# COMMISSION DECISION

## of 23 July 1984

## on the North Rhine-Westphalia regional economic development programme

**(Only the German text is authentic)**

(85/12/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments in accordance with the above provision, and having regard to those comments,

Whereas :

I

By note verbale of 22 July 1982 the Government of the Federal Republic of Germany notified the Commission, in accordance with Article 93 (3) of the Treaty, of amendments to its guidelines for the award of investment aid to improve the regional economic structure of the Land North Rhine-Westphalia (regional economic development programme).

The main amendments to the previous guidelines, dating from 1978 and 1980, are changes to the regional-assisted areas in North Rhine-Westphalia. These changes were carried out at the same time as a review of assisted areas under the joint Federal Government/Länder regional-aid programme (the 'Joint Task for the improvement of regional economic structures') and employed partly the same methodology as the joint review.

Thus, the Land used the labour market region map which was drawn for the 1979 joint programme review on the basis of local commuting patterns and which identifies 179 such regions countrywide, whose boundaries are drawn to local government boundary level. In the joint programme review, to determine which of the 179 regions should be assisted, the situation of each region was assessed according to five criteria : a measure of future supply and demand for labour, the average rate of unemployment over the period 1976 to 1980, average wages and salaries per employee in 1978, gross domestic product per head of resident population in 1978, and finally a measure of infrastructure provision. The figures for each variable were combined into a composite indicator, in which the employment and income indicators each received weights of 40 % and the infrastructure indicator 20 %. The 179 regions were then ranked in ascending order of composite indicator values. Those with values under 459 (73 regions in all) were designated assisted areas for the purposes of the joint programme.

For its review, North Rhine-Westphalia used the same composite indicators but set the cut-off point differently, allowing any region to qualify which had a composite indicator value of at least seven percentage points below the national average. This meant that regions up to position 87 in the national ranking table could qualify for inclusion in the Land scheme, and Aachen (position 82) and Borken-Bocholt (position 87) in fact did so. Six previously assisted labour market regions and three further localities were removed from the Land programme by the method.

In addition to the labour market regions qualifying according to the above method, the Land also designated as assisted areas until the end of 1985 the regions Gelsenkirchen, Hagen, Siegen and the Lengerich area of the labour market region Osnabrück on the ground that they were suffering under the effects of structural change caused by the crisis in the steel industry. Lengerich was also included because the central part of the region, Osnabrück-Georgsmarienhütte, was assisted under the joint programme steel areas aid scheme (approved by the Commission) and it was thought that assistance only to the central part would disadvantage the peripheral part of the region around Lengerich.

Of the six designated areas, Aachen and Hagen had not been assisted areas before under the Land scheme. In Borken-Bocholt, Osnabrück-Lengerich and Siegen the aid ceiling was raised by 2,5 percentage points, while in Gelsenkirchen the scheme continued unchanged.

These six regions hold approximately 3,1 % of the population of the country as a whole and 10,5 % of that of the Land. The areas of North Rhine-Westphalia assisted under the joint Federal Government/Länder programme (including the steel areas scheme), which are not subject to this procedure, hold a further 8,8 % of the national and 29,7 % of the Land population.

The six areas destined to lose their assisted status under the new Land programme were given a transitional period until the end of 1983 before being finally removed from the programme. On grounds of equity, the labour market region Gummersbach, which had been removed from the joint programme without a transitional period in the spring of 1981, was also brought within the Land programme until the end of 1983 with an aid ceiling of 7,5 % (5,62 % net grant equivalent).

The Land programme assists setting-up and extension investments. Investments arising from the takeover of businesses under threat of closure or already closed can be assisted up to the same aid ceilings as for setting-up investments in proportion to the number of the previous workforce that is kept on. The aid ceiling for setting-up projects is 10 % (7,49 % net grant equivalent) in Growth Points and 7,5 % (5,62 % net grant equivalent) in other areas. That for extension projects is 7,5 %.

II

To assess the compatibility of the new North Rhine-Westphalia regional economic development programme with the common market under Article 92 of the Treaty, the Commission first saw how the situation in the proposed assisted areas compared in a Community context and then considered whether there were serious regional disparities at national level which might justify the aid. In the areas which the Land believed to be suffering under the effects of structural change caused by the crisis in the steel industry, the Commission also considered the impact which planned steel redundancies would have on the labour market, assuming that the redundancies would be immediately and fully reflected in the unemployment figures.

On completing its scrutiny the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty with regard to the inclusion of the labour market regions Borken-Bocholt and Siegen and the temporary inclusion until the end of 1983 of the labour market region Gummersbach. On 17 December 1982 the Commission accordingly sent written notice to the Federal Government asking it to submit its comments.

The Federal Government submitted its comments in agreement with the North Rhine-Westphalia Government on 21 February and 10 May 1983. Its view was that under EEC law North Rhine-Westphalia was entitled to determine the coverage of its regional aid programme according to its chosen method. However, even if the Commission's procedure of scrutinizing area's indicator values were accepted, the Commission should not apply the same criterion for them as for the assisted areas under the joint Federal Government/ Länder programme. Since the aid ceilings under the additional Land programme were much lower than under the joint programme, the cut-off points for aid in terms of the various indicators should also be much lower for the Land programme.

On the specific areas against whose inclusion the Commission had opened the Article 93 (2) procedure, the Federal Government had the following comments.

Borken-Bocholt was one of the most depressed labour market regions in North Rhine-Westphalia with a GDP 17 % below the national average. It had a very high proportion of its jobs (in 1981 35,4 % of all industrial employment) in the textile and clothing industry, which was undergoing major structural change. There had been a significant rise in unemployment since 1981, with 980 jobs lost through bankruptcies alone in 1981/82. It was feared that this adverse trend would continue in 1983.

The labour market region Siegen had in December 1982 11 600 people employed in the steel industry. On the Commission's assumption that 150 000 jobs needed to be shed in the European steel industry between 1983 and 1986, the steel industry workforce in Siegen would have to be cut by 20 % or 2 300 jobs. A further 1 600 jobs were likely to disappear in industries dependent on the steel industry. There had been net outward migration from the area in recent years except 1980. Unemployment had risen considerably and had been above the national average since December 1981.

The labour market region Gummersbach had been in the Land programme from 1972 to 1977. In 1978 it had been brought within the joint programme because of a sharp deterioration in its structural economic indicators. The Federal Government still took the view that assistance to a region should not be ended abruptly but should be phased out over a period. There were a number of joint programme areas which were in a better economic and social situation than Gummersbach where the Commission had allowed a transitional period. The transitional arrangements for Gummersbach were therefore justified on grounds of equity. In addition, in the southern part of the region there had been a marked deterioration in the employment situation.

III

The aid proposed under the North Rhine-Westphalia regional economic development programme distorts or threatens to distort competition within the meaning of Article 92 (1) of the Treaty by favouring certain undertakings or production of certain goods and is likely to affect trade between Member States.

Article 92 (1) provides that aid having these features is in principle incompatible with the common market. The exceptions which are provided for in Article 92 (3) (a) and (c) and which are the only ones potentially applicable in a regional aid case require that the aid should serve certain objectives in the Community interest rather than simply serving the interests of the aid recipient. These exceptions must be construed narrowly when any regional or industry aid scheme or any individual award under a general aid scheme is scrutinized.

In particular, they may be applied only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour which would serve one of the said objectives.

To apply the exceptions to aid not serving such an objective would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

In applying the principles set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems which are serious enough, on a Community-wide comparison, to warrant the grant of aid at the level proposed, such that the aid is necessary to ensure attainment of the objectives set out in Article 92 (3) (a) or (c). Where this cannot be demonstrated, it is evident that the aid does not serve the objectives specified in the exception clauses, but does little more than further the private interests of the recipient.

The First Resolution on general regional aid schemes adopted by the Representatives of the Governments of the Member States meeting within the Council on 20 October 1971 following a communication from the Commission [1] recognized that regional aid, when it is adequate and judiciously applied, forms one of the essential instruments of regional development and enables the Member States to follow regional policies aimed at a more balanced growth of the various regions of the same country and of the Community.

Therefore, when assessing the compatibility of regional aid with Article 92 (3) (a) and (c) under the current Principles of Coordination of regional aid schemes, which are intended to reduce the danger of competitive bidding-up and escalation of aid levels, the Commission must take account both of the social and economic situation in the regions concerned in comparison with the rest of the Community and of any serious disparities existing between regions of the same country.

In its 1980 scrutiny of the North Rhine-Westphalia regional economic development programme the Commission decided that the situation in the Land by comparison with the rest of the Community was such that only the exception provided for in Article 92 (3) (c) was potentially applicable. As the situation had not changed in the meantime, in its scrutiny of the new programme the Commission was still only able to consider application of Article 92 (3) (c).

To determine whether application of this exception to the new programme was justified, the Commission applied the principles outlined above after seeing how the areas stood in a Community context by comparing GDP and unemployment in the designated areas with the Community averages, the Commission then examined whether there were any disparities between the areas and other areas in the country which might warrant the grant of regional aid. For this purpose it took a series of indicators covering, in particular, income and the level of economic activity, unemployment, labour supply, migration and infrastructure provision.

The Commission also investigated whether the aid to the areas could be said to be compatible with the common market on account of special structural problems, such as a one-sided industrial structure or restructuring in the steel industry.

The Commission has reached the conclusion that the inclusion of the labour market regions Aachen, Gelsenkirchen, Hagen and the Lengerich area of the labour market region Osnabrück within the regional-aid programme can be considered to be compatible with the common market. The inclusion of Aachen and Gelsenkirchen in the programme can be accepted chiefly in view of the high structural unemployment

[1] OJ No C 111, 4. 11. 1971, p. 1.

in the areas and that of Hagen because of the impact of steel redundancies on the local labour market. Osnabrück-Lengerich's inclusion is considered justified since Lengerich forms an economic unit with part of the same labour market region that already has assisted area status.

On the other hand, the Commission considers that the inclusion of the labour market regions Borken-Bocholt and Siegen within the programme is incompatible with the common market. Here the further arguments advanced by the Federal Government did not give the Commission sufficient ground to revise the view it had taken when opening the Article 93 (2) procedure. The Commission would reply to these arguments as follows :

Borken-Bocholt cannot be said to have a one-sided industrial structure since while the textile and clothing industry is very important there, in 1983 it accounted for under one-third of manufacturing and mining employment. The figures supplied by the Federal Government show that a substantial proportion of industrial employment in the region is provided by industries other than textiles and clothing. The combined workforces of the steel, machine tool and vehicle construction industries and the electrical and instrument engineering and metal goods industries exceed that of the textile and clothing industry. The decline in employment in textiles and clothing averaged 3,7 % a year between 1979 and 1983, but was only 2 % between September 1982 and September 1983, which was less than the Community average for the industry (2,4 %). In textiles there was actually an increase in employment between 1982 and 1983. Over this period the rise in unemployment overall levelled off and was less than the national average.

In the labour market region Siegen the unemployment rate, both over the longer-term (1979 to 1983) and in 1983, has been running only slightly above the national average. With regard to steel redundancies the Commission accepted the Federal Government's assumption that capacity reductions would lead to the loss of 20 % of the current jobs in the industry and also assumed that the redundancies would show up immediately and in full in the unemployment total in 1983 and that the situation would not improve in subsequent years. Even on this worst assumption, however, the Commission found that unemployment in Siegen would still be less than 30 % above the national average. Even bearing in mind the recent pattern of net outward migration, this situation does not justify application of an exception from the principle in Article 92 (1) of the incompatibility of State aid with the common market.

Where State aid is found to be incompatible with the common market, a time limit must be set for its abolition. This time limit is set at 30 June 1985. Until that date applications for aid to investment projects in Borken-Bocholt and Siegen may be entertained under the rules in force before 1 January 1982.

In opening the Article 93 (2) procedure, the Commission had no objection to the granting of a transitional period until the end of 1983 for the areas removed from the programme. Regarding Gummersbach, the Federal Government stated that before its temporary inclusion in the joint programme the labour market region had been in the Land programme and had been included in the joint programme because its economic and social situation was worse than that in the other Land programme areas. The Commission had not objected to its inclusion in the joint programme. Since the proposed transitional period will merely place the area in the position it would have had if it had not been upgraded to a joint programme area, the Commission has decided to approve the transitional period which will allow Gummersbach, to remain in the Land programme until the end of 1983.

To enable the Commission to keep the North Rhine-Westphalia regional-aid programme under review as required by Article 93 (1) of the Treaty, the Federal Government should be required to submit to it an annual report on the operation of the programme showing, in particular, the total amount of aid granted, the total amount of the aided investment and the number of awards made.

In view of the reliance the Commission has placed on redundancy forecasts in the areas assisted because of their local steel industry, the reports on the labour market regions Hagen and Osnabrück, in addition to details of aid, should also state for each region the net job losses in the steel industry and the number of jobs created in other industries during the past year and give the latest estimates of further redundancies in the steel industry. The Commission reserves the right to examine individual awards.

This Decision is without prejudice to present or future rules on aid to particular industries,

HAS ADOPTED THIS DECISION :

*Article 1*

The aid which the Land North Rhine-Westphalia proposes to grant, under the guidelines for the award of investment aid for the improvement of regional economic structures of the Land North Rhine-Westphalia (regional economic development programme), as amended by the circular from the Minister for Economic Affairs, Small Business and Transport of 10 June 1982, towards investment undertaken by firms falling within sections 4.11 to 4.13 of the guidelines in the labour market regions Borken-Bocholt and Siegen is incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Such aid may not be granted after 30 June 1985.

*Article 2*

The aid which the Land North Rhine-Westphalia proposes to grant under its regional economic development programme towards investment undertaken by firms falling within sections 4.11 to 4.13 of the guidelines in the labour market regions Aachen, Hagen, Gelsenkirchen, and the Lengerich area of the labour market region Osnabrück and during a transitional period in the labour market region Gummersbach is considered to be compatible with the common market within the meaning of Article 92 (3) of the EEC Treaty.

*Article 3*

The Federal Republic of Germany shall supply the Commission before the end of June each year with a report stating the amount of regional aid granted, the amount of aided investment and the number of awards, broken down by labour market region and by industry according to the two-digit subdivisions of the General Classification of Economic Activities within the European Communities. For the labour market regions Hagen and Osnabrück the report shall also state the net number of jobs lost in the steel industry and the number of jobs created in other industries during the past year and the latest forecasts of further job losses in the steel industry in each region.

In addition, the Federal Republic of Germany shall provide the Commission, on request, with any information it may require to examine individual awards.

*Article 4*

The granting of aid pursuant to this Decision shall be without prejudice to compliance with present or future rules on aid to particular industries.

*Article 5*

The Federal Republic of Germany shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply therewith.

*Article 6*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 23 July 1984.

*For the Commission*

Étienne DAVIGNON

*Vice-President*