or producing the object rented which are entered on the assets side of the financial investor's (i.e. the lessor's) balance sheet for tax purposes,
- the leasing contract must provide that the investment grant is fully set off against the rent,
- the investor and the lessee must assume joint and several liability for any repayment of the grant,
- the leasing contract and the grant decision must contain the said conditions on the adjustment of the rent, the duration of the lease and any agreed options for extending it. The assisted economic goods must be used within the lessee's own works for the duration of the contract and for at least three years after the conclusion of the investment project.

3.2. Technical change

Under the **existing scheme**, eligible projects are only those likely to increase income overall and in the long term in one of the assisted regions. Points 2.1.1 and 3.1.4 of the scheme, first, contain a list of economic goods for which this effect is presumed if the production of the beneficiary form relates to at least 50 % of these goods or services and, second, exclude certain sectors from the scheme.

The **notification** proposes to amend this list, in particular by including certain building sector products (prefabricated concrete or wood components).

3.3. Budget

Appropriations available for granting fresh aid in 1998

The following are available: new payment appropriations under the 1998 budget less impact of past commitments due in 1998 (Mittel zur Abdeckung von in Vorjahren eingegangenen Verpflichtungen),

plus commitment appropriations for 1998 falling due after 1998 (Verpflichtungsermächtigungen 1998 mit Fälligkeit in den Folgejahren)

— in favor of the old *Länder*:

DEM 760,1 million (1997: DEM 803,5 million),

— in favour of the new *Länder*:

DEM 6 428,5 million (1997: DEM 6 636 million),

— in favour of all the German assisted areas:

DEM 7 188,5 million (1997: DEM 7 439,5 million, 1996: DEM 7 994,4 million).

As in previous years, this budget represents a reduction in appropriations available for granting fresh aid in 1998 (− 3,5 %) throughout the German assisted areas and, unlike preceding years, is due to a larger reduction in the old *Länder* (− 5,7 %) than in the new *Länder* (− 3,2 %).

Consequently, the share of all appropriations available for granting fresh aid in 1998 accounted for by the new *Länder* is 89,4 % in 1998, which is slightly more than in 1997 (89 %).

Financial plan for the period 1998 to 2002

The outline plans for the joint Federal Government/*Länder* programme contain a financial plan for the payment appropriations to be earmarked over the five-year period for fixed investment and infrastructure investment directly serving industry. For the period 1998 to 2002, resources totalling DEM 25 002,1 million are planned, compared with DEM 27 906,6 million for the period 1997 to 2001.

The overall guarantee ceiling of DEM 2 400 million is the same as in 1997.

III. ASSESSMENT

1. Basis for assessment

The Commission hereby informs the German Government that it has examined the changes and the new budget provisions on the basis of the information provided by your authorities on the aid in question, in accordance with Articles 92 and 93 of the EC Treaty

and Article 61 of the EEA Agreement and in conformity with the first paragraph of point 6.1 of the guidelines on national regional aid (OJ C 74, 10.3.1998, p. 18), particularly in the light of the rules and practices in force for regional aid at the time of notification (5 February 1998).

In this context, the Commission has considered the following:

2. Existence of aid

The investment grants and guarantees for fixed investment and intangible investment of firms, which are provided under the joint Federal Government/*Länder* programme in German assisted areas, constitute national regional aid within the meaning of Articles 92(1) of the EC Treaty and 61(1) of the EEA Agreement.

3. Compliance with the notification requirement

With the adoption of the 27th outline plan and its entry into force on 1 January 1998, subject to its approval by the Commission with regard to State aid, Germany has complied with its obligations under Article 93(3) of the EC Treaty.

4. Compatibility with the common market of the change introducing the possibility of a "sell-and-rent-back" arrangement

The notification under examination introduces the possibility of a "sell-and-rent-back" arrangement.

This method of financing puts certain economic goods (equipment or buildings) at the disposal of the operating firm without it having to commit the funds needed to purchase them.

The Commission notes that:

- the sale/rent back operation takes place as part of an initial investment relating to the creation of a new plant or the extension or modernisation/rationalisation/diversification of an existing one, and therefore has the effect of creating new jobs or (in some cases) maintaining them in a situation of stronger competitiveness,

- the economic good to which the operation relates must remain in the firm for a period of at least three years,

- the financial investor, who is the direct beneficiary of the aid, must pass it on in full to the operating firm, by a corresponding reduction in the rent.

At this stage the Commission takes the view that the newly introduced provision, whereby the ownership and the risk remains with the third party financing the investment and the operating costs of the firm (rent) are reduced, may comprise an element of operating aid. In this connection it recalls that it has initiated Article 93(2) proceedings, which are still not concluded, in a fisheries case (V 21/96, OJ C 302, 12.10.1996) because of a similar operation.

