COMMISSION DECISION

of 12 July 2000

on the State aid 'Measures to improve the indoor environment' which Sweden is planning to implement

(notified under document number C(2000) 2239)

(Only the Swedish text is authentic)

(Text with EEA relevance)

(2000/733/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 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],

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Commission decision of 18 January 2000 [2], by which the Commission initiated proceedings in accordance with Article 88(2) concerning aid C 2/2000,

Having called on interested parties to submit their comments pursuant to those provisions [3] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 19 November 1999, registered on 22 November 1999, Sweden notified the Commission of the proposed aid in favour of private and municipal housing companies and real estate owners.

(2) By letter dated 29 February 2000, the Commission informed Sweden that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [4]. The Commission called on interested parties to submit their comments.

(4) The Commission received comments from the Swedish authorities by letter dated 19 May 2000, registered on 25 May 2000. No other comments were received.

2. DETAILED DESCRIPTION OF THE AID

(5) The notified measure is a modification of an environmental investment aid scheme last approved on 20 July 1999 based on the Community guidelines on State aid for environmental protection [5]. The overall objective of the scheme is to encourage municipalities and enterprises to carry out projects which improve the ecological sustainability of Swedish society. The scheme lasts until 2001 and the number of beneficiaries is between 101 and 500.

(6) The aid is given in the form of grants. Grants can be given for:

— projects carried out by municipalities directly,

— proejcts that a municipality administers through a public procurement procedure, in accordance with the applicable rules,

— projects that support economic activity in general, and

— projects that are carried out by individual enterprises.

(7) In the original scheme, six objectives were defined. Eligible projects should aim at reducing impact on the environment, increasing efficiency when using energy or natural resources, supporting the use of renewable raw materials, increasing recycling, supporting and strengthening biological diversity, encouraging education in environmental matters or, finally, at improving the circulation of plant nutrients.

(8) Eligible projects have to lead to a significant improvement on mandatory environmental standards, and the eligible costs are costs for investments in land, buildings and equipment, which can be expected to bring a significant improvement in the quality of the evironment. They are strictly confined to the extra investment costs necessary to meet environmental objectives. The aid intensity is 30 % gross of the eligible costs. Projects also have to have a likely, positive effect on employment.

(9) The overall budget amounts to SEK 6,8 billion (about EUR 791 million) for the period 1998 to 2001. According to the Swedish authorities about SEK 1 billion remains. The budget will not be increased when the new objective described below is introduced. The grants for indoor environment are expected to amount to about 5 % of the remaining budget, i.e. SEK 50 million (about EUR 6 million).

[1] OJ L 83, 27.3.1999, p. 1.
[2] Letter to Sweden dated 29 February 2000, published in OJ C 110, 15.4.2000, p. 9.
[3] OJ C 110, 15.4.2000, p. 9.
[4] See footnote 3.
[5] OJ C 72, 10.3.1994, p. 3.

2.1. **The modification subject to the procedure under Article 88(2)EC**

(10) The Swedish authorities propose to add a seventh objective to the scheme. It wants to give grants to individuals, to municipalities directly and to municipal and private housing companies and real estate owners, which undertake renovation of buildings with a view to reducing the presence of allergenic substances or other substances or materials which constitute health hazards. The objective is to prevent diseases caused by the poor quality of the indoor environement. Buildings may be damaging to the health of their occupiers if they for example contain radon, have insufficient ventilation or are humid.

(11) A grant will only be given on condition that the renovation project on its own, or in combination with other measures, also contributes to achieving at least one of the original six environmental objectives. The project must also be likely to have a positive effect on employment. As for the rest of the scheme, the eligible costs are strictly confined to the extra investment costs necessary to meet the environmental objectives, and the aid intensity is 30 % gross of the eligible cost.

(12) Examples of measures for which grants may be given under the new objective:

— conversion of insufficient ventilation systems, e.g. in housing,

— elimination of humidity and mould in buildings,

— elimination of excessive radon in buildings (grants already available for private housing).

(13) Examples of how a measure carried out under the new objective at the same time can fulfil one of the environmental objectives already covered by the scheme:

— when converting a ventilation system the presence of hazardous substances can be reduced at the same time as the energy efficiency is increased,

— when eliminating damage caused by humidity and mould, building materials and working methods can be chosen in a way which fosters the use of renewable materials or increases recycling and reutilisation.

(14) Grants under this objective may not cover the following:

— costs for construction of new buildings,

— current operating expenses or routine maintenance measures, such as cleaning of air ducts,

— conversions that do not have health or environmental effects, such as changing the plan of the building,

— measures carried out due to requirements in laws or regulations.

(15) The Commission had doubts as to the compatibility with the EC Treaty of the notified measure for the following reasons:

— investments improving the evironment within buildings are not specifically mentioned in the Community guidelines on State aid for environmental protection. The guidelines are based on 'the polluter pays' principle, and are aimed at the effects of production processes on the external environment. This is demonstrated by the examples of eligible kinds of investments mentioned in point 1.5.1 of the guidelines, namely reduction of emissions, waste disposal and recycling,

— grants to housing companies and real estate owners with a view to financing renovation work may constitue operating aid, rather than investment aid. Operating aid is aid that relieves companies of typical general operating costs that they would normally have to bear in order to carry out their activity ([6]), In this case it may be considered part of the activities of housing companies and other real estate owners to keep their buildings in a condition in which they do not constitute health hazards.

3. **COMMENTS FROM SWEDEN**

3.1. **The environmental guidelines**

(16) The Swedish authorities agree that indoor environment is not specifically mentioned in the environmental guidelines. They also admit the guidelines were introduced for a transitonal period — until the polluter pays principle has been fully implemented — in order to enable Member States to give environmental investment aid. However, the fact that the guidelines do not explicitly mention indoor environment must not be interpreted as meaning that aid for that purpose is excluded. They point out that the polluter pays principle does not include personal injuries, which are covered by the principles of compensation for damages. However, the environmental protection covered by the guidelines aims at reducing the release of substances which are damaging to human health. The notified measure has the same objective, namely to protect human health by reducing the presence of allergenic and other hazardous substances in indoor environments.

3.2. **Operating aid or investment aid**

(17) For some hazardous substances, such as radon, there are mandatory standards, which means that aid may only be granted for investments leading to concentrations below the mandatory standards. For other substances, such as mould and other organic emissions, there are no clear standards. Therefore, in these cases the owner of the building is not under an obligation to remedy the problem. In spite of this, high concentrations of such substances are a problem for people with asthma or allergies.

([6]) Case C-278/95 P Siemens SA v Commission of the European Communities [1997] ECR I-2507.

(18) The grants would constitute operating aid if they were granted for routine maintenance and for measures which owners are under a legal obligation to carry out. No aid may be granted for routine maintenance. As aid may only be granted for measures for which there are no mandatory standards, or which go beyond mandatory standards, it is not a question of operating aid.

3.3. **Public health**

(19) A good and sanitary indoor environment is important for preventing disease and other illnesses related to the environment. Allergies, asthma and other respiratory problems are on the increase. It is clear that the indoor environment affects people with asthma or allergies and hypersensitive people, and there is an ongoing debate about whether deficient indoor environments could be one of the possible causes of the increase in allergies. There are certain indications that it is particularly important that the indoor environments for children, i. e. houses, schools and kindergartens, are of good quality. Indoor pollution like radon and smoke also lead to cancer. Good ventilation reduces the exposure to those carcinogens. Against this background, investments in improved ventilation mainly in houses, schools and kindergartens are important to public health.

4. **ASSESSMENT OF THE AID**

4.1. **Applicability of Article 87(1) of the EC Treaty**

(20) In so far as grants under the new objective are granted for projects carried out directly by municipalities, or given directly by municipalties, or given directly to individuals, without any connection to any economic activity, they are not covered by Article 87(1) of the EC Treaty. Grants given to housing companies and real estate owners in order to carry out renovation projects fall within the scope of Article 87(1) of the EC Treaty, as they constitute an economic advantage for recipients which can affect trade between Member States.

4.2. **Compatibility of the aid under Article 87(3)(c) of the EC Treaty**

(21) The Commission maintains that the Community guidelines on State aid for environmental protection cannot be applied to aid aimed at the indoor environment. It nevertheless concludes that the notified investment aid can be approved on the basis of Article 87(3)(c) of the EC Treaty, given its contribution to public health, the protection of workers' health and safety and environmental policy, which are Community objectives of common interest (see Articles 137, 152 and 174 of the EC Treaty).

4.2.1. *Applicability of the environmental guidelines*

(22) The Commission had doubts as to whether the scope of the Community guidelines on State aid for environmental protection [7] was limited to the external environment, or whether they could form the basis of an approval, under Article 87(3)(c) of the EC Treaty, of aid to improve the indoor environment.

(23) The Swedish authorities in their comments recognise that the environmental guidelines were introduced in order to allow Member States to give aid for environmental protection during a transitional period until the polluter pays principle has been fully implemented. However, they argue that the ultimate objective of the guidelines is the same as the objective of the aid in question, namely to protect human health.

(24) After having examined the aid and having taken its justification as presented by the Swedish authorities into account, the Commission has come to the conclusion that the main objective of the aid is to improve public health directly, without first improving the external environment. The Community guidelines on State aid for environmental protection are therefore not applicable.

4.2.2. *Operating aid for investment aid*

(25) The Commission questioned whether grants to housing companies and real estate owners with a view to financing renovation work did not constitute operating aid, rather than investment aid as claimed in the notification.

(26) The Swedish authorities claim that the aid is to be seen as investment aid, since the investments are carried out in the absence of mandatory environmental standards or in order to go beyond such standards. Aid for investments aimed at attaining mandatory standards would be operating aid. This method for distinguishing between the two forms of aid is not accepted by the Commission. Under the current environmental guidelines, it is possible to give investment aid to help firms adapt to new mandatory standards under certain circumstances.

(27) According to the definition established by the Court of Justice [8], operating aid is aid that relieves companies of typical general operating costs that they would normally have to bear in order to carry out their activity, such as salary and financial payments that are made on a continuous basis. Although the owners of the buildings are obliged to keep them in a safe state in order to be allowed to continue their activity, the aid is granted for one-off investments. The Commission therefore concludes that it does not constitute operating aid.

[7] See footnote 5.
[8] Case C-278/95 P Siemens SA v Commission of the European Communities [1997] ECR I-2507.

4.2.3. *Other relevant provisions of the EC Treaty*

Article 137

(28) This Article provides that the Community shall support and complement the activities of the Member States with regard to improving the working environment to protect workers' health and safety. It may be of relevance in this case in so far as investment aid is granted for the buildings of enterprises that constitute work places. According to the notification, aid may only be granted for renovation works that have a health as well as an environmental effect and companies are only eligible for aid if their projects bring a significant improvement.

Article 152

(29) Article 152 states that Community action shall complement national policies and that it should be directed towards improving human health, preventing human illness and diseases and obviating sources of danger to human health. In the Commission's 1993 Communication on the framework for action in the field of public health ([9]), eight action programmes were adopted. Pollution-related diseases were identified as a priority area for Community action. Diseases arising from environmental changes and workplace environments were mentioned among the challenges facing the Member States in the field of public health. A number of health problems are being produced by changes in the environment resulting from economic and technological developments. The increased levels of respiratory illnesses and certain forms of cancer can for example be linked to such changes.

(30) On 8 June 1999 and 18 November 1999 the Council adopted Resolutions in the field of public health ([10]), in which environmental determinants of health were mentioned as one of the key health challenges faced by the Member States, and which urged Member States to take the health impact into account in the coordination of their own policies.

(31) On 29 April 1999 the European Parliament and the Council aodpted Decision No 1296/1999/EC adopting a programme for Community action on pollution-related diseases in the context of the framework for action in the field of public health (1999 to 2001) ([11]). The general objective of the programme is to act against diseases which are caused, triggered or aggravated by environmental pollution. In the sixth recital it is stated that the prevention of pollution-related diseases has to include measures aimed at the sources and concentrations of pollutants and at limiting exposure.

([9]) COM(93) 559 final.

([10]) Council Resolution of 8 June 1999 on the future Community action in the field of public health, OJ C 200, 15.7.1999, p. 1. Council Resolution of 18 November 1999 on ensuring health protection in all Community policies and activities, OJ C 86, 24.3.2000, p. 3.

([11]) OJ L 155, 22.6.1999, p. 7.

(32) On 16 May 2000 the Commission adopted a Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the health strategy of the European Community, and a proposal for a Decision of the European Parliament and of the Council adopting a programme Community action in the field of public health (2001 to 2006) ([12]). The programme will help to improve the health status of the population and reduce premature deaths in the EU by tackling the underlying causes of ill health, through effective health promotion and disease prevention measures. The importance of the link between public health and the environment was underlined.

(33) The implementation of Article 152 shows that the prevention of disease, and in particular disease related to pollution, whether external or internal, is a Community priority. In this case it is national environmental policy which is contributing to the protection of human health, in line with the subsidiarity principle and with the Council Resolution of 18 November 1999.

Article 174

(34) Article 174 provides that Community policy on the environment shall contribute to protecting human health.

5. **CONCLUSIONS**

(35) The measure will promote the development of public health in line with the Community policy in this field. Given, in addition, the very low budget of the scheme, and the eligible costs and the aid intensity of the grant are the same as those of the already approved measures of the scheme, it can be concluded that the aid will facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest. The Commission therefore closes the formal investigation procedure with a positive decision based on Article 87(3)(c) EC,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Sweden is planning to implement for the improvement of the indoor environment in buildings, based on 'Förordning om ändring i förordningen (1998:23) om statliga bidrag till lokala investeringsprogram som ökar den ekologiska hållbarheten i samhället' is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Implementation of the aid is accordingly authorised.

([12]) COM(2000)285 final.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 12 July 2000.

For the Commission
Mario MONTI
Member of the Commission