II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 March 1993

concerning the application of the national regional aid scheme in an area in the north of the Province of Madrid

(Only the Spanish text is authentic)

(93/353/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 the parties concerned notice to submit their comments, in accordance with Article 93,

Whereas :

I

By letter of 1 June 1987 the Commission notified the Spanish Government of its decision to accept the areas and aid ceilings under the national regional aid scheme in Spain. By letter of 1 September 1987 and telex message of 14 March 1988 the Commission notified the Spanish Government of its decision to accept the other terms of the scheme, including the form of aid and the types of eligible investment. On the basis of these decisions, the national regional aid scheme (Law 50/1985 and Royal Decree 1535/1987) was gradually established by the Spanish Government, by royal decrees determining the various assisted areas.

In an area situated in the north of the Province of Madrid, the Sierra Norte, the Commission, taking into account Protocol No 12 to the Act of Accession of Spain to the European Communities, decided to permit, as an exception and for a period of three years followed by a review, the grant of regional aid with an intensity ceiling of 45 % net grand equivalent (nge).

By letter of 7 June 1990 from its Permanent Representative, the Spanish Government requested the Commission to permit the validity of the ceiling in this area to be extended for an unspecified time.

After reviewing the case for maintaining the ceiling in this area, the Commision decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the grant of aid under the national regional aid scheme with an intensity ceiling of 45 % nge in the Sierra Norte, in the north of the Province of Madrid.

By letter dated 3 August 1990 the Commission gave the Spanish Government formal notice to submit its comments. The other Member States and interested third parties were also given notice to submit their comments [1].

II

The Spanish Government submitted its comments by letter dated 3 October and 10 October 1990. In its letters, the Spanish Government requested that the extension of the right to grant regional aid with an intensity ceiling of 45 % nge be reviewed, bearing in mind the following comments in particular :

[1] OJ No C 32, 7. 2. 1991, pp. 5 and 6.

— the fact that the Province of Madrid failed to satisfy the conditions necessary for the first stage of the procedure for the application of Article 92 (3) (c) to regional aid had not prevented aid being granted in the Decision of 1 June 1987 because of the socio-economic backwardness of the area in question. The decision stated that this was a mountainous, agricultural area forming a natural extension of the Provinces of Segovia and Guadalajara which fitted in better with the socio-economic background of those provinces than with that of the Province of Madrid to which it was attached for administrative purposes;

— the socio-economic situation of the area had not altered appreciably in the course of the last three years;

— this area could not be considered to fit in with the socio-economic background of the rest of the Province of Madrid. Caution was therefore necessary in drawing on provincial data to verify whether the criteria for the application of Article 92 (3) (c) had been satisfied;

— although the Spanish Government had not used, under the national regional aid scheme, the authorization given it by the Commission to grant regional aid in the Sierra Norte, the basic problems continued, so that the possibility should remain open;

— it was basically the impact of the metropolitan area of Madrid in the province which prevented the Province of Madrid from meeting the criteria for per capita GDP and structural unemployment in the first stage of the procedure for the application of Article 92 (3) (c). In the absence of data at municipal level, it appeared preferable to assess the per capita GDP for the Sierra Norte as follows:

  — it should be compared with the Provinces of Segovia and Guadalajara whose socio-economic situation bore a greater resemblance to that of the north of the Province of Madrid than to the capital itself. The per capita GDP of Segovia was 84 % of the national average between the years 1986 and 1988 whilst, taking Spain as 100, Guadalajara's index dropped from 103 to 99 between 1985 and 1989,

  — the income indicator used should be the personal income tax payable per inhabitant. In 1986 the average amount for the Sierra Norte was Pta 28 792, that is around one third of the average of the Autonomous Community of Madrid as a whole (Pta 85 026).

  With regard to employment, in 1986 the rate of unemployment was 18 %, and the employed labour force in the primary sector in the area [1] accounted for 19,48 % of total employment. Furthermore, between 1987 and 1989 jobs in agriculture in the Province of Madrid fell by 36,1 %, primarily affecting the Sierra Norte because of the level of agricultural employment in the area. Finally, between 1981 and 1986 the proportion of jobs in the area in industry and construction fell from 21,32 to 20,05 % and from 17,60 to 11,81 % respectively, whilst the proportion of jobs in the service industry increased from 48,13 to 59,29 %;

  — the tendency for people to leave the area had resulted in the loss of a quarter of the population since 1950. The process reflected large-scale migration, principally by young persons, to metropolitan Madrid. The net migration balance for the area, excluding Colmenar Viejo, was − 12 % between 1976 and 1981. In 1986 the ageing index [2] of the area [1] (17,5 %) was much higher than that of the Province of Madrid (9,3 %) and the national average (10,9 %), whilst the population under 16 accounted for only 19,05 % of the population of the area [1];

  — agriculture in the area, which was very prominent, had low productivity because of the small size of the farms (79 % being less than 20 hectares), the low degree of use (75,4 % of farms being unproductive) and the age of the workforce (52,7 % of the agricultural workforce being over 50);

  — the proximity of metropolitan Madrid had adverse effects on the environment and buildings in the area, with the gradual abandonment of agricultural and rural housing through migration to Madrid, the widespread use of the area for leisure purposes by the inhabitants of Madrid and the construction of five dams to the detriment of most of the irrigable land. Moreover, certain of the municipalities in the area lacked swift, modern means of communication;

  — Protocol 12 to the Act of Accession of Spain to the European Communities did not specify a time when the Protocol would cease to be applicable. It was Spain's regional development objectives which were crucial in applying the Protocol.

[1] Excluding four municipalities.
[2] Percentage of the population aged 65 and over.

In its letter of 7 June 1990 the Spanish Government also indicated that:

— in 1986 the area's population was 50 029 and population density was 30,5 inhabitants per km²;

— 77 % of the municipalities had fewer than 500 inhabitants. Some were liable to disappear since in 1980 only one had fewer than 100 inhabitants and only eight had fewer than 200, whilst in 1986 there were 11 in the former category and 22 in the latter;

— the fact that the rate of unemployment in the area was lower than the average for the province was not a particularly positive aspect given the high level of agricultural underemployment.

III

The other Member States and interested third parties did not submit comments to the Commission within the time allowed.

IV

(a) The aid granted by the Spanish Government under the national regional aid scheme is caught by Article 92 (1) of the EEC Treaty.

This aid is granted to enterprises investing in certain areas of Spain. It favours these enterprises as it is not granted for similar investments outside these areas.

The aid distorts competition since it improves the recipient's financial position and scope for action compared with competitors which do not receive aid. Where this effect arises in intra-Community trade, such trade is affected by the aid.

In particular, the aid distorts competition and affects trade between the Member States where enterprises in receipt of aid export part of their production to other Member States; even if such enterprises do not export, domestic production is favoured because enterprises established in other Member States have less chance of exporting their products to the Spanish market [1].

Trade is also affected by the influence of the aid on beneficiary enterprises' choice of location. In so far as the aid prompts the enterprises to locate in areas qualifying for aid or to move from one Member State to another, production at the new location and the supply of the goods produced there alter trade flows between the Member States.

These points show that the aid granted under the national regional aid scheme is caught by Article 92 (1). Consequently, the continued grant of such aid in the Sierra Norte in the Province of Madrid is incompatible with the common market unless one of the derogations laid down in the Treaty applies.

(b) Since this case concerns regional aid, the only possible derogations from the prohibition of aid set out in Article 92 (1) are those specified in Article 92 (3) (a) and (c), which lay down objectives to be pursued in the interests of the Community and not exclusively those of the Member States or of the beneficiaries of aid. These derogations must be interpreted restrictively in examining aid schemes and their application.

When the Commission applies these derogations to regional aid schemes it must be satisfied that the region's difficulties are sufficiently serious, in relation to the position elsewhere in the Community, to justify the granting of aid and the intensity of that aid. An examination of the schemes must show that the aid is necessary to attain the objectives laid down in Article 92 (3) (a) or (c).

(c) Article 92 (3) (a) provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered to be compatible with the common market.

The Commission considers that this derogation applies to NUTS [2] level II regions which have a per capita GDP, measured in purchasing power standards (PPS) that does not exceed 75 % of the Community average [3].

The NUTS level II region which includes the Sierra Norte in the Province of Madrid is the Autonomous Community of Madrid. The per capita GDP for the Autonomous Community, measured in PPS, exceeds 75 % of the Community average, in fact amounting to 91 % (taking the average for the years 1986 to 1990). Consequently the derogation provided for in Article 92 (3) (a) is not applicable in the Autonomous Community of Madrid, and the grant of aid under the national regional aid scheme in the Sierra Norte in the Province of Madrid accordingly cannot be considered to be compatible with the common market under that derogation.

[1] Judgment of 13 July 1988 in Case 102/87, France v. Commission, [1988] ECR 4067.

[2] Nomenclature of territorial units for statistics.

[3] OJ No C 212, 12. 8. 1988, p. 2 and OJ No C 163, 4. 7. 1990, p. 6.

(d) Article 92 (3) (c) provides that aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market.

The Commission considers that this derogation applies to regions satisfying the conditions of the method for the application of Article 92 (3) (c) to national regional aid [1]. According to the method, which involves two stages of analysis, the regions are assessed on the basis of the NUTS level III geographical unit, which in Spain is the province. A smaller unit may be used in justified exceptional circumstances, in accordance with the principles of the method and with the Commission's practice.

(e) A Spanish province satisfies the conditions for the first stage of the method if income as measured by per capita GDP is not above 85 % of the national average or the rate of structural unemployment is not below 110 % of the national average.

The NUTS level III region, which includes the Sierra Norte of Madrid is the Province of Madrid. The per capita GDP for the province is higher than 85 % of the national average since it amounts to 125 % of that level (taking the average for the years 1986 to 1990), and the provincial level of structural unemployment is below 110 % of the national average since it amounts to 76 % of that level (average for the years 1988 to 1992). Consequentely the Province of Madrid does not satisfy the conditions for the first stage of the method.

(f) The first stage of analysis must be complemented by a second stage which allows other relevant indicators based on available Community and national statistical data to be taken into account. In some circumstances, and especially for regions which are at the margin of the thresholds applied in the first stage, it is possible that the second stage may reveal an adequate justification for regional aid even in regions which do not full satisfy the thresholds established in the course of the first stage.

This does not apply in the case of the Province of Madrid, which has a per capita GDP and rate of structural unemployment much more favourable than the thresholds of the first stage and indeed significantly more favourable than the national average.

Moreover, the sole relevant indicator for the Province of Madrid which has been supplied by the Spanish Government is the fall of 36,1 % in agricultural employment in the province between 1987 and 1989. That indicator alone cannot be taken to justify the grant of regional aid in the Province of Madrid since it concerns an industry which accounted for only 1 % of employment in the province in 1988.

Moreover, the trend in recent years in the per capita GDP and unemployment rate of the Province of Madrid has been favourable, particularly with regard to unemployment, where the position has markedly improved. Whilst the province's per capita GDP increased from 123 % of the national average in 1986 to 127 % of the national average in 1990, the provincial rate of unemployment fell from 86 % of the national average in 1988 to 70 % of the national average in 1992.

Consequently, the second stage of the method too does not provide any justification for the grant of regional aid in the Province of Madrid.

(g) All that remains to be done therefore is to see whether there are exceptronal circumstances which, under the method, justify an analysis that focuses on the Sierra Norte alone rather than on the province as a whole.

It should be recalled that the Commission, in its 1987 decision, already identified exceptional circumstances enabling the analysis to be carried out at area rather than provinicil level. The Commission especially took account of the fact that the Sierra Norte was a mountainous agricultural area forming a natural extension of the Provinces of Segovia and Guadalajara which fitted in better with the socio-economic background of those provinces than with that of the Province of Madrid, to which it was attached for administrative purposes.

The Sierra Norte remains a mountainous area forming a natural extension of the Provinces of Segovia and Gudalajara.

Looking at the data provided by the Spanish Government, there may be doubts whether the area is in fact agricultural because the percentage of jobs in the primary sector fell from 12,95 % in 1981 to 8,85 % in 1986 and is thus below the national average, which was 16,1 % for 1986. However, the area remains to a certain degree agricultural in so far as in 42 of its 46 municipalities the percentage of jobs in the primary sector (19,48 % in 1986) is higher than the national average.

The population density of the area has increased from 23,9 inhabitants per km^2 in 1981 to 30,5 inhabitants per km^2 in 1986. Despite the increase, the population density of the area continues to bear a closer resemblance to the densities of the Provinces of Segovia and Guadalajara (21,7 and 12 inhabitants per km^2, respectively) than to that of the Province of Madrid (597,9 inhabitants per km^2). In this respect, the Sierra Norte continues to have a socio-economic background that is more like that of Segovia and Guadalajara than that of Madrid.

[1] OJ No C 212, 12. 8. 1988, pp. 4 and 5.

The situation in this area also looks very different from that of the rest of the Province of Madrid because the personal income tax payable per inhabitant in the Sierra Norte is on average about one third of that for the Province of Madrid as a whole.

There are thus grounds for again focusing the analysis on the area.

(h) However, the information supplied by the Spanish Government shows that the unemployment rate in the area is a little more favourable than that for the province as a whole, which is significantly lower (see point (e) above) than the threshold of 110 % of the national average applied in the first stage of the method. Since no per capita GDP figures for the area are available it is impossible to conclude that the Sierra Norte does not satisfy the requirements of the first stage of the method. Nevertheless, a comparison with the Provinces of Segovia and Guadalajara suggests that these conditions have not been satisfied since the per capita GDPs of these provinces are 94 and 120 % respectively of the national average (average for the years 1986 to 1990).

(i) In the second stage of the method account must be taken of the additional fact that, since the agricultural productivity of the area appears low (small size and low degree of use of farms, age of the labour force), it may well be that there is underemployment in agriculture, although the level of that underemployment is limited by the size of the primary sector. Finally, despite the relatively unfavourable trend in the area's demographic characteristics (out-migration, depopulation of villages and ageing) its population has in fact grown from 39 319 inhabitants in 1981 to 50 029 inhabitants in 1986. These factors do not permit the area to be considered eligible under the second stage of the method.

(j) Nevertheless, under guidelines adopted by the Commission in 1991, certain national aid restricted to small and medium-sized enterprises (SMEs) may be authorized to the end of 1993 at the request of the Member State concerned in areas satisfying the eligibility criteria under Community structural policies for Objectives 2 and 5b where aid could not be authorized according to the Commission's appraisal in comparable situations, applying the usual criteria of the method, for regions not covered by Objectives 2 or 5b.

Except for the municipality of Colmenar Viejo, the Sierra Norte is currently eligible under Objective 5b. Consequently, the grant of aid under the national regional aid scheme may be authorized in the Sierra Norte in the Province of Madrid (excluding the municipality of Colmenar Viejo) in accordance with the guidelines referred to in the foregoing paragraph, provided that it is limited to the SMEs specified in the Community guidelines on State aid for small and medium-sized enterprises (SMEs) [1], for a period ending on 31 December 1993.

After that date, all plans to apply the national regional aid scheme in the Sierra Norte in the Province of Madrid must be notified to the Commission under Article 93 (3) of the Treaty.

(k) With regard to maximum aid intensities, the 1991 Commission guidelines provide that the aid which may be authorized in the regions in question are not subject to a ceiling fixed in advance. Nevertheless, according to the Commission's practice in such situations and in relation to investment aid, the acceptable maximum intensities are as follows: 10 or 20 % of the investment, depending on whether it involves SME projects or small enterprises a defined in the Community guidelines. In such cases, the Commission may also authorize aid of up to 40 % of the investment for craft-industry projects (enterprises with a maximum of 10 employees) or tourist projects. Such ceilings have in fact already been authorized by the Commission for aid in the Madrid region under Objective 5b (State aid measure No 31/91). In order to comply with the 1991 guidelines and ensure equality of treatment, the Commission may thus authorize the ceilings for the scheme in question up to the above-mentioned limits, until 31 December 1993.

Finally, the aid must comply with the provisions of Community law on the culmination of aids for different purposes [2] and certain sectors of industry, agriculture and fisheries,

HAS ADOPTED THIS DECISION:

Article 1

The scheme of regional aid in the Sierra Norte in the Province of Madrid, excluding the municipality of Colmenar Viejo, which is retricted to SMEs as defined in the Community guidelines on State aid for small and medium-sized enterprises (SMEs) is compatible with the common market within the meaning of Article 92 (3) (c) provided that the aid granted satisfies the following conditions:

[1] OJ No C 213, 19. 8. 1992, p. 2, section 2.2.
[2] OJ No C 3, 5. 1. 1985, p. 2.

— the aid itensity does not exceed :

  — 40 % of the investment in craft-industry projects (enterprises with a maximum of ten employees) or tourist projects,

  — 20 % of the investment in other projects of small enterprises as defined in the Community guidelines on State aid for small and medium-sized entrprises (SMEs), and

  — 10 % of the investment in other cases ;

— the scheme is not applied after 31 December 1993.

Article 2

The aid shall comply with the provisions of Community law on the cumulation of aids for different purposes and certain sectors of industry, agriculture and fisheries.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 9 March 1993.

For the Commission

Karel VAN MIERT

Member of the Commission