The Commission recalls its consistent practice of authorising operating aid only in areas which fall within the Article 92(3)(a) derogation, and in particular on condition that the aid is limited in time and degressive. In this connection the Commission notes that:

- the arrangements for granting aid under the joint Federal Government/*Länder* programme are proposed for an unlimited period (although subject to an approved map of assisted areas),

- only part of the German assisted areas can at present be considered for the regional derogation in Article 92(3)(a),

- the validity of the present map expires at the end of 1999,

- the scheme does not provide for degressivity.

It is for these reasons that the Commission expresses doubts as to the compatibility of the new "sell-and-rent-back" possibility.

5. Compatibility of the technical changes with the common market

Since the changes in question here relate only to a change to the list of economic goods whose production is probably likely to increase incomes in one of the assisted regions overall and in the long term, this change has no impact on the assessment of

the scheme as such. It can consequently be considered to be compatible with the common market.

6. Compatibility of the financial resources with the common market

The analysis of the appropriations available for the grant of fresh aid in 1998 demonstrates a reduction of budget resources as compared with previous years. In addition, the financial plan for the period 1998 to 2002 shows a general reduction in budget funds.

7. In view of the foregoing, the Commission hereby informs the German authorities that, after examining the changes made to the existing scheme and to the budget provisions, it has decided not to raise any objections to the technical change and the new budget provisions in the context of the derogations laid down in Article 92(3)(a) as regards their application in the five new *Länder* and in Article 92(3)(a) as regards their application in the assisted areas in the West German *Länder* and Berlin on the basis of this derogation.

8. However, the Commission has decided to initiate the proceedings laid down in Article 93(2) against the possible "sell-and-rent-back" arrangement introduced by the 27th outline plan. This will give the Commission the opportunity of giving closer consideration to the "operating aid" nature of the said arrangement.

Taking the foregoing into account, the Commission calls on the German Government, pursuant to the procedure under Article 93(2) of the EC Treaty, to submit its comments and all information necessary to assess the aid within one month of receiving this letter. It calls on the authorities to forward a copy of this letter immediately to the potential recipient of the aid.

The Commission would remind the German Government of the suspensive effect of Article 93(3) of the EC Treaty and would draw its attention to the letter to all the Member States dated 22 February 1995 stipulating that any aid granted unlawfully may have to be recovered from the beneficiary according to the provisions of national law; the recoverable amount would include

interest based on the reference rate used to calculate the net grant equivalent and accruing from the date on which the aid was granted until it is actually recovered.

The Commission hereby informs the German Government that it will give notice to interested parties by publishing this letter in the *Official Journal of the European Communities*. It will also inform interested parties in the EFTA countries that are signatories to the EEA Agreement by publishing a notice in the EEA Supplement to the Official Journal, and will send the EFTA Surveillance Authority a copy of this letter. All concerned will be requested to submit their comments within one month of such publication.

The Commission should be informed within 15 working days of receiving this letter if the letter contains confidential information not suitable for publication. If no such substantiated request is received by the deadline, the Commission will assume that there is agreement to publish the letter in full. Such requests and notifications should be sent by registered post or fax to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate G.3,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,
Fax (32-2) 296 98 15

The Commission has examined the compatibility of this scheme on the basis of the rules in force before the adoption of the new guidelines on national regional aid, which the Commission approved on 16 December 1997 and notified to the German Government by letter dated 24 February 1998, since the scheme change under examination was notified before the guidelines were communicated to the Member States (see point 6.1 of the guidelines on national regional aid). It recalls that the joint Federal Government/*Länder* programme, in the version authorised by the Commission under the 26th outline plan, is the subject of appropriate measures concerning national regional aid, which were communicated to the German authorities by letter dated 24 February 1998 (SG(98) D/1670). The approval of the technical change and the budget provisions, which were notified in connection with the 27th outline plan, does not affect the said appropriate measures, accepted by Germany.

The Commission would remind the German Government that in accordance with Article 93(3) of the EC Treaty, it must report any refinancing, prolongation or change connected with this scheme.

The Commission requests the German Government to submit an annual report on the application of the parts of the scheme approved by this decision.

The German Government is also reminded that implementation of this scheme is subject to the rules on the combination of aid measures and that such combination concerns aid with different policy objectives (OJ C 3, 5.1.1985) or aid with the same policy objective awarded under schemes adopted by the same entity or by different entities (central, regional and/or local). In the latter case, the combined aid must not exceed whichever of the ceilings for the schemes involved is the highest. Lastly, the Commission notes that the German authorities have confirmed that implementation of this scheme is subject to the Community provisions governing certain areas of industrial activity, including those coming under the ECSC Treaty, transport and agriculture and fisheries, including the processing and

marketing of agricultural products (OJ C 29, 2.2.1996, p. 4).

The Commission would remind the German authorities that they have undertaken to comply with the multi-sectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998) as regards aid to be granted under the 27th outline plan.⁹

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

These comments will be communicated to the German Government.

Non-opposition to a notified concentration
(Case No IV/M.1419 — Groupe Cofinoga/BNP)

(1999/C 80/04)

(Text with EEA relevance)

On 19 February 1999, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document number 399M1419. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

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