

- accepting the total or partial interruption of supplies,
- accepting the supply of gas of a different calorific value.

Supplies to consumers agreeing to these conditions are charged at Tariff E with a rebate of 5 cents per m³. Since the introduction of Tariff F in November 1983, however, this rebate has not been constant. It fell from 5 cents per m³ in 1983 to 2,5 cents per m³ in 1986 and 2 cents per m³ in 1988, rising in the first quarter of 1991 to 3,27 cents per m³. The Dutch ammonia producers have been the main beneficiaries of Tariff F.

The Commission accordingly invites Member States and other interested parties to send it their comments on the special tariff charged in the Netherlands for gas supplies to Dutch nitrogenous fertilizer producers. The comments should be sent within one month of the date of publication of this notice to:

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

The Commission will pass on any information it receives in this context to the Dutch Government.

STATE AID

C 53/91 (N 529/91)

Germany

(92/C 10/05)

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

Commission notice pursuant to Article 93 (2) of the EEC Treaty to other Member States and interested parties regarding aid which Germany has decided to grant in the laser research sector

By means of the letter reproduced below, the Commission informed the German Government of its decision to initiate the Article 93 (2) procedure.

By registered letter dated 22 August 1991, your Government notified the Commission of a planned aid scheme 'Förderschwerpunkt Laserforschung und Lasertechnik' under the Eureka programme (EU-226).

At the request of the Commission departments, additional information was sent by registered letter dated 22 October 1991.

According to that information, the aid planned for the period from May 1988 to August 1993 is ECU 6,93 million. Of this amount, ECU 4,30 million will go to firms in the market sector and ECU 2,63 million to universities and public research institutes.

As regards the intensities of the aid in question, the institutes will receive between 70 % and 75 % of their costs as State aid, giving an average rate of 72,7 %.

The firms will receive between 45 % and 51,9 %, giving an average of 49,5 % of costs covered out of public funds.

The work for which aid is to be granted is confined to cooperative research projects. According to your assessment, the activities of the institutes consist exclusively in fundamental research within the meaning of point 2 of Annex I to the Community framework for state aids for R&D. The work carried out by firms, for their part, will involve almost exclusively basic research (point 3 of the Annex), with the exception of one firm which, in the initial stage, is carrying out a project which is 90 % basic research and 10 % applied research.

As regards the results of the R&D, the NKFT and AN Best-P conditions of the Federal Ministry for Research and Technology are applicable. Moreover, your

authorities sent the Commission a copy of the standard contract used for every scientific cooperative venture between industry and institutes.

The conditions of Article 92 (1) of the EEC Treaty are met since competition may be distorted in that firms will receive subsidies from the State. This also applies to the funds allocated to the universities and public institutes in so far as their research is carried out solely in collaboration with firms (paragraph 2.3 of the framework).

In evaluating the aid intensity, the Commission notes first of all that the assessment of the research stages made by your authorities does not correspond to its own.

The initial investigation by the Commission departments led them to conclude that, of the 18 individual projects, eight concern basic research (of which four to be carried out by institutes and four by firms) and 10 applied research (of which four to be carried out by institutes and six by firms). Thus, DM 4,61 million (32,3 %) of the aids concern basic research projects and DM 9,66 million (67,7 %) applied research.

There is, therefore, some uncertainty as to the nature of the research. This has important consequences regarding the maximum admissible intensity, which should not exceed a weighted average of 33 % if we apply the usual rates of 50 % for basic research and 25 % for applied research.

In any event, on the basis of paragraph 5,3 of the framework, one could not allow an aid scheme which, for the most part, is designed for market-related activities to provide for intensities of between 50 % and 75 %, with an average of 56 %.

The Commission's doubts are reinforced by the terms under which the results are transferred between institutes and firms under the cooperative research scheme (Verbundforschung).

As this specific case involves only cooperative projects, the effect of the aid to universities and institutes cannot be separated from that of the subsidies to industry. The information provided by the German authorities has

shown that industry alone benefits from the results of the research, as the institutes are placed at a disadvantage by the legal conditions set out in the standard contract. These explicitly state that the firms have the sole right to use the results for commercial purposes.

Under these circumstances, the firms benefit not only from direct subsidies from the State, but also from the results obtained by the institutes. Consequently, it is as if, from a commercial point of view, the aid granted to the institutes benefited industry alone. For this reason, it should not be higher than that granted to the firms.

The intensity of aid N 529/91 does not appear, therefore, to satisfy the requirements laid down in the Community framework. By affecting the conditions of trade between Member States to an extent contrary to the common interest, the aid does not appear to be compatible with Article 92 (1) of the Treaty.

Consequently, the Commission is obliged to initiate the procedure provided for in Article 93 (2) of the EEC Treaty with respect to the 'Laserforschung und Laser-technik' scheme.

Under that procedure, the Commission hereby gives the German Government notice to submit its observations within one month of the date of receipt of this letter.

It would also inform the German Government that it will be publishing a notice in the *Official Journal of the European Communities* requesting other Member States and interested parties to submit their comments.

The Commission would remind the German authorities that, under Article 93 (3) of the EEC Treaty, the planned aid measures may not be implemented until the Article 93 (2) procedure has resulted in a final decision.

It would also draw the attention of the German Government to the letter it sent to all the 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 *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 of the date of publication of this notice to:

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

The comments will be communicated to Germany.

Communication of agricultural structure decisions

(92/C 10/06)

(See Notice in Official Journal of the European Communities No L 74 of 22 June 1989, p. 31)

Commission Decision No C(91) 2443 of 13 December 1991:

Member State concerned:

— Greece

Basis:

— Council Regulation (EEC) No 2328/91 (improving the efficiency of agricultural structures)

Decision that the conditions for a financial contribution from the Community are satisfied in the light of the measures adopted by the Member State concerning the set-aside.

Commission Decision No C(91) 2444 of 13 December 1991:

Member State concerned:

— Luxembourg

Basis:

— Council Regulation (EEC) No 2328/91 (improving the efficiency of agricultural structures)

Decision that the conditions for a financial contribution from the Community are satisfied in the light of the measures adopted by the Member State concerning the set-aside.

Commission Decision No C(91) 2509 of 13 December 1991:

Member State concerned:

— Luxembourg

Basis:

— Council Regulation (EEC) No 2328/91 (improving the efficiency of agricultural structures)

Decision that the conditions for a financial contribution from the Community are satisfied in the light of the measures adopted by the Member State on compensatory allowances.
