II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 February 1986

on the compatibility with the common market of aid under the German Federal/Land Government Joint Regional Aid Programme (Joint Programme for the improvement of regional economic structures) in six labour market regions

(Only the German text is authentic)

(87/15/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, and having regard to those comments :

Whereas :

I

(1) The Federal/Land Government Joint Regional Aid Programme (Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur' — 'Joint Programme for the improvement of regional economic structures'), introduced by law on 6 October 1969 [1], is financed on a 50-50 basis by the federal and Land governments. Section 1 (2) of the law provides that aid under the Joint Programme is to be available in the Zonal Border Area and in areas where :

— the level of economic activity is (or is expected to fall) substantially below the national average, or

— there is a preponderance of industries undergoing, or threatened with, structural change, which is having or is likely to have substantial adverse effects in the area.

Section 4 of the 1969 Act provides that a General Plan for the Joint Programme should be drawn up and annually reviewed and updated. In practice, a new amended General Plan is adopted each year.

Part II, paragraph 1.2, of the Thirteenth General Plan — and of the Fourteenth Plan, now also under examination by the Commission [2] — declares as eligible for aid under the Joint Programme 'industrial investment that is particularly deserving of support from an economic point of view'.

This criterion is defined in paragraph 1.2.1 as follows :

'Industrial investment shall be regarded as particularly deserving of support from an economic point of view if it is likely directly, and in the long run not unsubsantially, to increase total income in the relevant economic region by creating additional sources of income (primary effect). This can be presumed to be the case where the business receiving the assistance produces goods or provides services predominantly of types that are regularly traded across regional boundaries.'

[1] Bundesgesetzblatt I 1861 ; last amended by law on 23 December 1971 (BGBL. I, p. 2140).

[2] Bundestag papers 10/1279 of 11 April 1984 and 10/3562 of 25 June 1985.

Under paragraph 2.3.2 of the General Plans, aid is payable in the form of automatic and discretionary capital grants (Investitionszulage [1]) and Investitionszuschuß, respectively), the latter of which is often taken as a tax allowance. Discretionary grants are available on top of the automatic grants up to a total aid ceiling which varies with the area.

The aid is concentrated in localities designated as 'Growth Points' within the wider assisted areas. Outside the Zonal Border Area, the aid ceiling for setting-up and extension investment in Category B Growth Points is 20 % (16,7 % net grant equivalent) and 15 % (13 % net grant equivalent) in Category C Growth Points. Outside Growth Points, setting-up or extension investment projects are aided only in exceptional cases, and the aid ceiling is generally 10 % (9,3 % net grant equivalent), although 15 % is possible for projects with a 'high structural effect'. A general ceiling of 10 % applies for reorganization and basic rationalization investment.

In specially designated tourist areas outside the Zonal Border Area, the General Plan also provides for aid up to a 15 % ceiling for investment connected with the setting-up, extension, reorganization and basic rationalization of enterprises in the tourist trade.

(2) This Decision concerns aid under the Joint Programme in the six labour market regions Alfeld, Holzminden-Höxter, Kleve-Emmerich, Landsberg, Miesbach and Itzehoe. Except in Kleve-Emmerich and Miesbach, the aid ceiling in these labour market regions is 15 %. In Kleve-Emmerich it is 20 %. Miesbach has no Growth Points, so that the aid ceiling is normally 10 %. The events leading up to this Decision were as follows.

For the Tenth General Plan (1981) the Joint Programme's area coverage was completely reviewed. The country was divided on the basis of a survey of travel-to-work patterns in 1979 into 179 labour market regions, with boundaries drawn to local authority boundary level. 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 'labour supply coefficient'), the average rate of unemployment over the period 1976 to 1980, average earnings per employee in 1978, *per capita* gross domestic product in 1978, and finally a measure of infrastructure provision. The figures for these variables were combined into an employment indicator, an income indicator and an infrastructure indicator, and these were further combined into a composite indicator in which the employment and income indicators each received weights of 40 % and the infrastructure indicator received 20 %. The 179 regions were then ranked in ascending order of composite indicator values. Those with values less than a certain cut-off point (73 regions in all) were designated Joint Programme assisted areas. The 73 designated areas, including the Zonal Border Area, contained 29,77 % of the country's population.

By letter dated 6 November 1981, the Commission opened the procedure of Article 93 (2) of the EEC Treaty in respect of the grant of regional aid in 15 of the 73 designated labour market regions, including Itzehoe, Alfeld, Kleve-Emmerich, Holzminden-Höxter, Landsberg am Lech and Miesbach. Its objections were based on the relatively good economic and social situation in the areas compared with the rest of Germany and other parts of the Community.

In 1983 the Federal Government offered to remove seven labour market regions [2] from the Programme after a transitional period lasting until 31 December 1984. The Commission, in turn, withdrew its objections to the inclusion of four other areas.

Regarding the status of the six labour market regions referred to above, by letter of 20 June 1983 the Commission agreed to their remaining within the programme for the time being and announced that it would take a final decision on the compatibility with the common market of aid in the six regions before the end of 1984.

The Federal Government replied to the Commission's letter of 20 June 1983 with a letter, dated 29 July 1983 [3], from the Federal Economics Minister to the competent Member of the Commission, in which it reiterated its standpoint in detail. The letter stated, *inter alia*:

'The Planning Committee (for Regional Economic Structures) has now amended the Twelfth General Plan in line with its resolution of 16 March 1983. It notes, however, that the Commission has said its approval is on the understanding that the retention of the six other labour market regions is for the time being only.'

[1] Section 1 of the Investitionszulagengesetz, as amended on 4 June 1982 (BGBL. I, p. 648).

[2] Including two (Wasserburg and Düren) not among the 15 in respect of which the Article 93 (2) procedure had been opened.

[3] Published together with the Twelfth General Plan, p. 152.

After the Federal Government had incorporated the agreed amendments into the Twelfth General Plan, the Commission closed the procedures against the Tenth and Eleventh Plans and authorized the introduction of the Twelfth Plan. It informed the Federal Government of this by letter dated 18 November 1983.

(3) To prepare the ground for its final decision on the compatibility of regional aid in the six labour market regions with the common market, the Commission asked the Federal Government, on 1 August 1984, for information on the economic and social situation in these regions. By letter dated 14 November 1984, the Federal Economics Minister announced that a review of the Joint Programme's area coverage was planned and that the new assisted-area map would apply from 1 January 1986. Pending this review, and in view of the current lack of reliable, up-to-date figures, the Minister asked the Commission to defer its final decision until 1 January 1986. He made no reference to the information which the Commission had requested in August.

The Commission decided to go ahead with its examination of the six labour market regions on the basis of the data that were available. It first compared *per capita* GDP in the regions in 1978, and their average unemployment rate over the five-year period 1979 to 1983, with Commuity averages. It also compared the regions' *per capita* GDP in 1978 with that of the six most developed Member States. After this comparison of the regions' positions with the situation elsewhere in the Community, the Commission examined whether they showed serious disparities with other parts of Germany, which might justify it in regarding aid to the regions as compatible with the common market. For this purpose it also looked at the change in GDP between 1978 and 1980, average pay levels in the regions in 1978, changes in their levels of unemployment as seen from the average unemployment rates for each of the years 1979 to 1983 and in September 1984, an estimate of the surplus labour supply in the regions in 1985, available statistics on migration to and from the relevant rural districts, and other evidence of regional problems in the areas.

Having completed its scrutiny, the Commission concluded that there were objections to the continuation of aid in the labour market regions Kleve-Emmerich, Landsberg and Miesbach, but saw no such objections to the continuation of aid in the labour market regions Alfeld, Holzminden-Höxter and Itzehoe.

It therefore opened the Article 93 (2) procedure against aid in the former three labour market regions and duly gave notice to the Federal Government by letter dated 7 February 1985, and to the Governments of the other Member States by letters dated 7 June 1985, to submit their observations. A notice to other interested parties was also published in the *Official Journal of the European Communities* [1], in accordance with Article 93 (2).

II

The Federal Government submitted its observations in a memorandum dated 15 May 1985.

