COMMISSION DECISION

of 29 May 1996

on the renewal, for the period 1993 to 1997, of the charge levied on certain oil products for the benefit of the Institut Français du Pétrole (IFP)

(Only the French text is authentic)

(Text with EEA relevance)

(96/615/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having requested the parties concerned to submit their comments pursuant to those Articles,

Whereas:

I

By letter No SG(94) D/16532 of 23 November 1994, the Commission informed France that the procedure provided for in Article 93 (2) of the EC Treaty had been initiated in respect of the aid arrangements financed by a parafiscal charge levied on certain oil products for the benefit of the Institut Français du Pétrole (IFP).

The IFP is a non-profit-making scientific and technical institute founded in 1944. Operating under the supervision of the French authorities, it is engaged primarily in R&D projects in prospecting, refining and petrochemical technologies. As an adjunct to this activity, it carries out studies, disseminates technical information and trains technicians in the above fields. The IFP also has financial holdings in oil companies.

To a large extent, the IFP is financed from the proceeds of a parafiscal charge on certain oil proudcts that was introduced for that purpose (68 % of its operating budget in 1991, 63,7 % in 1993 and 65,2 % in 1994). The parafiscal charge was introduced in 1944 but France gave notification of its renewal only in 1992 for the period 1993 to 1997.

Average annual proceeds from this charge for the period 1993 to 1997 are estimated at around FF 1 billion (ECU 155 million). The figure for 1944 was FF 1,15 billion.

The refinancing project for the period was notified to the Commission in August 1992 but, following the announcement that the IFP was to be granted advances on the proceeds from the charge, the aid was registered as non-notified aid in January 1993.

The Commission decided to initiate the procedure pursuant to Article 93 (2) of the EC Treaty in connection with these arrangements because of the following doubts:

— the levying of a charge on imported products might violate the general principle (which the Commission has regularly asserted in connection with parafiscal charges) that imports from other Member States shall be fully exempt from tax,

— firms acquiring the findings of IFP studies would benefit from indirect aid because the prices, although they reflected market prices, did not seem to be calculated on the basis of real costs,

— it could not be ruled out that the IFP programmes involved direct aid to some of the firms controlled by the Institute and/or indirect aid as mentioned in the above indent,

— the proceeds from the charge could constitute direct aid favouring the Institute's activities over those of similar establishments in the rest of the Community,

— the fact that the IFP did not obtain sufficient remuneration from its financial holdings might also constitute aid.

Since taxable oil producers who exported their production could obtain a refund of the charge, the Commission took the view that exemption constituted export aid. However, since France had notified it of a draft decree making exports of the products in question subject to the charge in accordance with the general principles in force, the Commission did not examine this matter when it initiated the procedure.

At the same time, France had proposed amending the procedure for levying the charge on imports so that traders liable to it would not pay it on a proportion of their deliveries in France corresponding to the national average consumption of the product concerned that was met by imports from other Member States. In its decision to initiate the procedure, the Commission argued that this

system 'does not wholly neutralize the tax on products imported from other Member States. This is because certain releases for consumption in France made by operators whose own supply originates in a proportion of imports higher than the national French average would be burdened with a residual tax that would infringe the general principle of complete exoneration of imports from other Member States.'

After the procedure had been initiated, France neither applied the mechanism for adjusting the procedure for levying the charge on imports nor made exports subject to the charge.

The Commission received France's observations on 5 January 1995. Those observations addressed some of the Commission's doubts as to the compatibility of the arrangements. Further information was received on 10 November 1995, 6 December 1995 and 15 January 1996. A meeting between representatives of France and the Commission was held in Brussels on 14 November 1995 to clarify a number of points.

The Commission communication giving the other Member States and third parties notice to submit their observations was published in the *Official Journal of the European Communities* on 27 June 1995 (1).

As part of the procedure, no other Member States or third parties submitted any observations to the Commission.

II

In the observations submitted by them when the procedure was initiated, the French authorities explained that:

— as a preliminary remark, the procedure was initiated as part of the ongoing examination of existing schemes (Article 93 (1) of the Treaty) since the arrangements in question had been in force, without significant change, since 1944. Accordingly, the Commission could not complain of a failure by France to notify those arrangements. Furthermore, adoption of this method for 'informing' the Commission of the renewal of the arrangements in 1992 could not call into question the fact that the arrangements were standing arrangements,

— the IFP's activities did not lead to any distortion of competition since the results of its work were accessible to all without discrimination. The following evidence bore witness to this:

1. participation of non-French nationals in the IFP's governing bodies (four out of 13 on the Scientific Advisory Board and three out of 18 on the Board of Directors). This shows that international parties have always been informed of the IFP's work through these channels and that they have played an active part in determining strategy;

2. participation by the IFP in Commission initiatives forming part of the Community's energy and R&D policy and in various programmes launched by the Commission;

3. the IFP has helped to set up various European networks, including the European Institute on Geo-energies and the European Network for Research and Geo-energies. A similar network is currently being set up for motors;

4. as regards training activities, more than one-third of students attending the Ecole Nationale Supérieure des Pétroles et Moteurs are non-French (37 % in 1993/94);

5. research findings are available to any interested company irrespective of its nationality or location (inside or outside the Community). Participation in collaborative research programmes is open to any interested firms (from inside or outside the Community) on condition, of course, that they contribute to their realization. Participation brings with it shared ownership of any future results;

6. for companies, another way of obtaining access to research findings is to acquire process-operating licences developed by the IFP on its own account or in collaboration with others. This option is open to all companies inside or outside the Community and is invoiced at market prices. Of the total number of licences granted worldwide as at 1 January 1995 (1 042), only 74 (7,1 %) were granted to French firms,

— there is no State-owned or independent research establishment in Europe comparable to the IFP. The leading establishments, which are comparable in size to the IFP, do not specialize in fuels, motors and the environment, while the other establishments specializing in these fields are small and pursue a niche policy. Furthermore, virtually all research establishments qualify for substantial public funding equivalent to or exceeding that available to the IFP. Lastly, the research establishments of the major oil, chemicals, gas and automobile groups do not provide free access to their research findings. It cannot be claimed that the part-funding of the IFP from the public purse favours its activities in comparison with those of the other establishments in the Community, for which the rate of public funding is more often than not comparable or higher,

(1) OJ No C 161, 27. 6. 1995, p. 5.

— the IFP does not grant indirect aid, since licence sales are effected at market prices, irrespective of the partner. These prices are determined by competition and are not lowered artificially. They cannot be held below cost in the long term,

— it is wrong to state that the IFP does not receive any remuneration from its financial holdings in its holding company ISIS. Between 1986 and 1994 the IFP received FF 98,4 million in normal remuneration for shareholders. In addition, while the companies in which the IFP has holdings use its services, they do not enjoy any benefits either in terms of access to research programmes or in terms of the conditions governing access to research findings. As regards the exploitation of IFP technologies, they have either non-exclusive concessions on market terms or joint ownership of findings proportionate to their financial contribution,

— the charge financing the IFP is additional to excise duties and is borne, as excise duties are, by final consumers. It is a tax on consumption and is totally neutral as to product origin. Furthermore, there is no link between those paying the charge and those benefiting from the IFP's research, and it is such a link that determines the application of the principles derived from the Court of Justice's case-law on parafiscal charges.

These arguments were developed in the subsequent correspondence and at the meeting held with the Commission.

III

As a preliminary observation, the Commission challenges France's interpretation of the nature of the existing arrangements and points out that, pursuant to Article 93 (3) of the EC Treaty, on 17 August 1992 France notified the renewal of the parafiscal charge levied for the benefit of the IFP.

As regards parafiscal charges financing aid schemes, the Commission is bound to examine, in the light of Articles 92 and 93, both the compatibility of the procedures for collecting the charge and the compatibility of the aid itself which is financed from the proceeds of the charge.

The compatibility of the collection procedure is assessed in the light of two general principles which are regularly asserted by the Commission and were confirmed by the Court of Justice in its ruling of 25 June 1970 in Case 47/69, France v. Commission [2] (parafiscal charge for the benefit of the Institut Textile de France), namely exemption from payment of the charge for imported products and taxation of products exported to the other Member States and, by extension, to the EEA countries.

The first principle was introduced to avoid situations in which positive measures (in this case, R&D programmes) which chiefly benefit companies from the Member State levying the charge are financed disproportionately, in relation to the benefits, by companies from other Member States.

The second principle is designed to ensure that it is not more advantageous to export rather than to produce for the domestic market since this might lead to a larger flow of exports and thus affect intra-Community trade. Another objective is to ensure that domestic firms engaged in exports do not benefit from positive measures financed from the proceeds of the charge without having contributed to the financing of those measures.

An analysis of these two aspects is inseparable from the third principle laid down by the Commission in connection with parafiscal charges, namely that the proceeds of such charges should not be used to grant direct aid to individual firms.

The Commission has consistently maintained since the judgment handed down in Case 47/69 [3] that 'placing the resources and works of (an institute of that kind) at the disposal of all undertakings without discrimination does not necessarily bring about an actual and equal beneficial share for everyone in these advantages, as even if equality of treatment were guaranteed by legislation, in practice French undertakings (or, more generally, any domestic firms) would be in a more favourable position by force of circumstances.'

It follows that, in general, a parafiscal charge introduced by a Member State for the purpose of financing a research establishment 'naturally' procures greater advantages for firms from that Member State.

If, as France maintains, the results of work by the IFP are accessible to all without discrimination, the Commission must assess whether this is true not merely in terms of the regulatory environment but also in practice. To demonstrate that this is indeed the case, France has argued that the IFP's research activity takes place within an open European and international context.

The Commission took the view that these arguments, which are detailed in Print II, were not sufficient to show that French firms were not the chief beneficiaries of the results of the research carried out in all its forms by the IFP. In other words, they were not sufficient to refute the presumption that the advantages derived from that Institute's activities naturally accrued primarily to French firms.

[2] [1970] ECR p. 487.

[3] See footnote 2.

The Commission therefore asked the French authorities to provide it with detailed information on the nature of the IFP's R&D activities and on the industrial partners with which these activities were carried out (4).

The French authorities provided further information on the IFP's budget, broken down by activity, by fundamental, basic and applied R&D expenditure, by own and collaborative research expenditure and by collaborative research undertaken by each country and firm concerned.

Taken as a whole, these data show that the IFP's operating budget for the last four years covered is as follows:

(%)

	1992	1993	1994	1995
Operating budget	91	92	85	87
Of which:				
training	10	10	9	9
information-documentation	3	4	4	4
R&D	78	79	72	75
Net investment	2	1	3	-1
Repayment of loans	5	5	5	5
Non-refundable VAT	—	—	7	7
Other	2	2	0	2
Total general expenditure	100	100	100	100

To give an idea of the sums involved, R&D expenditure in 1994 and 1995 was just under FF 1,3 billion and total general expenditure about FF 1,8 billion.

For management purposes, the IFP distinguishes between expenditure on explanatory research and that on applied research. Exploratory research aims to enhance understanding of the scientific phenomena and technological processes underlying more applied work and to open up new channels for technical progress. Applied research consists of investigation and experimentation work designed to improve or develop new methods, products, equipment or processes. It does not lead systematically to the creation of a new prototype.

In recent years the IFP's research expenditure has broken down as follows: 20 % on exploratory research and 80 % on applied research (5).

Within the research budget, the shares accounted for by own research and by collaborative research are as follows:

(%)

	1992	1993	1994	1995
Own research	38,74	40,30	40,92	41,11
Other research	13,74	13,71	14,35	12,91
Research with external partners	47,51	46,00	44,73	45,98
Total	100,00	100,00	100,00	100,00

The share of the research budget accounted for by the IFP's own research is about 40 %, that by general-interest programmes (e.g. the environment, Commission programmes) 14 % and that by research with external partners 46 %. Thus, the share of research programmes carried out by the IFP with financial backing from external partners amounted for 60 % of its R&D budget.

Data on the type of research, combined with data on the partners with which it is carried out show, as one would logically expect, that exploratory research accounts for a relatively substantial, albeit minor, share of the IFP's own research (38 %) while applied research accounts for a very substantial share of collaborative research (93 %).

In order to assess the benefits accruing to firms from research findings, we need to examine the different types of technology transfer used by the IFP.

In general, contacts between the IFP and potential customers are made at scientific conferences. The Institute's reputation and the patents it has filed (which are public) mean that buyers know to which areas of the IFP's work they can have access. The IFP does not engage in canvassing to set up contracts for collaboration or to sell licences but operates a network of offices and agents which promote its research work.

Research findings are transferred to firms in four different ways: (a) dissemination in the public domain; (b) individu-

(4) Since the French authorities have asked the Commission to keep details of the relationship between the IFP and firms strictly confidential, these firms' names will not be quoted in this Decision. Data on the firms concerned are given on an aggregate basis.

(5) According to the information provided by the French authorities, these percentages have not changed significantly for a number of years.

alized services; (c) exploitation of collaborative research; (d) sales of licences.

(a) Dissemination in the public domain concerns fundamental research or basic industrial research which has been published. Such research is accessible to all, especially since some of the publications are in English.

(b) Individualized services: in this case, all findings are communicated to the buyer. Such transfers are carried out on an exclusive, full-ownership basis. The IFP may even be prohibited from using knowledge thus acquired for an agreed period. The work is invoiced at cost price as calculated from the accounts. These services are available to any interested company.

(c) Collaborative research is the most usual form of transfer. The expenditure incurred by each partner is recorded on presentation of invoices for external expenditure and by applying rates reflecting all staff costs and overheads to time spent. This is carried out under the supervision and subject to the approval of an auditor in accordance with the rules of ordinary law. It should be noted that depreciation is not taken into account when the IFP's expenditure is calculated.

Joint ownership of findings is proportionate to the respective shares in financing, and the allocation of the rights of exploitation includes the option of transferring licences to third parties against payment.

(d) The transfer of licences concerns both the IFP's own research and collaborative research. Total transfers of research findings do not occur (no sales of patents but merely of licences to exploit the findings). User rights are limited over time and geographically. The IFP and its partners remain free to grant licences to other firms.

In this situation, it is impossible to impose on each party acquiring a licence the total costs of research, even assuming that these could be separately identified (for instance, it is very difficult to evaluate knowledge acquired prior to a research programme, multiple findings, deferred findings or spin-off). In addition, the first licence is sold without its being possible to make a valid estimate of the number of purchasers between whom total real costs should be divided.

In view of this objective difficulty in invoicing at cost price, the IFP can rely only on the market price resulting from the interplay of supply and demand, which mostly involves consultations launched by potential customers (firms) or, to a lesser extent, by the issue of calls for tender by potential buyers (countries).

Although the meaning of 'market price' is quite rightly open to question in a situation where most tenderers are subsidized to a greater or lesser extent in their operating budgets, it is clear that buyers are prepared to offer a price equal to, or lower than, the profit gains arising when the old process is replaced by the new one developed by the research establishment.

Potential customers interested in a given technique may contact the IFP's competitors without its being informed and ask them to make price and service proposals. They are then free to select the best offer.

The IFP's different activities are financed from two sources, the proceeds from the surcharge on the domestic tax on petroleum products (Taxe Intérieure sur les Produits Pétroliers — TIPP) and external financing from firms, public authorities or the Commission.

The financing of the IFP's activities from these different sources breaks down as follows:

(%)

	1992		1993		1994		1995	
	IFP charge	Industry	IFP charge	Industry	IFP charge	Industry	IFP charge	Industry
Activities								
Training	93,90	6,10	93,90	6,10	95,40	4,60	94,50	5,50
Information/documentation	98,80	1,20	98,80	1,20	99,10	0,90	99,60	0,40
Own research	100	0	100	0	100	0	100	0
General-interest programmes	70,50	0	69,40	0	72,60	0	69,40	0
Programmes with external partners	27	73	26,40	73,60	27,80	72,20	29,40	70,60

Where the total does not equal 100 %, particularly in the case of general-interest programmes, the balance is financed by the public authorities (various ministries) and the Commission.

It should be noted that the proceeds of the charge finance all the Institute's own research but only a minor part of research carried out with external partners (French and foreign industrialists). In addition, expenditure financed by the charge does not benefit fully the industrialists that co-finance research since the IFP continues to own its share of findings.

Part of the IFP's operating budget (between 32 and 37 %, depending on the year) consists of financial support from external partners in return for transfers of technology (revenue from contracts and licence fees); this is the most sensitive aspect of the financing of the Institute. Such support is broken down as follows:

(% of external financing of research)

	1994	1995
Support from national bodies	15,20	14,00
Financing by French partners	21,90	24,00
Licence fees (France)	12,30	12,00
Subtotal (France)	49,40	50,00
Community support	5,90	4,00
Financing by partners in other countries	24,70	22,00
Licence fees (other countries)	20,00	24,00
Subtotal (other countries)	50,60	50,00
Total	100,00	100,00

The item 'licence fees' would not seem to require further explanation since details are given in the description of the price-fixing mechanism for licences.

By contrast, the item 'financing by partners', whether French or foreign partners, does require further explanation. This term covers both the payment for individualized services (with activities invoiced at the cost price resulting from the accounts) and the invoicing balance for collaborative research.

As regards the latter form of technology transfer, collaborative research entails equal financing by the different partners. When the value of work carried out by the IFP under this programme exceeds its share of financing, the resulting difference is invoiced by the IFP to the partners concerned.

In the above table, the subtotal for France corresponds to revenue from French firms or their subsidiaries abroad, whereas the subtotal for other countries comprises turnover achieved outside France with foreign companies and with the subsidiaries of foreign companies based in France.

As the above table shows, financing from foreign sources is roughly equivalent overall to financing from domestic sources. But a very different picture emerges if the focus is narrowed to relations between the IFP and firms. Turnover achieved in 1994 with French firms amounted to 34,2 % of the total, whereas turnover achieved with foreign firms in the same year amounted to 44,7 % of the total. In 1995 these figures were 36 and 46 % respectively.

Even if revenue from foreign firms or their subsidiaries based in France is added to turnover achieved with French firms, there is no significant change: in 1994, 36,8 % was realized in France or abroad with subsidiaries of French firms, while 42,1 % was realized with foreign firms.

A more detailed analysis of the different revenue categories shows that the major French firms in the oil or automobile industries are important partners for the IFP. In 1994, for example, 24,7 % of turnover was achieved with the major oil companies, the main French car manufacturers and ISIS group companies (ISIS being the holding company which manages the IFP's interests in the petrochemicals, automobile and related industries).

A country which levies a parafiscal charge to finance positive actions generally does so in order to support its own industry and not that industry's competitors abroad. The two leading French companies in the oil and automobile industries are among the IFP's most important customers, but this does not alter the fact that the IFP generates most of its turnover with foreign companies.

The following table shows the IFP's turnover for 1994, broken down by geographical area:

(%)

Foreign industries	Revenue from foreign partners 1994	Fees from abroad 1994	Fees from abroad 1995 (1)
Subsidiaries in France	2,60	—	—
European Union	5,00	3,20	2,15
Other European countries	0,60	0,70	0,72
North and South America	6,20	4,80	12,18
Asia	10,10	11,30	8,95
Africa	0,20	—	—
Australia (2)	—	—	—
Total (3)	24,70	20,00	24,00

(1) A detailed breakdown of revenue from foreign partners is not available.

(2) The IFP also deals with a number of Australian firms, but the total revenue from this source is not large enough to warrant inclusion in the table.

(3) Figures obtained from the previous table.

In the light of the above, it can be concluded that French firms are not the chief benificiaries of the findings of R&D carried out by the IFP and that these findings are available to all firms without discrimination. This situation is in line with what happens on the market, where most companies are active in the same fields and so are interested in the same technologies. There is therefore nothing strange in the IFP's research findings also being disseminated internationally.

This conclusion is borne out when we examine the number of licences granted to French firms (74 out of 1 042 as at 1 January 1995) and the number of exploitation contracts signed in recent years:

	1989	1990	1991	1992	1993	1994
France	24	17	27	n.a.	40	28
Europe-CIS	31	34	28	n.a.	48	26
North and South America	28	23	31	n.a.	32	42
Asia-Australia	43	73	58	n.a.	50	51
Africa	0	2	13	n.a.	7	5
Total	126	149	157	n.a.	177	152

IV

With regard to the other doubts raised as part of the Article 93 (2) procedure, the following facts have been established on the basis of the information available to the Commission:

1. With regard to the direct and/or indirect aid available under IFP programmes for certain firms in which it has holdings, it transpires that the companies of the ISIS group, 57,3 % of which is held by the IFP, 39,1 % by Sogerap (ELF group) and 3,6 % by Banque Nationale de Paris, are treated in exactly the same way as the other firms with which the IFP has dealings.

   It is true that the ISIS-group companies (13 companies in 1994) are important customers for the IFP, with revenue from contracts and licences amounting to 10,3 % of the Institute's total external revenue (2 % from contracts and 8,3 % from licence fees).

   However, the involvement of other shareholders, the fact that ISIS's holdings in companies active in the oil, chemicals and automobile industries are, with three exceptions, all minority holdings, and the fact that the IFP carries out collaborative reseach with the group companies, provides them with individualized services or grants licences to them under the same conditions as for other firms lead to the conclusion that the ISIS group companies do not receive any more aid from the IFP than other firms (bearing in mind that the IFP does not invoice its total costs for certain types of technology transfer, namely collaborative research and licence sales). In addition, the three exceptions where ISIS holds a majority stake are a consultancy firm (100 % of which is controlled by ISIS), a real estate company (70,39 %) and a firm specializing in the manufacture and marketing of measuring instruments (81 %);

2. With regard to the IFP's income from its holdings, the Commission takes the view that it is acceptable under normal market conditions.

   On the basis of the ISIS share price as at 1 January 1986 and 31 December 1994, and on the basis of dividends paid each year by ISIS to the IFP between 1986 and 1994 inclusive, the average annual return on the investment, calculated on the internal rate of return (which measures the discounted value of a series of cash flows equal to the interest rate that would have been earned on the initial investment if income had been regular), amounted to 15 %. This means that, on average over the period in question, the IFP received an annual return of 15 % on its investment, taking account both of dividends paid and of increases in the share price. Even if inflation is assumed to average 3 % for the period in question, the return on the holding is still acceptable;

3. As regards the view that the protocols from the charge represent direct aid that favours the activities of the Institute over those of similar establishments in the rest of the Community, it should be noted that the IFP is not the only research establishment in the Community which is financed in full or in part from public funds.

As point 2.4 of the new Community framework for State aid for research and development [6] states, 'Public financing of R&D activities by public non-profit-making higher-education or research establishments is normally not covered by Article 92 (1) of the EC Treaty'. It should be noted that the IFP is a non-profit-making research institute (its statutes state that it is a non-commercial body ('à caractère non commercial')).

[6] Adopted by the Commission on 20 December 1995 and communicated to the Member States by letter dated 19 January 1996 (OJ No C 45, 17. 2. 1996, p. 5.).

It can hardly be claimed that the IFP carries out activities which are contrary to its statutes. However, it could be argued that, by selling its research findings at market prices, the IFP is acting in a manner incompatible with its statutes.

It could also be argued that a non-profit making establishment could transfer its findings without charge since it is not supposed to make profits. Instead of this, the IFP sells its findings at the market price (although the concept has no meaning in this field since most similar institutes are subsidized and do not therefore have to cover their costs) because the proceeds from the charge are not sufficient to finance all its activities and it needs additional funds.

In view of the fact that, under the new Community framework for State aid for R&D, public financing of non-profit-making research establishments is not covered by Article 92 (1) of the EC Treaty, any aid elements may be detected when findings are transferred to companies. This point was dealt with in Part III.

V

In the light of the above considerations, it has to be noted that, even though the IFP does not always charge the real cost of research to customers, it makes no distinction between the companies to which it transfers the findings of research carried out on its own behalf or on a collaborative basis. It cannot therefore be argued that French companies are the chief beneficiaries of the IFP's work.

It also transpired that the IFP does not give direct or indirect aid to firms and that firms controlled by the ISIS holding company are not accorded more favourable treatment than other companies. The IFP also receives an acceptable return on its holdings with ISIS.

Accordingly, in cases of collaborative research where the cost price is not charged, there is an aid element because resources are transferred from the State to companies which have an interest in availing themselves of the IFP's work rather than in carrying out research themselves. In other types of technology transfer, namely individualized services and licence sales, the transfer is effected on the basis of either the cost price or the market price as determined by the interplay of supply and demand, and so there is no aid element involved.

Point 2.4 of the new Community framework for State aid for research and development [7] states that 'where the results of publicly financed R&D projects ... are made available to Community industry on a non-discriminatory basis, the Commission will assume that State aid within the meaning of Article 92 (1) of the EC Treaty is not normally involved.'

Even in instances where there is an aid element (collaborative research), research findings are available on a non-discriminatory basis to all interested companies irrespective of their nationality and the transfer of such findings does not therefore fall within the scope of Article 92 (1) of the EC Treaty.

Nevertheless, the Commission would be likely to change its assessment if it were to emerge in future that, although the IFP was theoretically open to all companies, French companies were the chief beneficiaries of its activities in practice.

Since it has been established, for the reasons set out above, that the IFP's activities do not involve aid within the meaning of Article 92 (1) of the EC Treaty, it is necessary to ascertain whether financing the Institute by means of a parafiscal charge levied on certain oil products is compatible with the Treaty.

As the Court of Justice ruled in Case 47/69 [8], 'It may be that aid properly so-called ... may ... be acknowledged as permissible but that the disturbance which it creates is increased by a method of financing it which would render the scheme as a whole incompatible with a single market and the common interest.'

Accordingly, in the present case, in so far as it does not involve any aid within the meaning of Article 92 (1) of the EC Treaty, the method of financing cannot be contested, at least with regard to the taxation of imported products. Furthermore, since all interested companies can benefit from positive actions financed from the proceeds of the charge, the fact that non-French companies help to finance those actions is not incompatible with the Treaty.

As regards the exemption of exported products, it should be remembered that this aspect was not examined when the procedure was initiated because France had undertaken not to refund the charge on products intended for export to other Member States or to EEA countries.

Such an exemption would, at least in theory, be an incentive for manufacturers to sell abroad rather than on the domestic market, and this might adversely affect trade within the Community.

[7] See footnote 6.

[8] See footnote 2.

Since, as part of the present procedure, France has renewed its agreement (9) on the principle that products exported to other Member States and to EEA countries should be subject to the charge levied for the benefit of the IFP by no longer refunding the charge in the case of products intended for export to other Member States and to EEA countries, the Commission does not intend to investigate this aspect,

HAS ADOPTED THIS DECISION:

Article 1

The renewal, for the period 1993 to 1997, of the parafiscal charge levied on certain oil products for the benefit of the IFP shall not be caught by Article 92 (1) of the EC Treaty in so far as:

1. the financing of the IFP's research and development (R&D) activities from the proceeds of that parafiscal charge does not constitute aid within the meaning of Article 92 (1) of the EC Treaty;
2. transfers to companies of the findings of R&D carried out by the IFP, either on its own account or on a collaborative basis, do not constitute aid within the meaning of Article 92 (1) of the EC Treaty because such transfers are effected without any discrimination between interested firms from the Member States.

Article 2

In compliance with its undertaking to levy the charge for the benefit of the IFP on oil products intended for export, which it entered into in the letter dated 5 January 1996 from the Office of its Permanent Representative to the European Union, France shall inform the Commission of the measures it has taken to implement the draft Decree amending Decree 93-28 of 8 January 1993 within two months of this Decision being notified.

Article 3

France shall inform the Commission, by submitting an annual report, of the amount of the charge fixed each year and of the use made by the IFP of the proceeds thereof, specifying the different categories of activity undertaken and giving a detailed description of those activities and of the partners with which they are carried out.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 29 May 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

(9) Letter TL/dm No 0016 of 5 January 1996 from the Office of the French Permanent Representative to the European Union.