II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 July 1987

on the redesignation of assisted areas in Denmark on 1 January 1987

(only the Danish text is authentic)

(87/573/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 as provided in Article 93,

Whereas :

I

1. The Danish Law of 13 March 1985 (1) provides for a distinction between two categories of regions eligible for aid : priority assisted areas where aid can be granted up to 35 % gross (25 % net grant equivalent) and normal assisted areas where the maximum intensity of aid is 25 % gross (16,9 nge).

   The areas concerned were those approved for a five-year period by the Commission Decision 82/691/EEC (2).

2. By letter dated 9 October 1986, the Danish Government notified to the Commission the redesignation of regional development areas for a five-year period from 1 January 1987. To classify areas in one of the two categories, the Danish Government has used a ranking of all Danish areas by the Danish Regional Development Council. The ranking of the Council was based, as in 1981, on the division of Denmark into the groups of districts ('kommuner') specified in the Regional and National Planning Act. These groups, numbered from 1 to 59, each contain 1 to 16 districts and their population varies between 11 665 and 350 789 inhabitants. For each of them a synthetic index as calculated composed of five indicators : the proportion of the total population aged 20 to 66 on 1 January 1985, average actvity rate in 1980-1982-1984 expressed as a proportion of the number insured against unemployment, average taxable income per taxable person in 1983, and employment both in the public and private service sector and in manufacturing industry (excluding building and construction, the extractive industries and public utilities) in November 1983. Before being added up, the five indicators were corrected for their standard deviation and a double weighting was given to employment and income. Alternative indices were also calculated adding up the five indicators without any double weighting and with a double weighting for employment only, to compare possible changes in ranking.

   The ranking showed that since 1982 the trend had been positive in most of the aided areas.

(1) Approved by the Commission on 20 February 1985.
(2) OJ No L 290, 14. 10. 1982, p. 39.

The Danish Government therefore proposed that the population covered be reduced from 24,1 % to 20,7 % of Denmark's population. The population living in priority and ordinary assisted areas would be respectively 11,1 % and 9,6 % of the Danish population as against the current distribution of 15,5 % and 8,5 %.

3. The Commission has scrutinized both the existing and proposed areas in the national and Community context under Article 92 (3) of the EEC Treaty.

This scrutiny showed that no Danish region could be considered as experiencing abnormally low living standards or suffering from serious underemployment and that therefore assistance to none of the areas proposed could be accepted under the terms of Article 92 (3) (a) of the EEC Treaty.

Furthermore, no justification under Article 92 (3) (c) of the EEC Treaty could be found for the continuation of regional aid in the following districts : Spøttrup in the county ('amtskommune') of Viborg, Egvad, Holmsland, Ringkøbing and Skjern in the county of Ringkøbing.

The Commission also raised objections to the classification of the following groups of districts as priority assisted areas instead of ordinary assisted areas, with the implied higher aid ceiling : Nos 52, 53, 57, 47, 46, 45, 34 and the districts of Højer and Tønder in Sønderjylland ; and to the upgrading of the previous ordinary assisted group of district No 21 in Sønderjylland.

At its meeting of 3 December 1986 the Commission therefore decided to initiative the Article 93 (2) of the EEC Treaty procedure in respect of these measures of the proposal.

It informed the Danish Government thereof by letter of 10 December 1986 and the Governments of the other Member States by letters of 12 March 1987, asking them to submit their observations.

In accordance with Article 93 (2) of the EEC Treaty a notice to other interested parties was also published in the *Official Journal of the European Communities* on 27 March 1987.

II

The Danish Government submitted its observations in a letter dated 23 February 1987 and during meetings between the Danish authorities and the Commission, held on 19 May and 1 June 1987.

The Danish Government's arguments can be divided in two categories : general arguments and arguments pertaining to the areas in respect of which the Commission had reservations.

Its first general argument was that Denmark, provides regional aid to a smaller percentage of its population, has a smaller per capita aid budget and also supports a lower percentage of overall investments, of which moreover the vast majority goes to small and medium-sized businesses, than any other Member State in the Community.

It also pointed out that a further scaling down of aid in Denmark would create distorting effects on competition as long as the neighbouring Scandinavian countries and Germany grant higher aid.

It further criticized several points in relation to the method used by the Commission in its scrutiny.