It pointed out that its consent to the compromise reached in 1983 did not imply acceptance of the scrutiny method and criteria used by the Commission. In this connection, it referred to the Planning Committee's resolution of 16 March 1983 and the Federal Economics Minister's reply of 29 July 1983 to the Commission's letter of 20 June 1983, both of which had rejected the Commission's approach. Furthermore, the removal of seven labour market regions from the Joint Programme had been on the express understanding that such removal had 'to be effected in accordance with the standard country-wide designation criteria for Joint Programme assisted areas adopted by a large majority of the Planning Committee in 1981'. The Commission had effectively accepted this condition when it approved the Twelfth General Plan and closed the scrutiny procedures pending against the earlier Plans.

In reopening the procedure, the Commission was acting in disregard of this principle. Its action was all the more puzzling to the Federal Government in that it had been informed by the Federal Economics Minister in his letter of 14 November 1984 that the Joint Programme's area coverage was to be reviewed with effect from 1 January 1986. The assisted status of individual labour market regions could only be properly reviewed with up-to-date figures and with due regard to the relative positions of all 179 labour market regions in the country. The essential basis for Articles 92 and 93, an overall picture of the competitive situation, was lacking when it was attempted to review the status of individual regions in isolation and out of context. Such an approach also denied the Member States' responsibilities for regional policy, enshrined in Article 104 of the EEC Treaty. The Federal Government did notbelieve that Articles 92 *et seq.* allowed the Commission in its control of State aid to replace the method of designating assisted areas that had been duly adopted by the appropriate national authorities by another

[1] OJ No C 166, 5. 7. 1985, p. 6.

method. Nor was it clear what basis the Commission had for deciding that the cut-off point should be at position 58 on the 1981 model A ranking table.

The Federal Government also submitted that the Commission took insufficient account of the need to reduce disparities between regions of one country, especially as the EEC Treaty left the Member States considerable freedom to designate assisted areas. Under the Treaty, the Federal Governement was entitled to designate the areas listed inthe General Plan on the basis of a composite indicator and a chosen cut-off point for that indicator.

Whereas the German system combined five equally wieighted criteria into a composite indicator, the Commission used a system which relied heavily on two indicators and Community indices calculated for them.

This method was open to serious objections :

— the comparability of the statistics gathered in different Member States was highly doubtful,

— unlike the sophisticated German designation method, the Commission's method was based on two rather crude criteria,

— Community averages were not a suitable yardstick for national regional policy, i.e. for the reduction of national development disparities,

— a sharp cutback in regional aid in Germany while trade-distorting subsidies were continuing in the other Member States could not, in the long run, be conducive to the coordination the Commission was seeking in the regional policy field.

On the three labour market regions whose inclusion in the Joint Programme the Commission had challenged, the Federal Governent had the following to say :

The level of economic activity in the labour market region Kleve-Emmerich, as measured by *per capita* gross value added at factor cost (= *per capita* gross domestic product at factor cost), had fallen by 2 % between 1978 and 1982. A similar fall in average pay levels had taken place over the period 1978 to 1984. Unemployment had risen faster than average since 1984, and stood at 28 % above the national average in February 1985. There were shortly to be another 500 redundancies in Kleve district and a further 850 jobs were in acute danger. The number of industrial jobs per 1 000 residents was only 58 % of the average for the Land North Rhine-Westphalia. In addition to the likelihood of further job losses, the pressure on the labour market from the supply side was also sharply increasing because of demographic factors. The rate of net inward migration has slackened ; in 1982 the region had indeed lost population.

In the labour market region Landsberg, employment problems were evidenced mainly by a low participation rate, a high proportion of residents who travelled to work outside the area and seasonal increases in unemployment. *Per capita* gross value added had still been 13 % below the national average in 1982, and the number of jobs in mining and manufacturing in 1983 had been only 68,6 % of the average for Bavaria. The region had cut, but not eliminated, the gap between it and the rest of the State. Further job losses were likely in some local industries. The hitherto successful policy of attracting industry to Landsberg needed to be continued to induce self-sustaining and lasting development in the area. If no incentives were offered in Landsberg, investors would tend to opt for sites within the Greater Munich conurbation. With a continuation of incentives, the Growth Point Landsberg could fulfil its role of relieving pressure on the Munich area.

In the labour market region Miesbach, gross value added at market prices in 1982 had been only 82 % of the national average. The area had lost a large number of jobs through closures of business establishments since the 1960s and, despite regional development incentives, these losses had still not been completely made up. The number of jobs in mining and manufacturing had fallen between 1977 and 1983 to under half of the average for Bavaria. In Penzberg, 1 300 people still had to travel to work outside the town. A recent plant closure there had thrown 200 people out of work. Most had still not found new jobs. Another plant closure with the likely loss of 120 jobs had been announced in Bad Tölz. Especially in Penzberg, further government financial help was urgently needed to expand essential infrastructure for industry as local taxes did not generate enough revenue for such projects.

Finally, the Federal Government stressed the special importance of the development of tourism for the labour market region, which with its natural amenities was eminently suited for the tourist trade. It explained how in tourist areas the emphasis in regional policy was on small, mainly family, businesses.

III

Two other Member States replied to the Commission's invitation to comment. Both approved of the opening of the Article 93 (2) procedure in the case. One expressed the view that the retention of assisted status must be justified by regional disparities of a certain magnitude.

IV

(1) The aid for industrial investment provided under the German Joint Federal/Land Regional Aid Programme (the 'Joint Task for the improvement of regional economic structures') falls within the scope of Article 92 (1) of the EEC Treaty.

The aid is given to firms undertaking eligible types of investment in assisted areas. It favours such firms by reducing the cost of their investment.

This conclusion is not refuted by the argument that regional aid merely compensates for the disadvantages of assisted areas from the point of view of firms choosing a location for their investment. In the first place, it should be pointed out that even compensation for the disadvantages of an area strictly speaking favours the recipient since it reduces his costs in that area. Secondly, in most cases it is doubtful whether the disadvantages of an area can be quantified with sufficient accuracy to fix aid at a level which exactly compensates for them. Above all, however, regional aid is usually set by Member States at so high a level that it provides firms with a positive financial inducement to locate and invest in certain areas. The contention that regional aid favours the recipients is confirmed by the wording of Article 92 itself. Article 92 (3) provides that aid to promote or facilitate the economic development of certain areas may under certain circumstances be held compatible with the common market. This shows that such aid falls within Article 92 (1) and that it cannot be argued that regional aid does not favour the recipients as it merely compensates for the disadvantages of the particular location.

The aid in issue in the present case distorts competition because it calculably improves the recipient's return on his investment, thereby strengthening his financial position compared with competitors who do not receive such assistance. The distortions of competition are appreciable. The aid can amount to 9,3, 13,0 or 16,7 % net grant equivalent. A reduction in the cost of investment by such margins gives the assisted firm a considerable advantage over its unaided competitors.

In so far as the aid induces firms to choose another location, this also constitutes a distortion of competition falling within Article 92 (1), for the institution of a system ensuring that competition in the common market is not distorted (Article 3 (f) of the EEC Treaty) implies that firms should be allowed to make up their own mind where to locate and that their choice should therefore not be swayed or guided by financial inducements.

The aid concerned in the present case also affects trade between Member States. Although, in assessing a general aid scheme such as the joint regional aid programme, it is not possible to say exactly where the recipients' markets are since the prospective recipients are not known, past experience indicates that some of the aided firms will be active in intra-Community trade. In the case of the Joint Programme, this presumption is strengthened by the fact that, pursuant to paragraph 1.2.1 in Part II of the Thirteenth General Plan and subsection 2 (3) of the Investment Grants Law, aid under the programme is aimed mainly at firms selling a high proportion of their goods or services outside the area. The Commission's previous experience of awards of Joint Programme aid in the labour market regions concerned also supports this impression.

As shown above, the aid strengthens the financial position of recipients compared with their competitors. Where intra-Community trade is involved, this must be regarded as affected by the aid.

Trade is also affected by the influence which the aid has on the location decisions of aided firms. When, for example, a firm relocates from one Member State to another, both the relocation itself and the production at, and supply of output from, the new location change trade patterns between Member States.

The aid under the Joint Programme that is in issue in the present case therefore falls within the scope of Article 92 (1).

(2) As the present case concerns regional aid, the only exceptions from the prohibition of State aid that are potentially applicable are those provided for in Article 92 (3) (a) and (c). These require that the aid should serve specified Community objectives rather than simply serving the interests of the Member State or the aid recipient. The exceptions must be strictly construed when scrutinizing aid schemes or individual aid awards.

In particular, they may be applied only when the Commission is satisfied that market forces alone would be insufficient to guide the recipients towards behaviour that would serve one of the objectives specified in the exception clauses.

To invoke the exceptions in cases where there is no such causal link would be to allow trading conditions between Member States to be affected and competition to be distorted without any compensating benefit to the Community.

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, in comparison with the situation in the rest of the Community, to justify the grant of aid at the level proposed. The scrutiny must show that the aid is necessary to achieve objectives specified in Article 92 (3) (a) or (c). Where this cannot be demonstrated, it must be assumed 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.

(3) The exception provided for in Article 92 (3) (a) is applicable to aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

When the Commission opened the Article 93 (2) procedure against the Tenth General Plan of the Joint Programme, it took the view that the economic and social situation in the Federal Republic, whether nationally or locally, did not justify application of Article 92 (3) (a). The Commission stated this position in the annex to its letter to the Federal Government of 6 November 1981. This view was confirmed by the further study which the Commission carried out before opening the Article 93 (2) procedure against the regional aid schemes of the Länder Baden-Württemberg, Bavaria, Hessen, Lower Saxony, Rheinland-Pfalz and Schleswig-Holstein, and was restated in the annex to the Commission's letter to the Federal Government of 10 August 1984. The Commission would expressly refer to both these statements.

The Commission's latest review of the situation confirms its impression that neither in the Federal Republic as a whole nor in the particular areas concerned by this Decision is the standard of living abnormally low or is there serious underemployment. The three areas whose assisted status has been contested are in the Länder North Rhine-Westphalia and Bavaria. *Per capita* GDP in these Länder in 1981 and 1983 was well above the Community average (at 120 and 124, respectively, on the Community index in North Rhine-Westphalia and 116 and 120, respectively, in Bavaria), and, in both Länder, rose relative to the Community average between 1981 and 1984. With a reading of 96 on the Community index, unemployment in North Rhine-Westphalia in September 1985 was below and, in Bavaria, at 58, substantially below the Community average.

(4) The exception provided for in Article 92 (3) (c) is applicable to aid which facilitates the development of certain economic areas, but which does not adversely affect trading conditions to an extent contrary to the common interest.

The only circumstances in which the effect on trading conditions caused by regional aid can be regarded as not against the common interest are where it can be shown that the aided region suffers from difficulties that are relatively severe by Community standards, that without the aid market forces would not eliminate these difficulties, that the level of the aid is in proportion to the difficulties and that the grant of aid does not unduly distort competition in particular sectors.

Therefore, when assessing the compatibility of regional aid with Article 92 (3) (c), the Commission must take account both of any serious disparities existing between regions of the same country and of the social and economic situation in the regions concerned by comparison with the rest of the Community.

The Commission applied these principles in its assessment of the six labour market regions prior to its Decision on the Tenth General Plan and has again followed them in this review.

(5) The Commission was able to carry out the review properly using the available data for individual indicators, without waiting for the Federal Government to prepare a new ranking table for the 179 labour market regions in the country on the basis of the latest data. This ranking table evaluates the relative situations of the labour market regions, which can vary depending on how the various indicators are weighted.

First, the purpose of the review was to check the results obtained in 1983. The Federal Government had been given notice of it in the Commission's letter of 20 June 1983, referred to above, and had not opposed it in its reply of 29 July 1983. Secondly, the result of the review is not very different from the current 1981 ranking table. The three labour market regions against which the Article 93 (2) procedure was opened are ranked in consecutive positions (59 to 61) on it. Furthermore, the fact that the Federal Government has announced a complete review of the Joint Programme's area coverage on the basis of the latest figures indicates that it regards the 1981 ranking table as out of date. For the purposes of this Decision, therefore, the question whether the Commission must take account at all of a ranking table based on purely national criteria and, if so, whether it can depart from it on the basis of an assessment of the justification for aid in the regions according to Community criteria, does not arise.

Finally, it is pointed out that the Decision is based on the latest available figures for unemployment and *per capita* gross value added at factor cost in all German labour market regions. By comparing each region's figures with the national average, it was possible to establish its position relative to the average in all other regions.

(6) Nor, in view of the foregoing, can it be claimed that, by proceeding in this way, the Commission is failing to take due account of the need to reduce internal national disparities, is restricting the Federal Republic's freedom of action in this area, contrary to the EEC Treaty, or is usurping the responsibility for regional policy left to the Member States by Article 104 of the Treaty.

First, the Commission has taken national development disparities fully into account in its scrutiny of the German assisted areas. As the discussion of its method in paragraph 7 below shows, the Federal Government is left considerable scope to remove regional disparities in Germany. Secondly, the proportion of assisted areas challenged by this Decision is too small for this to restrict the Federal Government's freedom to any great extent.

Finally, the Commission's action does not infringe Article 104 of the EEC Treaty. Although the Member States are charged with pursuing an economic policy on the lines laid down in that Article, such a policy cannot be divorced from the Community interest. This is clear from Articles 105 to 109.

The powers which Articles 92 and 93 vest in the Commission in relation to regional aid would be meaningless if Member States could avoid their obligations under these or other provisions of the Treaty simply by claiming that their action was part of their economic policy. The Treaty's state aid provisions are still applicable in the context of Article 104. Articles 92 to 93 override Article 104.

(7) The Commission assessed the economic and social situation in the six labour market regions concerned both nationally and in relation to the Community as a whole. To ensure that its Community-related assessment is systematic and objective, the Commission has developed a method of determining, for a given Member State, general threshold levels of structural unemployment and *per capita* gross domestic product from which regional aid can be deemed acceptable.

These thresholds are regularly reviewed in the light of the latest figures. The current thresholds from which regions in the Federal Republic are considered in principle to be eligible for aid are a level of *per capita* gross domestic product or gross value added of less than 76 % of the national average, or an average unemployment rate over five years of more than 145 % of the national average. Federal Government was informed of these thresholds in a letter sent to the Federal Economics Minister dated 31 July 1985. The Federal Government noted the current thresholds in a memorandum to the Commission dated 22 January 1986. Incidentally, as the table below for the two indicators shows, the result of applying the current thresholds would not be changed by applying the thresholds the Commission used when opening the Article 93 (2) procedure against the Tenth General Plan (gross domestic product under 73 and unemployment over 130).

For the purposes of this Decision, the regions' gross value added figures for 1980 and 1982 were compared with the threshold, which is based on the three years 1979, 1981 and 1983, because as a result of changes in the method of compiling the national accounts in Germany, only figures for these two years had been supplied. In the case of

unemployment, the regions' figures for 1980 to 1984 were compared with the threshold, also based on the three years 1979, 1981 and 1983, because harmonized figures for annual average unemployment rates in the Community are published only once every two years. The discrepancy in the years compared does not affect the outcome of the assessment to the Federal Republic's disadvantage.

The result obtained from applying the thresholds is taken only as a *prima facie* presumption, which may be revised in a second stage of the assessment procedure if other indicators of the present situation or future trends point to the opposite conclusion.

The initial readings of the six labour market regions on the two indicators are as follows:

	Per capita gross value added at factor cost 1980 to 1984	Average unemployment rate 1980 to 1984
Itzehoe	89,3	148,9
Alfeld	71,4	120,9
Kleve-Emmerich	80,0	120,9
Holzminden-Höxter	75,9	147,4
Landsberg	87,9	70,3
Miesbach	83,5	75,9

This suggests that the granting of aid may, *prima facie,* be deemed compatible with the common market in the labour market regions of Itzehoe (because of structural unemployment), Alfeld (because of the low level of economic activity) and Holzminden-Höxter (because of structural unemployment). As the Commission has no evidence on the three regions which points to the opposite conclusion, it has decided to raise no objection to aid in them.

(8) The preliminary finding on the labour market regions of Kleve-Emmerich, Landsberg and Miesbach, however, was that aid in these regions could not be accepted as being compatible with the common market.

In stage two of its scrutiny, the Commission went on to verify this finding by checking the results of the economic and social analyses of the three regions that it had carried out before opening the Article 93 (2) procedure (and to which it would expressly refer here) against the latest unemployment figures and the latest figures for gross value added at factor cost (published in autumn 1984), and in the light of the arguments put forward in the Federal Government's reply to the opening of the procedure. The outcome was as follows for the three labour market regions.

Kleve-Emmerich

Per capita gross value added at factor cost in the region stood at 80,7 % of the national average in 1980 and 79,3 % in 1982. This slight decline in the level of economic activity (by 1,4 percentage points) does not necessarily indicate a deterioration in the local economic structure. The corresponding reading for 1978 was 80,4 %.

The fall in average pay levels from 93 % of the national average in 1978 to 91 % in 1984, which the Federal Government cites in its submission, does not alter the relatively favourable view of the region's economic performance. This change, too, was insignificant. The level is still close to the national average.

In May 1985, the Federal Government, however, forecast further job losses in the labour market region (500 redundancies imminent in Kleve district and a further 850 jobs in acute danger).

While the unemployment rate in September 1984 (11,12 %, or 129 % of the national average) and the average for 1984 (11,15 %, or 123 % of the national average) had only risen marginally above the levels of the previous year (10,76 % or 125 % in September 1983 and 10,78 % or 119 % for 1983 as a whole), by September 1985 the rate had risen sharply to 12,83 % or 148 % of the national average, equivalent to the loss of 872 jobs between September 1984 and September 1985. According to information obtained by the Commission, this jump in the unemployment rate by comparison with the national average was due partly to demographic growth in the labour force and partly to actual redundancies over the period. The same sources forecast further redundancies. These job losses are unlikely to be made up by job creation.

This deterioration in the employment situation justifies the authorization of aid in the labour market region until 31 December 1986. Before that date, the Commission will review the economic and social situation in the region.

Landsberg

Per capita gross value added at factor cost in the region stood at 86,8 % of the national average in 1980 and 89 % in 1982. The 1978 figure for *per capita* gross domestic product was 81 % of the national average. This points to a steady increase in economic activity in the region.

The Federal Government asserts, without providing detailed figures to back up its claim, that the participation rate in the region is low and that a high proportion of its residents travel to work outside the area. The first observation the Commission would make is that both these factors will reduce the recorded level of *per capita* (i.e. per resident) gross value added. Yet on the evidence of the above figures this still does not pose a regional problem. Secondly, there is some doubt as to whether the participation rate in Landsberg is as low as the Federal Government suggests. The Commission has established that the level of employment in mining and manufacturing in the region is 94 % of the national average. The figure cited by the Federal Government for mining and manufacturing employment of 68,6 % of the average for Bavaria only refers to establishments with over 20 employees, and so does not include the relatively high number of people in rural areas who work in small establishments. Furthermore, between 1980 and 1983, Landsberg district had the second largest increase in the number of employed paying social security contributions (8,9 %) of all districts in the country.

A high incidence of commuting to work outside the area would, as has been seen, reduce recorded *per capita* gross value added. It would suggest, therefore, that gross value added per person employed in Landsberg — and hence the productivity of the local economy — is even higher than the recorded index reading of 89.

The Federal Government has also claimed that job losses are likely in some industries, although it has not substantiated this assertion. In view of the relatively good employment situation in the area, with unemployment in 1984 only 70 %, and in September 1985 only 60 % of the national average, any redundancies which did occur would be unlikely to cause serious regional problems.

Finally, the argument that Landsberg needs to be aided because of its proximity to Munich is not a compelling one. In view of its economic and social situation, as described above, the ending of aid is unlikely to cause substantially more firms to invest in the neighbouring Munich area than did so previously.

It is concluded that aid for investment in industry and commerce other than tourism under the Joint Programme in the labour market region of Landsberg is incompatible with the common market.

Miesbach

In the Labour market region of Miesbach, *per capita* gross value added at factor cost measured 83,5 on the national index in 1980, and 83,4 in 1982. Thus, the reading had stayed virtually the same and, compared with that of 79 on the national index of *per capita* gross domestic product in 1978, had improved.

As in Landsberg's case, the Federal Government referred to the low level of employment in mining and manufacturing in Miesbach, claiming that it was 56,8 % of the average for Bavaria. If those employed in small establishments are included, however, the level rises to 66,7 % of the Land and 72 % of the federal average. This, in a labour market region that is largely a tourist area, cannot be regarded as a regional problem.

The employment situation in the region is good. Average unemployment of only 71 % of the national average in 1984 had improved on the previous year's 75 %. In September 1985, the level was down to 63 % of the national average. The redundancies the Federal Government mentions in Penzberg have thus not halted the steady relative fall in unemployment. Nor is this likely as a result of the closure in Bad Tölz.

The number of residents travelling to work outside the labour market region is already reflected in the figures for *per capita* (i.e. per resident) gross value added, yet on the evidence of those figures does not constitute a regional problem. It suggests that gross value added per person employed in Miesbach, which is a measure of the productivity of the local economy, is considerably higher than that per resident.

It is concluded that aid for investment in industry and commerce other than tourism and the Joint Programme in the labour market region of Miesbach is incompatible with the common market.

(9) The Commission's position on aid for developing tourism in Landsberg and Miesbach is as follows :

The Federal Government stated that, in the labour market region of Miesbach, the emphasis of such aid was on small, mainly family, businesses. The Commission has established that this is also true of such aid in the tourist areas of the labour market region of Landsberg. In these circumstances, it can be assumed that in neither labour market region does the aid for developing tourism affect tourist trade flows to an extent contrary to the common

interest, if at all. In arriving at this conclusion, the Commission has taken into account the fact that the parts of both labour market regions designated by the Federal Government as tourist areas have the natural amenities for tourism, but lack the facilities. Aid could enable the facilities to be improved and the natural amenities of the areas to be utilized. In these circumstances, aid for developing tourism may be deemed compatible with the common market under Article 92 (3) (c).

To enable it to check that the aid for developing tourism keeps within the above limits in the future, the Commission should be sent an annual report showing, *inter alia,* the total amount of aid awarded, the value of the aided investment and the number of awards.

In the case of awards for investment in enterprises with over 50 employees, the amount of the aid and the value of the aided investment should be stated for each individual award.

(10) A time limit must be set for the ending of aid found to be incompatible with the common market. The Commission sets this time limit at 30 June 1986. Until that date applications for aid for industrial investment in the labour market regions of Landsberg and Miesbach may still be made under the rule of the Thirteenth General Plan of the Joint Federal/Land Programme, the General Plan which provides for aid on a scale approved by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The award of aid for investment in industry and commerce other than tourism under the Joint Federal/Land Regional Aid Programme (Joint Programme for the improvement of regional economic structures) in the labour market regions of Landsberg and Miesbach is incompatible with the common market under Article 92 (1) of the EEC Treaty. The Federal Republic of Germany shall discontinue such aid as from 1 July 1986. Applications for aid submitted up to 30 June 1986 may be processed after that date in accordance with the provisions of the Thirteenth General Plan of the Joint Programme.

Article 2

The award of aid for investment by enterprises in the tourist trade in the tourist areas of the labour market regions of Landsberg and Miesbach under the Joint Federal/Land Regional Aid Programme (Joint Programme for the improvement of regional economic structures) is deemed compatible with the common market under Article 92 (3) of the EEC Treaty. The Federal Republic of Germany shall supply the Commission, before the end of June each year, with a report stating the total amount of such aid, the value of the aided investment and the number of awards in the previous year. In the case of awards for investment in enterprises with over 50 employees, the amount of the aid and the value of the aided investment shall be stated for each individual award.

Article 3

The award of aid under the Joint Federal/Land Regional Aid Programme (Joint Programme for the improvement of regional economic structures) in the labour market region of Kleve-Emmerich is deemed compatible with the common market under Article 92 (3) of the EEC Treaty until 31 December 1986. Before that date the Commission will review the economic and social situation in this labour market region.

Article 4

The award of aid under the Joint Federal/Land Regional Aid Programme (Joint Programme for the improvement of regional economic structures) in the labour market regions of Itzehoe, Alfeld and Holzminden-Höxter is deemed compatible with the common market under Article 92 (3) of the EEC Treaty.

Article 5

This Decision shall be without prejudice to compliance with Community legislation and codes applicable to certain sectors of industry and agriculture and to industrially organized agricultural enterprises.

Article 6

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 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 February 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission