

## STATE AID

C 22/89

(France)

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

(89/C 294/06)

Commission communication pursuant to Article 93 (2) of the EEC Treaty to other Member States and interested parties concerning environmental aid which France has decided to grant to the 'Agence pour la Qualité de l'Air' (AQA).

In response to a request from the Commission made on 1 December 1987, the French Government, by letter dated 6 April 1988, notified three environmental aid schemes administered by the 'Agence pour la Qualité de l'Air'.

At the Commission request, the French Government supplied the additional information needed to assess the proposal, most recently by letter received on 3 February 1989.

The Agence pour la Qualité de l'Air, a public industrial and commercial body created by the Law of 7 July 1980, awards aid in the form of repayable loans and grants to support development and demonstration projects on the prevention of air pollution.

The repayable loans, used for the development of gas-cleaning techniques or the improvement of existing systems, generally represent between 25 % and 30 % of the aided programme and can reach 50 %, which gives an aid intensity of between 7 % and 14 % (gross) (net grant equivalent of between 3,85 % and 7,7 %). Total loans granted amount to FF 2 million a year.

Grants are awarded for investments in two areas: for the first industrial application of a new gas-cleaning technique (demonstration operations), grants amount to 10 % of the investment (NGE of 7,2 %). Some FF 8 million are awarded each year as grants. They are also awarded to assist investments in desulphurization and the development (up to 10 % of the budget) of industrial techniques for the prevention, reduction or measurement of air pollution.

The aid is financed through a parafiscal charge levied on the same enterprises that are potential beneficiaries, i.e. the largest producers of sulphur oxides (approximately 500 enterprises).

The aid is awarded by a joint management committee (administration/business circles). The grants are limited

to 50 % of the 'desulphurization' module of the investment. Aid granted annually totals FF 90 million.

The French Government has failed to comply with the obligation under Article 93 (3) to notify the aid prior to its implementation.

The aid, which threatens to distort competition and adversely affect intra-Community trade by favouring certain undertakings, has been examined in the light of Article 92. This applies to the two aid schemes directly financed by the State, and also to the desulphurization aid scheme which is financed by a parafiscal charge, this form of aid being regarded by the Commission as aid granted through State resources and therefore failing under Article 92 (1) of the EEC Treaty.

The three schemes were examined separately. It emerged from the analysis that the aid in the form of repayable loans for the development of gas-cleaning techniques or the improvement of existing processes, and that in the form of grants for the first industrial application of a new gas cleaning technique, qualify for exemption under Article 92 (3) (c) in view of the nature of the projects, the intensity of the aid and the small budgets made available for their implementation. The Commission reserves the right, however, to review its decision giving approval in the event of a change in the 'polluter-pays' principle.

The exemption does not cover the aid grants for investments in desulphurization because the aid is given for simple investment projects of which only a very small part consists in technological development. In addition, the aid intensity of up to 50 % and the amount of FF 90 million awarded annually are very high. The aid reduces some of the cost of the recipient undertakings, costs which their competitors in other Member States must bear in full.

Furthermore, the aid is granted in sectors where there is considerable intra-Community trade, notably the paper, aluminium and steel sectors. For these reasons, the aid in question is likely to affect trading conditions to an extent contrary to the common interest.

In view of the foregoing considerations, the Commission would inform the French Government that, having examined the abovementioned proposal, it has decided to open the Article 93 (2) procedure in respect of the aid for investments in desulphurization facilities.

The Commission hereby gives the French Government notice, as part of that procedure, to submit its comments within one month from the date of this letter.

The Commission would further inform the French Government that it is giving the other Member States, by sending them a copy of this letter, and parties concerned other than Member States, by publishing a notice in the *Official Journal of the European Communities*, notice to submit their comments.

The Commission would remind the French Government that Article 93 (3) of the EEC Treaty prevents the proposed measures being put into effect until the Article 93 (2) procedure has resulted in a final decision.

It would also draw the French Government's attention to the letter it sent to all Member States on 3 November 1983 on the subject of their obligations under Article 93 (3) of the EEC Treaty and the communication it published in the *Official Journal of the European Communities*, No C 318 of 24 November 1983, page 3, in which it reminded Member States that where they grant aid unlawfully, i.e. before the Article 93 (2) procedure has resulted in a final decision, the Commission may require them to recover it.

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

Commission of the European Communities,  
200 rue de la Loi,  
B-1049 Brussels.

*The comments will be communicated to France.*

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#### **'Scientific apparatus' — Authorization of relief from import duties**

(89/C 294/07)

*(Legal basis: Regulations (EEC) No 918/83 <sup>(1)</sup> and (EEC) No 2290/83 <sup>(2)</sup>)*

File: XXI/B/3 — 008/89

The Commission has established that the apparatus known as 'Schonstedt Instrument Co. — AC Tumbling Demagnetizer, Model GS D-5, with accessories', may be imported free of import duties.

This apparatus, ordered on 17 March 1988 and the subject of an application by the Kingdom of Spain accepted on 17 January 1989 is intended for analysing the remanent magnetization stability in rocks in Spain.

#### ***Reasoning:***

Deemed to fulfil the requirements for duty relief by application of Article 7 (4) of Regulation (EEC) No 2290/83.

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<sup>(1)</sup> OJ No L 105, 23. 4. 1983, p. 1.

<sup>(2)</sup> OJ No L 220, 11. 8. 1983, p. 20.