The Danish Government asked further why the Commission rejected three of the indicators used by the Danish Regional Council.

On the districts whose classification as priority or ordinary assisted area the Commission had challenged, the following cirticisms were made. Although the Danish Government had suggested downgrading four districts of Nordjylland to take into account the improvement of its situation, the Commission wanted eleven more districts to be downgraded, disregarding their relative position compared to the rest of the country and their peripheral location. Moreover, the Danish Government proposed granting aid of 25 % nge only to small and medium-sized business in these eleven districts.

In the county of Viborg, the Commission, in requesting the exclusion of the district of Spøttrup, did not take into account its geographical and structural links with the accepted adjoining group of districts. The same criticism was made with regard to the requested downgrading of group No 47, which borders on an accepted assisted group in Nordjylland with similar characteristics.

When objecting against the maintaining of eight currently assisted districts of the county of Ringkøbing, the Commission did not take into account their inclusion by Council Regulation (EEC) No 3638/85 [1], in the Danish non-quota fisheries-programme area on 17 December 1985, and the difficulties for the Danish Government in implementing its participation in this programme, if it is prevented from granting aid.

With regard to Sønderjylland, the Commission disregarded the high level in the German area of Flensburg when objecting to the priority status of the border districts Højer and Tønder, and the deterioration of the socio-economic situation in the area of Gram, against whose upgrading to priority assisted area it objected.

[1] OJ No L 350, 27. 12. 1985, p. 17.

III

No other Member States replied to the Commission's invitation to comment. Of the parties concerned, other than the Member States, the Danish county of Storstrøm submitted its comments by letter of 22 April 1987 pursuant to the notice published in the *Official Journal of the European Communities* of 27 March 1987. It expressed the view that the whole of Lolland and also Falster and Møn should become priority areas.

IV

1. The aid for industrial and service investment provided under the Danish Regional Development Law of 13 March 1985 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 those firms in as far as the same aid is not granted to similar investments outside those areas.

The aid provided under the Danish Regional Development Law distorts competition because it calculably improves the recipient's return on his investment, in comparison with competitors who do not receive such assistance. The distortions of competition are appreciable. The aid can amount to 16,9 %, 20 % or 25 % nge. A reduction in the costs of investment by such margins makes investments artificially more profitable for the assisted firm than for 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), since 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 minds 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 the implementation of a general aid scheme such as the Regional Development Law it is not possible to say exactly where the recipients' markets are since the prospective recipients are not known, past experience indicates that at least some of the aided firms, will be active in intra-Community trade. Furthermore, intra-Community trade is also affected when aid furthers national production at the expense of imports from the other Member States.

As shown above, the aid increases the profitability of recipients compared with their competitors. Where intra-Community trade is involved, it 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 Danish Regional Development Law therefore falls within the scope of Article 92 (1).

2. As the redesignaton of assisted areas in Denmark concerns regional aid, the Commission can only accept those regions which do fit within the exceptions from prohibition of State aid that are 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 to 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 redesignation of the Danish assisted areas under the Regional Development Law, it took the view that the economic and social situation in Denmark, 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 Danish Government of 10 December 1986.

This view was based on the per capita GDP figures for Denmark during 1981-1984, which grew faster than in the rest of the Community. As a result the lowest per capita GDP of all Danish level III regions is currently more than 2 % above the Community average. These relative rankings remain valid even when the differences in purchasing power are taken into account. On the other hand, the highest unemployment index of all Danish level III regions was only 15 % above the Community average, and unemployment is currently decreasing in Denmark.

This confirms that neither in Denmark as a whole, nor in the particular areas concerned by this Decision is the standard of living abnormally low or serious underemployment evident.

4. The exception provided for in Article 92 (3) (c) is applicable to aid which facilitates the development of certain economic areas without at the same time adversely affecting 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 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.

According to the Court of Justice, the Commission has a discretion the exercise of which involves the economic and social assessments which must be made in a Community context [1].

To ensure that this Community-related assessment is systematic and objective, the Commission has developed a method of determining, for all Member States, general threshold levels of structural unemployment and per capita gross domestic product from which regional aid can be deemed acceptable. In this method the thresholds for a given Member State are adapted in the light of its relative position in comparison with Community average. The thresholds are therefore more restrictive for more developed Member States. For the rest, the method does not limit to a wider extent the discretion of the Member States to pursue their own regional policy objectives.

On the basis of this method, the current thresholds from which regions (Nomenclature of Territorial Units level III) in Denmark are considered in principle to be eligible for aid were a level of per capita GDP of less than 73 % of the national average, or an average unemployement rate of more than 110 % of the national average. The Danish authorities were informed of this method by a note dated 8 July 1986.

The result obtained from applying these thresholds was that no county has an index for per capita GDP below 73 % of the national average, and that the counties of Storstrøm (index 113), Fyn (index 115) and Nordjylland (index 128) have an unemployement rate above the threshold of 110.

In a second stage, the Commission scrutinized on the basis of the indicators of the groups of districts used by the Danish Government, whether within the counties (NUTS level III) important disparities were noticeable which could warrant a separate assessment of parts of these regions.

For this purpose the groups of districts used in the Danish proposal were examined on the basis of unemployement figures for 1981 to 1985, total population, per capita taxable income in 1983, population density in the same year, net migration, employment in the primary sector and some geographical features such as insularity or borderline areas.

In the county of Nordjylland the Commission distinguished the northeastern part covering groups Nos 52, 53 and 57 from southwestern part covering groups Nos 55, 56, 58 and 59 and the island of Læsø (No 54). In the county of Viborg the Commission clustered the three northern groups (Nos 45, 46 and 47). In Ringkøbing group 34 was assessed separately. So was the island of Samsø in county of Århus. The two northern groups of that county (Nos 40 and 41) were assessed together. In the western part of Sønderjylland the Commission clustered groups Nos 21, 23, 24 and 28. In the county of Fyn, the Commission assessed the three groups proposed separately since they did not form a geographical unit. In the County of Storstrøm, East and West Lolland were also assessed separately to take fully into account the socio-economic consequences of the closing of the Nakskov shipyards on the latter.

[1] Case 730/79 Philip Morris Holland BV v. Commission (1980) ECR 2671 ground 24.

With regard to the aid level proposed, the Commission deemed compatible with the common market aid up to the highest ceiling where unemployment was highest. This prompted the Commission to raise no objection to the aid level proposed in district groups Nos 54, 34, 20, 17, 16 and 12, the region formed by groups Nos 55, 56, 57 and 59 and the area covering groups Nos 40 and 41. Taking into account its increasing unemployment index, West Lolland — group 11 — was accepted as a priority assisted area.

The islands of Bornholm and Samsø were accepted on the basis of their specific problems as islands and the latter also in view of its negative net migration figure.

The Commission similarly did not object to aid in the western part of Sønderjylland, groups 21, 23, 24 and 28, although its unemployment index was below the above threshold. The Commission accepted the region on the grounds of the attraction to investors of the assisted areas in Germany (mainly the Flensburg area), where the relatively high aid of the Eastern border area's programme are offered.

5. However, the Commission did not find any justification for maintaining as priority areas groups Nos 52, 53 and 57 in the county of Nordjylland, 45, 46 and 47 in the county of Viborg, 34 in the county of Ringkøbing, one district in group No 48 and group No 37, mainly because of their relatively low unemployment figures. The upgrading of group 21 in the county of Sønderjylland could not be accepted either.

The Danish Government states that the Commission did not take into account the relative position of the area of Nordjylland compared to the rest of the country when objecting against some of the districts in the priority area. But the Commission's objections are based on a difference in the relative position of respectively the northeastern part and the southwestern part of the county in comparison with the national average, Moreover, limiting of the award of aid of the highest intensity (25 % nge) to small and medium-sized business does not ensure that trading conditions are not affected. Regional aid to such firms must be also justified on regional grounds.

In the county of Viborg, the Commission accepted the inclusion of the district of Spøttrup (group No 48) with the adjoining group No 46 because of their economic similarities. This justifies regional aid in this district. On the other hand, the maintaining of groups 45, 46 and 47 as priority areas could not be accepted because the region is not one of the areas with the highest unemployment in Denmark. In addition, unemployment has been declining. in recent years. Because of this trend and since all the other indicators are satisfactory, the Danish argument concerning the geographical situation (peripherality) could not justify priority status for the area. The same is true for group 34 in the county of Ringkøbing.

The Danish Government also stated that the Commission would make the implementation of the non-quota fisheries programme in group No 37 difficult. The Commission has therefore accepted the granting of aid in the area until the end of the implementation of the Council Regulation concerned.

With regard to the districts of Højer and Tønder in Sønderijylland, the Commission has taken into account the fact that these districts border on a German assisted area, but even then priority area status is not warranted in view of the relatively good socio-economic indicators of the areas to which these districts belong. It objected also against the proposed upgrading of group No 21. This group with a population of only 26 000 could not be assessed separately from the adjoining area of Western Sønderjylland, which has the least unfavourable socio-economic situation of all assisted areas. For this reason the Commission did not deem the upgrading of the group concerned compatible with the common market.

6. Although account has been taken of the fact the Danish aid scheme covers a small percentage of the population, that Denmark has the lowest per capita aid budget in the Community and the lowest aid percentage of overall investments, the Commission is nonetheless bound to assess whether the regions and the aid levels proposed are warranted under Article 92 (3).

Nor can the aid granted in EFTA-Member States, from which industrial goods are imported into the common market free of duty, be accepted as a justification for regional aid in Denmark under Article 92. Furthermore, the Commission is not able to assess the level of the aid granted in the Scandinavian countries.

With regard to the indicators used by the Danish authorities, the Commission did not use three of them : — activity in manufacturing industry, activity in the service sector, and the proportion of the population aged 18-66. The first two are already reflected in one of the indicators used by the Commission (employment in the primary sector). The third has not been used because it is of no direct relevance.

7. The Commission deems it warranted to provide for a transitional period of two years for the reduction of the aid ceiling in the abovementioned areas in the counties of Nordjylland, Viborg, Ringkøbing and Søonderjylland and for a transitional period of three years, i.e. for the duration of the non-quota fisheries programme, for the area in the county of Ringkøbing where aid is to be abolished. Applications for aid for investment may thus still be made in the former areas until 31 December 1988 and in the latter until 31 December 1989, on the scale previously approved by the Commission.

8. To enable the Commission to check if the aid granted in the future under the scheme keeps within the approved limits, the Commission should further 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,

HAS ADOPTED THIS REGULATION :

Article 1

The award of aid in the districts of Viborg, Egvad, Holmsland, Ringkøbing and Skjern in the county of Ringkøbing is hereby found to be incompatible with the common market under Article 92 (1) of the EEC Treaty. Denmark shall discontinue such aid as from 1 January 1990. Applications for aid submitted up to 31 December 1989 may be processed after that date in accordance with the provisions of the Danish Act of 13 March 1985.

Article 2

The award of aid for investment by firms in the districts of Hirtshals, Hjørring, Løkken-Vrå, Sindal. Skagen, Dronninglund, Hals, Nibe, Sejflod, Skørping and Åbybro in the county of Nordjylland, Hanstholm, Sydthy, Thisted, Morsø, Sallingsund, Sundsøre, Møldrup and Ålestrup in the county of Viborg, Lemving, Thyborøn, Harboøre, Thyholm and Ulfborg-Vemb in the county of Ringkøbing, and Højer and Tønder in the county of Sønderjylland is hereby deemed compatible with the common market under Article 92 (3) of the EEC Treaty in so far its intensity remains below 17 % nge. Denmark shall discontinue the award of aid with a higher intensity as from 1 January 1989. Applications for aid submitted up to 31 December 1988 may be processed after that date.

Article 3

In the districts of Gram, Nørre Ringstrup and Rødding in the county of Sønderjylland, the award of aid with an intensity of 17 % nge or more is hereby deemed incompatible with the common market under Article 92 (3) of the EEC Treaty.

Article 4

This Decision shall be without prejudice to compliance with the Community rules and regulations applicable to the combination of different kinds of aid, to agricultural enterprises run on industrial lines or in certain sectors of industry, agriculture and fisheries.

Article 5

Denmark shall every year before the end of June present to the Commission a report containing information on the total amount of regional aid awarded, the value of the aided investment and the number of awards. This information shall be given by region (level III according to the Nomenclature of Territorial Units drawn up by the Statistical Office of the European Communities) and by sector (two-digit sectoral breakdown according to the General Industrial Classification of Economic Activities drawn up by the Statitiscal Office of the European Communities). In addition, the Commission will from time to time examine a certain number of individual cases.

Article 6

Denmark 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 Kingdom of Denmark.

Done at Brussels, 15 July 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission