COMMISSION DECISION

of 14 March 2000

on the redefinition of assisted areas under the joint Federal Government/*Länder* scheme for improving regional economic structures in Germany for the period 1 January 2000 to 31 December 2003 — West Germany and Berlin

(notified under document number C(2000) 809)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to those provisions [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) On 30 March 1999, Germany sent a 12-page fax announcing that two annexes notifying the regional aid map of Germany [2] would be sent by mail. The annexes were registered as received by the Secretariat-General on 23 April 1999. At a meeting on 11 and 12 May 1999 in Bonn, the Commission received oral explanations and asked for additional information in writing. On 19 May 1999, Germany sent clarifications on the notification.

(2) By letter dated 17 August 1999, the Commission informed Germany that it had decided to declare the regions proposed under Article 87(3)(a) of the EC Treaty and their respective maximum aid intensities compatible with the common market (the five new *Länder*, State aid Case N 195/99) and that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in order to examine the compatibility of the regions proposed under Article 87(3)(c) of the EC Treaty (the West German assisted areas and Berlin, State aid Case C 47/99).

(3) The Commission decision to declare a part of the German regional aid map compatible with the common market and to initiate the formal investigation procedure in respect of the other part of the German regional aid map was published in the *Official Journal of the European Communities* [3]. In relation to the second part, the Commission called on interested parties to submit their comments.

(4) The Commission received five comments from interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by fax dated 21 January 2000.

(5) The Commission received written comments from Germany on 17 September 1999. Additional information and comments were submitted on 2 February 2000. Meetings were held in Brussels (12, 18 and 23 November 1999) and in Berlin (2 December 1999) between representatives of the Commission and the German Government.

II. DETAILED DESCRIPTION OF THE ASSISTED AREAS PROPOSED BY GERMANY PURSUANT TO ARTICLE 87(3)(C) OF THE EC TREATY

(6) Under German law, the Planning Committee set up under the Federal Law on the joint Federal Government/*Länder* scheme for improving regional economic structures (hereinafter called the joint Federal Government/*Länder* scheme), decides which regions are eligible for regional aid and under which derogation of the EC Treaty. Such a decision was taken on 25 March 1999 and subsequently notified to the Commission on 23 April 1999.

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[1] OJ C 340, 27.11.1999, p. 8.

[2] For the definition of 'regional aid map', see point 5.1 of the guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

[3] OJ C 340, 27.11.1999, p. 8.

(7) The national decision of 25 March 1999 has partly been declared compatible with the common market as far as the five new *Länder* of Brandenburg, Saxony, Saxony-Anhalt, Thuringia and Mecklenburg-Western Pomerania, proposed under Article 87(3)(a) of the EC Treaty, and their maximum aid intensities for the period 1 January 2000 to 31 December 2003 are concerned. However, as far as the regions proposed under Article 87(3)(c) of the EC Treaty are concerned, the Commission initiated the formal investigation procedure pursuant to Article 88(2) of the EC Treaty and Article 4(4) of Council Regulation (EC) No 659/1999 [4].

(8) In initiating the procedure, the Commission expressed doubts over the following points of the notification:

1. Compliance with points 3.10.1 and 3.10.2 of the guidelines on national regional aid for not presenting the methodology in a clear and detailed manner for regions proposed under Article 87(3)(c) of the EC Treaty. The Commission is asking Germany to describe the methodology and all its ancillary aspects applicable to all regions proposed under Article 87(3)(c) of the EC Treaty.

2. Compliance with the first indent of point 3.10.3 of the guidelines in so far as municipalities (*Gemeinden*) which are not part of labour market regions proposed to the Commission under Article 87(3)(c) of the EC Treaty are eligible for regional aid (see also Annex to this Decision).

3. Compliance with the last sentence of point 3.10 of the guidelines, because Germany applies a maximum population ceiling for (c) regions of 23,4 % of its total population. Therefore, the ceiling as notified by Germany goes beyond the limit acceptable in the common interest and could not, at this stage, be considered compatible with the common market.

4. As Berlin has not been clearly identified as a region under Article 87(3)(a) or (c) of the EC Treaty, the Commission has no option but to raise doubts about its status.

5. Compliance with the fourth paragraph of point 4.8 of the guidelines for not respecting the regional aid intensities in the labour market regions proposed under Article 87(3)(c) of the EC Treaty, which have a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average and which do not adjoin a region with Article 87(3)(a) status.

6. Doubts as to whether the three regions of Kronach, Hersfeld-Rotenburg and Göttingen as well as Passau and Wunsiedel were notified by Germany on the basis of the exception provided for in the fourth paragraph of point 4.8 of the guidelines.

7. Doubts as to whether the principle of adjustment as expressed in the last paragraph of point 4.8 of the guidelines has been complied with.

(9) This Commission Decision relates only to the assisted regions and permitted maximum aid intensities which fall under the derogation of Article 87(3)(c) of the EC Treaty according to the German proposal as amended by the German Government during the formal investigation procedure.

(a) **Homogeneous geographical unit**

(10) In order to comply with the first indent of point 3.10.3 of the guidelines on national regional aid, Germany proposes the notion of the 'labour market region' (*Arbeitsmarktregion*). The term is used for a statistical unit the underlying idea of which is to identify an economic zone in terms of functionality, rather than administrative boundaries. Therefore, Germany selects the labour market region instead of NUTS III as the homogeneous geographical unit for its regions.

(11) Germany justifies its choice with the argument that economic problems to be targeted with regional aid policy do not, in general, correspond to administrative borders. Moreover, the indicators selected (see recital 12) were difficult to obtain and would lead to a distorted picture if measured on the level of NUTS III. Germany had opted for a geographical unit which best reflected economic reality in the form of commuter patterns and work-place accessibility. Ideally, this geographical unit represented a functionally interdependent region with a maximum of internal interdependence and a minimum of external interdependence. A labour market region was at least as big as, and usually bigger than, a NUTS level III region.

(b) **Methodology and indicators**

(12) The labour market regions in West Germany are ranked using a synthetic indicator based on the following four weighted subindicators:

[4] OJ L 83, 27.3.1999, p. 1.

Indicator	Weighting
Average unemployment rate from 1996 to 1998	40 %
Per capita income in 1997 of employed persons paying social security contributions	40 %
Infrastructure indicator	10 %
Employment forecast up to 2004	10 %

(13) The purpose of the indicators is to draw an accurate picture of which regional problems exist in West Germany and which regions require regional aid. The region with the least favourable socioeconomic situation, as determined by the synthetic indicator, is ranked in first place with the others following in ascending order.

(c) **The labour market region of Berlin**

(14) The labour market region of Berlin consists of the city of Berlin and its surrounding area, which belongs to the *Land* of Brandenburg and entirely surrounds Berlin. Brandenburg meets the eligibility criteria for assistance under Article 87(3)(a) of the EC Treaty and was accepted as an assisted area by the Commission. Germany has therefore proposed only the city of Berlin as an Article 87(3)(c) area, although it undertakes to treat the whole labour market region as if it were an Article 87(3)(c) assisted area. Germany explains that this means that not all the potential for granting aid will be used in the Brandenburg area surrounding Berlin ([5]).

(d) **List of regions and population ceiling**

(15) On 2 February 2000, after the procedure had been initiated, Germany submitted a list comprising 41 labour market regions and the city of Berlin (see Annex 1) ([6]). These regions have a total population of 14 546 097 inhabitants, accounting for 17,7 % of the total German population ([7]), and are considered by Germany to be the regions with the highest regional policy priority.

(e) **Aid intensities**

(16) During the formal investigation procedure, Germany submitted the following maximum aid intensities for West German labour market areas proposed for a derogation under Article 87(3)(c) of the EC Treaty:

28 % (gross) for SMEs, and

18 % (gross) for large undertakings.

(17) In future, it is to be explicitly provided for in the outline plan (Part II point 2.5.1 in conjunction with footnote 11) that the maximum aid intensities allowed, even in cases of cumulation of aid, may neither exceed the maximum gross intensity rate stipulated in the plan nor the maximum aid intensity rates approved by the Commission in nge.

(18) For Berlin, Germany notified the following maximum aid rates:

43 % (gross) for SMEs and

28 % (gross) for large undertakings.

(f) **Possible cumulation**

(19) In future, it is to be explicitly provided for in the outline plan (Part II point 2.5.1 in conjunction with footnote 11) that the maximum aid intensities, even in cases of cumulation of aid, may neither exceed the maximum gross intensity rate stipulated in the plan nor the maximum aid intensity rates approved by the Commission in nge.

III. COMMENTS FROM INTERESTED PARTIES

(20) The Commission received five comments from interested parties. All five comments were submitted by German *Länder* or regions affected by the regional aid map and concern the 'exchange of regions' (*Fördergebietsaustausch*) ([8]). The arguments put forward can be summarised as follows.

(21) It is pointed out that the Commission accepted the exchange of regions before the guidelines were adopted and that regions or municipalities adjoining regional aid areas covered by the derogation in Article 87(3)(a) or (c) of the EC Treaty have to deal with the problem of different aid intensities.

([5]) Comment of Germany on the decision to initiate the formal investigation procedure, fax of 17 September 1999, p. 10.

([6]) The originally notified list of regions contained 60 labour market regions and accounted for 23,4 % of the total German population.

([7]) The total German population is based on data from 31 December 1997 and amounts to 82 057 379 inhabitants.

([8]) See recitals 12 and 38 of the decision to initiate the formal investigation procedure (OJ C 340, 27.11.1999, p. 8) which explain that Germany removed some municipalities from the proposed labour market regions and replaced them by municipalities that do not belong to a proposed labour market region.

(22) It is also argued that the doubts raised by the Commission in its decision to initiate the formal investigation procedure concerning the exchange of regions would lead to exclusion of these regions from the joint Federal Government/*Länder* scheme. Another argument put forward is that, even in areas in which the method applied under the joint Federal Government/*Länder* scheme does not result in the status of a labour market region, the Commission should intervene if the socioeconomic data for the area warrant it.

(23) One of the observations explains that the exchange of regions allows the *Länder* the possibility of deviating from the criteria fixed for the country as a whole and allows them to adopt a flexible approach to specific structural problems. In this context, the subsidiarity argument is used. *Länder* should have a say in the choice of the regions on the basis of their own criteria.

IV. COMMENTS FROM GERMANY IN RESPONSE TO THE COMMENTS FROM INTERESTED PARTIES

(24) The comments of the German Government in response to the comments submitted by third parties may be summarised as follows: Germany reiterates that exchanging regions is of enormous importance for regional policy. It only covers exceptional economic situations which cannot be properly handled using the method developed for the joint Federal Government/*Länder* scheme. Furthermore, some structural problems have arisen in the recent past which are not reflected in the indicators. Exchanging regions is also necessary in order to mitigate the effects of different aid levels in neighbouring regions or municipalities. Germany concludes that, although exchanging regions is not covered by the letter of the guidelines, it is in line with its spirit. The regional aid map was changed for purely practical reasons, but Germany maintains its view that the exchange of regions is a valid tool for selecting eligible regions.

V. COMMENTS FROM GERMANY IN RESPONSE TO THE INITIATION OF THE FORMAL INVESTIGATION PROCEDURE

(25) The formal investigation procedure was initiated in relation to eight points (see recital 8 of this Decision).

(26) Concerning the methodology, recitals 12, 13, 41, 42 and 43 of this Decision describe the position of Germany and the Commission's assessment.

(27) Germany's comments on the exchange of regions are set out in recital 24; the Commission's response is set out in recitals 69 et seq.

(28) In relation to the population ceiling Germany maintains that 23,4 % of its total population should be covered by regions falling under Article 87(3)(c) of the EC Treaty and regrets that the Commission insists on the maximum population ceiling as laid down on 21 January 1999. Although Germany is still of the opinion that the population ceiling set for Germany (see Commission decisions communicated to Germany by letters dated 24 February 1998 (SG(98) D/1670) and 30 December 1998 (SG(98) D/12384)) was determined in violation of the principle of equal treatment, it did propose a modified list (Annex) during the formal investigation procedure corresponding to the population ceiling set by the Commission. Germany points out that regional aid is of the utmost importance for the necessary structural change in Germany ([9]). For purely practical reasons, therefore, Germany was changing the regional aid map, without giving up its legal opinion in relation to the population ceiling.

(29) The eligibility of the city of Berlin as a regional aid area is assessed in recitals 14 and 44 to 47 of this Decision.

(30) The question of the aid intensities for regions which have a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average and which do not adjoin an Article 87(3)(a) area, and regions which do adjoin an Article 87(3)(a) area is dealt with in recitals 57, 58, 61 and 62 of this Decision.

(31) Concerning the principle of adjustment, see recitals 67 and 68 of this Decision.

(32) Concerning the cumulation rules, see recital 64 et seq. of this Decision.

VI. ASSESSMENT

(33) Germany notified its regional aid map on 23 April 1999. The Commission approved the aid map for the period 1 January 2000 to 31 December 2003 for the regions eligible under Article 87(3)(a) of the EC Treaty.

(34) This Decision authorises the regional aid map for the period 1 January 2000 to 31 December 2003 for the regions eligible under Article 87(3)(c) of the EC Treaty,

([9]) Germany's comments on the decision to initiate the formal investigation procedure, fax of 2 February 2000, p. 2.

provided Germany complies with the conditions and requirements set out in Article 2. The two Decisions together determine the German regional aid map as defined in point 5.1 of the guidelines.

(35) Germany's notification of 2 February 2000, amended in relation to the Article 87(3)(c) areas, is examined in the light of Article 87(3)(c) of the EC Treaty and, in particular, in the light of the guidelines.

(a) **Homogeneous geographical unit**

(36) Pursuant to the first indent of point 3.10.3 of the guidelines, the regions proposed pursuant to Article 87(3)(c) of the EC Treaty must conform to NUTS level III or, in justified circumstances, to a different homogeneous geographical unit. Only one type of geographical unit may be submitted by each Member State.

(37) As described in recital 11, Germany justifies its departure from NUTS level III on the grounds that regional economic problems in Germany cannot be properly reflected at this level.

(38) The Commission notes that Eurostat uses NUTS level III for the purposes of collecting regional statistics in the Community. The demarcation is based almost exclusively on administrative boundaries as communicated to Eurostat by the various Member States. In Germany, the NUTS level III corresponds to the level of a district (*Kreis*). From a statistical point of view, comparing the 15 Member States, these are small units, both in terms of population and in terms of geographical area.

(39) Consequently, Germany uses a concept which, compared with NUTS level III, covers a larger geographical area and a higher population figure. All the labour market regions consist of one or more NUTS level III regions. The underlying idea is the functional economic areas identified by commuter patterns and accessibility analyses. In Germany's view, the statistical units so obtained best reflect the regional problems that need to be dealt with by regional policy measures.

(40) The Commission accepts that Germany is using the labour market regions as a homogeneous geographical unit and acknowledges that this is compatible with the first indent of point 3.10.3 of the guidelines.

(b) **Methodology and indicators**

(41) As set out in points 3.10.1 and 3.10.2 of the guidelines, the methodology and the indicators for the regions proposed under Article 87(3)(c) of the EC Treaty must satisfy a number of conditions.

(42) Germany presents its methodology in a clear and detailed fashion, and the Commission can therefore assess its merits. Each indicator is based on reliable statistical sources. Unemployment, income, infrastructure and employment up to 2004 may be regarded as relevant to the examination of the socioeconomic circumstances of a labour market region. All the indicators are based on statistical series covering a period including at least the three years prior to the notification or are derived from the last survey carried out, where the relevant statistics are not available on an annual basis. The fourth indicator is based on a statistical projection method using time series data from at least the last three years.

(43) The objective subindicators make it possible to measure the disparities in the socioeconomic circumstances of the regions in question. The Commission therefore accepts that Germany has met all conditions set out in points 3.10.1 and 3.10.2 of the guidelines.

(c) **The labour market region of Berlin**

(44) The city of Berlin, a German *Land* in its own right, corresponds to the statistical units of NUTS levels I, II, and III at the same time. Together with its surrounding region, which belongs to the *Land* of Brandenburg, Berlin is a labour market region. The NUTS level II region of Brandenburg meets the exemption criteria of Article 87(3)(a) of the EC Treaty, a fact which is acknowledged by the Commission.

(45) Germany argues that it would be unfair if the city of Berlin could not be proposed under Article 87(3)(c) of the EC Treaty on the grounds that part of the labour market region meets the socioeconomic criteria for classification as an Article 87(3)(a) region.

(46) The Commission acknowledges the special geographical position of the city of Berlin. Germany undertakes in any case to treat the entire labour market region of Berlin as an Article 87(3)(c) assisted area. This would mean the aid potential would not be fully used in the surrounding area

of Brandenburg ([10]). The Commission notes that this commitment means that aid intensities in those parts of Brandenburg that belong to the labour market region of Berlin may not exceed the aid intensities approved for Berlin and that no operating aid may be granted.

(47) All these considerations lead the Commission to conclude that the city of Berlin is covered by the derogation of Article 87(3)(c) of the EC Treaty.

(d) **List of assisted regions, population ceiling and standard deviation**

(48) The original notification of the list of assisted regions was not in line with the guidelines and with the assisted area population ceilings set by the Commission. The population ceiling was exceeded (see recital 44 of the decision initiating the procedure), and Germany did not comply with the principle of a single, homogeneous geographical unit, since there was an exchange of regions (see recital 38 of the Decision).

(49) During the course of the procedure, so as to bring the notification into line with the guidelines, Germany provided a list of regions that was reduced to the population ceiling set by the Commission and which complied with the principle of a single, homogeneous geographical unit.

(50) In selecting the regions for the Annex, Germany did not exchange any regions. Furthermore, the population ceiling set for Germany is complied with: on 21 January 1999, the Commission published the national ceilings for regional aid coverage under the exceptions provided for in Article 87(3)(a) and (c) of the EC Treaty for the period 2000 to 2006 (OJ C 16, 21.1.2001, p. 5). Germany was informed by letter dated 30 December 1998 (SG(98) D/12384). According to this, the population ceiling for Germany is 34,9 %, a figure which applies to the entire territory of Germany and covers the regions eligible under Article 87(3)(a) and (c) of the EC Treaty. In the notification of 23 April 1999, Germany proposed 17,16 % of its total population for the derogation provided for in Article 87(3)(a) of the EC Treaty; the Commission declared this compatible with the common market. Germany therefore has a population ceiling of 17,7 % for the assisted areas coming under Article 87(3)(c) of the EC Treaty. The proposed regions, with a total of 14 546 097 inhabitants, account for 17,7 % of the total German population and can be declared compatible with the common market.

(51) As stated in the third indent of point 3.10.3 of the guidelines, the list of regions must be arranged on the basis of the indicators selected. The regions proposed must show significant disparities (half of the standard deviation) compared with the average of the potential Article 87(3)(c) regions in Germany, in respect of one or other indicator used in the method.

(52) The Commission has checked the ranking order and the deviation requirement and considers that this criterion has been complied with in relation to the Annex.

(53) The list of assisted regions presented by Germany and set out in the Annex to this Decision can therefore be regarded as compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

(54) The Commission also considers it necessary for Germany to take measures at national level to demarcate quite clearly those regions covered by Article 87(3)(a) of the EC Treaty from those regions which are covered by Article 87(3)(c) of the EC Treaty and to make it clear that only such regions are entitled to receive regional assistance within the meaning of the guidelines. The Commission therefore considers it appropriate to impose a requirement along these lines in this Decision.

(e) **Aid intensities**

(55) Point 3.10 of the guidelines requires Member States to notify the relative aid intensities in the Article 87(3)(c) areas in accordance with points 4.8 and 4.9 of the guidelines. Under the second paragraph of point 4.8 of the guidelines, the aid intensity must not in principle exceed 20 % nge. However, if the proposed Article 87(3)(c) region has, at NUTS level III, both a higher per capital GDP/PPS and a lower unemployment rate than the respective Community average, the fourth paragraph of point 4.8 of the guidelines provides that the intensity of regional aid must not exceed 10 % nge. The fourth paragraph of point 4.8 of the guidelines provides that, exceptionally, in the case of regions subject to the ceiling of 10 % nge, a maximum aid intensity of 20 % nge may be approved for regions (corresponding to NUTS level III level or smaller) adjoining a region with Article 87(3)(a) status. Under point 4.9 of the guidelines, a supplement of 10 percentage points gross is allowed for SMEs, except transport firms.

([10]) Germany's comments on the decision to initiate the formal investigation procedure, fax dated 17 September 1999, p. 10.

(56) Germany has notified for the assisted regions in West Germany 28 % (gross) for SMEs and 18 % (gross) for large firms and, for Berlin, 43 % (gross) for SMEs and 28 % (gross) for large firms (see recitals 16 and 18).

(57) A comparison of the Commission's letter to Germany dated 30 December 1998 (SG(98)D/12384) with the list of regions in the Annex shows that the following NUTS level III regions have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average and do not adjoin regions with Article 87(3)(a) status: Hameln-Pyrmont, the cities of Hof and Passau.

(58) The following regions proposed in the Annex are covered by the exception provided for in the fourth paragraph of point 4.8 of the guidelines: Wunsiedel, Hersfeld-Rotenburg, Göttingen and the city of Berlin.

(59) Germany states that, because of *Land*-specific circumstances, the aid intensities cannot be given in nge, but only in gross terms. However, Germany has undertaken to comply with the gross aid intensities and accepts that the Commission approves the maximum aid intensities in nge for reasons of comparability between Member States. Since the nge cannot be equated with the gross value of a given grant of aid, the Commission is bound to approve maximum aid intensities for the German regional aid map in nge, even though the notification was submitted in gross terms. The supplements for SMEs are expressed in gross terms.

(60) For those regions for which the guidelines specify a maximum aid intensity of 10 % nge, it is made clear in the relevant outline plan (footnote 11 in point 2.5.1 in Part II) that the nge ceiling must not be exceeded.

(61) The Commission therefore considers that the following maximum aid intensities in West Germany are compatible with the guidelines:

— in the areas Hameln-Pyrmont, the cities of Hof and Passau:

  — 10 % nge
    and a 10 % gross supplement for SMEs,

— for the remaining West German assisted areas, except the city of Berlin:

  — 18 % nge
    and a 10 % gross supplement for SMEs.

(62) The gross aid intensities for the city of Berlin (43 % and 28 %, see recital 58) exceed the maximum specified in the guidelines, since footnote 11 in point 2.5.1 in Part II of the outline plan does not refer specifically to Berlin. Consequently, the aid intensities for the city of Berlin can be considered compatible with the guidelines only if the following nge rates are not exceeded:

— 20 % nge
  and a 10 % gross supplement for SMEs.

(63) Germany has complied with the criterion that no supplements may be granted to SMEs in the transport sector, since the outline plan is not applicable to transport firms in general.

(f) **Possible cumulation**

(64) Point 4.18 of the guidelines provides that the regional aid intensity ceilings, expressed in nge, apply to the total amount of aid, whether the aid comes from local, regional, national or Community sources. This rule ensures that whenever regional aid is granted to an undertaking, relating to the same eligible costs, the amount of aid must be totalled and may not exceed the aid ceiling for a given region. Point 4.20 of the guidelines relates to the combining of regional aid with aid for other purposes. In such cases, the most favourable ceiling will apply ([11]).

(65) In Part II, point 2.5.1 of the outline plan, Germany provides for the possibility of cumulation of regional aid. In conjunction with footnote 11 in point 2.5.1 of the outline plan, this provision explicitly makes it clear that, even in the event of cumulation with other types of aid, the maximum aid intensities allowed must not exceed the gross intensity rate laid down in the outline plan or the maximum aid intensities approved by the Commission in nge.

(66) As noted in recital 62, footnote 11 does not apply to the city of Berlin. Consequently, the cumulation rules do not comply with the guidelines. However, if the national legal framework clearly stipulates that the maximum aid intensities of 20 % nge and 20 % nge plus 10 % gross in the case of SMEs will be complied with, even in the event of cumulation of regional aid, the Commission can consider the cumulation rules to be compatible with the guidelines.

([11]) It should be noted that, in the notification of the 29th outline plan (see N 767/99), Germany lays down the rules for the combining of regional aid with aid for other purposes. Consequently, this aspect is dealt with in the context of the notification registered under N 767/99.

(g) **Principle of adjustment**

(67) The Commission accepts Germany's argument that, with the exception of the city of Berlin, the German maximum aid intensities are below the ceilings laid down in the guidelines. Below this ceiling, Germany has a further two-tier distinction (see recital 61). This gradation and the fact that in each individual case the maximum aid intensity ceiling laid down in the regional aid map may be exhausted only if specific structural effects so require, leads the Commission to conclude that the regional aid map takes appropriate account of the criteria set out in point 4.8 of the guidelines.

(68) The Commission also notes that the maximum aid intensities have not been increased in relation to those in the previous German regional aid map (see State aid Case N 613/96).

(h) **Exchange of regions**

(69) Point 3.10 of the guidelines sets out the main criteria which the Member States must comply with in selecting the regions to be proposed as regions eligible for assistance under Article 87(3)(a) and (c) of the EC Treaty. An exchange of regions clearly goes beyond these criteria and results indirectly in the introduction of a new indicator.

(70) The indicators and the methodology are intended to enable Member States to select those regions which are in a particularly difficult socioeconomic situation and hence require State aid in accordance with the guidelines.

(71) Member States can set their own priorities in the choice of methods and indicators. The Commission does not intervene in such decisions, nor does it have the power to correct the outcome, if both are acceptable. While the assisted regions are selected at Federal level, the *Länder* are involved in that they have a say in the determination of the indicators and the methodology.

(72) The various arguments put forward to justify the exchange of regions, for example, the argument that 'this practice does not lead to an increase in the population living in assisted (c) regions, because the municipalities affected by this exchange programme comply with the national population ceiling', that 'this exchange involves only very small geographical units (municipalities) and only a small percentage of the population (2 %)' and that 'such an exchange merely helps to mitigate the effects arising from the juxtaposition of regions receiving different levels of assistance', only allow the conclusion to be drawn that the infringement of point 3.10 of the guidelines is of a less serious nature.

(73) Germany's view that the exchange of regions is in accordance with the spirit though not the letter of the guidelines is not explained in any greater detail and is not shared by the Commission.

(74) In any case, Germany has amended its list of assisted regions eligible under Article 87(3)(c) of the EC Treaty without applying the exchange of regions method. The amended proposal is deemed compatible with the common market.

VII. CONCLUSIONS

The German regional aid map could, in the Commission's view, be deemed compatible with the common market if:

1. Germany introduces at national level measures which quite clearly distinguish those regions which are eligible under Article 87(3)(a) of the EC Treaty from those regions which are eligible under Article 87(3)(c) of the EC Treaty and which clearly establish that only these regions are entitled to receive regional aid pursuant to the guidelines;

2. the aid intensities for the city of Berlin are limited to the ceiling of 20 % nge, plus a possible supplement of 10 % gross for SMEs;

3. possible cumulation is limited to the regional aid ceilings approved by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The regional aid map for the period 1 January 2000 to 31 December 2003 in relation to the regions eligible under Article 87(3)(c) of the EC Treaty is compatible with the common market, subject to the conditions set out in Article 2.

Article 2

1. Germany shall introduce at national level measures which quite clearly distinguish those regions which are eligible under Article 87(3)(a) of the EC Treaty from those regions which are eligible under Article 87(3)(c) of the EC Treaty and which clearly establish that only these regions are entitled to receive regional aid within the meaning of the guidelines on national regional aid.

2. The maximum aid intensities for the city of Berlin shall, even in cases of cumulation, be limited to 20 % nge, plus a possible supplement of 10 % gross for SMEs.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 March 2000.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

List of areas assisted under Article 87(3)(c) of the EC Treaty representing 17,73 % of the population

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
1	Berlin		Berlin	City of Berlin and municipalities in Brandenburg in the Berlin conurbation including City of Berlin	3 425 759	4 253 418	
Total					**3 425 759**		**4,18**

Population of assisted area: 3 425 759.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
2	Schleswig-Holstein	14	Husum	LK Nordfriesland		162 084	
		18	Lübeck	City of Lübeck	215 376		
				LK Ostholstein	199 229	414 605	
		22	Flensburg	City of Flensburg	85 547		
				LK Schleswig-Flensburg	192 895	278 442	
		33	Heide	LK Dithmarschen		135 773	
Total						**990 904**	**1,21**

Population of assisted area: 990 904.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
3	Lower Saxony	1	Wilhelms-haven	City of Wilhelmshaven	88 950		
				LK Friesland	99 419		
				LK Wittmund	56 057	244 426	
		2	Helmstedt	LK Helmstedt		100 900	
		4	Uelzen	LK Lüchow-Dannenberg	52 129		
				LK Uelzen	96 541	148 670	
		5	Leer	LK Leer		157 051	
		6	Bremerhaven	LK Cuxhaven		200 636	
		8	Osterode	LK Osterode am Harz		87 531	
		9	Goslar	LK Goslar		158 979	

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
		10	Emden	City of Emden	51 546		
				LK Aurich	182 991	234 537	
		12	Einbeck	LK Northeim		152 988	
		15	Hameln	LK Hameln-Pyrmont		163 723	
		16	Göttingen	LK Göttingen		268 099	
		23	Cloppenburg	LK Cloppenburg		144 526	
		26	Westerstede	LK Ammerland		106 688	
		27	Celle	LK Celle		180 269	
		31	Nordenham	LK Wesermarsch		94 551	
		34	Holzminden	LK Holzminden		83 008	
		37	Nordhorn	LK Grafschaft-Bentheim		127 470	
	Total					**2 654 052**	**3,23**

Population of assisted area: 2 654 052.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
4	Bremen	6	Bremerhaven	City of Bremerhaven		126 997	
	Total					**126 997**	**0,15**

Population of assisted area: 126 997.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
5	North Rhine-Westphalia	17	Hagen	City of Hagen		209 027	
		24	Gelsen-kirchen	City of Gelsenkirchen	286 432		
				City of Bottrop	121 565		
				City of Herne	177 863		
				Kreis Recklinghausen	662 309	1 248 169	
		28	Heinsberg	Kreis Heinsberg		243 796	
		32	Duisburg	City of Duisburg	529 062		
				City of Oberhausen	223 399		
				Kreis Wesel	469 980	1 222 441	
		40	Dortmund	City of Dortmund	594 866		
				City of Hamm	181 194		
				Kreis Unna	427 067	1 203 127	
	Total					**4 126 560**	**5,03**

Population of assisted area: 4 126 560.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
6	Hessen	7	Eschwege	Werra-Meißner-Kreis		116 580	
		19	Hersfeld	LK Hersfeld Rotenburg		132 618	
		35	Kassel	City of Kassel	199 453		
				LK Kassel	244 192	443 645	
		38	Schwalm-Eder	Schwalm-Eder-Kreis		193 802	
	Total					**886 645**	**1,08**

Population of assisted area: 886 645.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
7	Rhineland Palatinate	3	Pirmasens	City of Pirmasens	47 184		
				City of Zweibrücken	35 885		
				LK Südwestpfalz	105 843	188 912	
		11	Idar-Oberstein	LK Birkenfeld		90 746	
		21	Kaiserslautern	City of Kaiserslautern	101 315		
				Donnersbergkreis	77 279		
				LK Kaiserslautern	109 917		
				LK Kusel	79 611	368 122	
	Total					**647 780**	**0,79**

Population of assisted area: 647 780.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
8	Saarland	30	Merzig	LK Merzig-Wadern		106 138	
		39	Saarbrücken	Association of towns (*Stadtverband*) Saarbrücken	355 865		
				LK Saarlouis	215 216		
				LK Neunkirchen	149 719	720 800	
	Total					**826 938**	**1,01**

Population of assisted area: 826 938.

No	*Land*	Labour market region		Cities or rural districts (*Landkreise* — 'LK') comprised in labour market region	Population (at 31 December 1997)		
		Ranking	Name		District (*Kreis*)	Labour market region	Total (%)
9	Bavaria	13	Freyung	LK Freyung-Grafenau		82 080	
		20	Marktredwitz	LK Wunsiedel	88 378		
				LK Tirschenreuth	80 544	168 922	
		25	Hof	City of Hof	51 781		
				LK Hof	110 340	162 121	
		29	Regen-Zwiesel	LK Regen		82 573	
		36	Cham	LK Cham		130 325	
		41	Passau	City of Passau	50 468		
				LK Passau	183 973	234 441	
	Total					**860 462**	**1,05**

Population of assisted area: 860 462.