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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 79/87

of 13 January 1987

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1579/86 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2010/86 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 12 January 1987;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2010/86 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 January 1987.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 173, 1. 7. 1986, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

to the Commission Regulation of 13 January 1987 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CCT heading No	Description	Levies	
		Portugal	Third country
10.01 B I	Common wheat, and meslin	18,39	197,33
10.01 B II	Durum wheat	45,77	243,84 ⁽¹⁾ ⁽²⁾
10.02	Rye	54,03	169,23 ⁽⁶⁾
10.03	Barley	24,59	182,98
10.04	Oats	86,01	151,07
10.05 B	Maize, other than hybrid maize for sowing	—	175,25 ⁽²⁾ ⁽³⁾ ⁽⁸⁾
10.07 A	Buckwheat	10,26	10,26
10.07 B	Millet	24,59	120,76 ⁽⁴⁾
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	9,83	178,67 ⁽⁴⁾ ⁽⁸⁾
10.07 D I	Triticale	⁽⁷⁾	⁽⁷⁾
10.07 D II	Canary seed; other cereals	24,59	45,71 ⁽²⁾
11.01 A	Wheat or meslin flour	40,36	290,61
11.01 B	Rye flour	90,26	251,54
11.02 A I a)	Durum wheat groats and meal	84,44	391,45
11.02 A I b)	Common wheat groats and meal	41,81	312,64

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 486/85 the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1,81 ECU/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is reduced by 50 %.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 and Commission Regulation (EEC) No 2622/71.

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within subheading 10.07 D I (triticale).

⁽⁸⁾ The levy referred to in Article 1 of Council Regulation (EEC) No 2913/86 shall be fixed on the basis of an invitation to tender in accordance with Commission Regulation (EEC) No 3140/86.

COMMISSION REGULATION (EEC) No 80/87

of 13 January 1987

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1579/86 ⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 2011/86 ⁽⁴⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of

these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 12 January 1987;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt originating in Portugal shall be zero.
2. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt originating in third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 January 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 173, 1. 7. 1986, p. 4.

ANNEX

to the Commission Regulation of 13 January 1987 fixing the premiums to be added to the import levies on cereals, flour and malt from third countries

A. Cereals and flour

CCT heading No	Description	(ECU/tonne)			
		Current 1	1st period 2	2nd period 3	3rd period 4
10.01 B I	Common wheat, and meslin	0	0	0	0
10.01 B II	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	4,26	4,26	4,26
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	100,8	100,8	100,8
10.07 B	Millet	0	0	0	0
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	0	0	0	0
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

CCT heading No	Description	(ECU/tonne)				
		Current 1	1st period 2	2nd period 3	3rd period 4	4th period 5
11.07 A I a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A I b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 A II a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	7,58	7,58	7,58	7,58
11.07 A II b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	5,67	5,67	5,67	5,67
11.07 B	Roasted malt	0	6,60	6,60	6,60	6,60

COMMISSION REGULATION (EEC) No 81/87

of 13 January 1987

fixing the amounts to be levied in the beef sector on products which left the United Kingdom during the week 22 to 28 December 1986

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1347/86 of 6 May 1986 on the granting of a premium for the slaughter of certain adult bovine animals in the United Kingdom ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 1695/86 of 30 May 1986 laying down detailed rules for the application of the premium for the slaughter of certain adult bovine animals for slaughter in the United Kingdom ⁽²⁾, and in particular Article 7 (1) thereof,

Whereas, under Article 3 of Regulation (EEC) No 1347/86, an amount equivalent to the amount of the variable slaughter premium granted in the United Kingdom is levied on meat and meat preparations from animals on which it has been paid, when they are consigned to other Member States or to non-member countries;

Whereas, under Article 7 (1) of Regulation (EEC) No 1695/86 the amounts to be charged on departure from the territory of the United Kingdom of the products listed

in the Annex to the said Regulation must be fixed each week by the Commission;

Whereas, accordingly, the amounts to be levied on products which left the United Kingdom during the week 22 to 28 December 1986 should be fixed,

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 3 of Regulation (EEC) No 1347/86, the amounts to be levied on the products referred to in Article 7 (1) of Regulation (EEC) No 1695/86 which left the territory of the United Kingdom during the week 22 to 28 December 1986 shall be those set out in the Annex.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 22 December 1986.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESSEN

Vice-President

⁽¹⁾ OJ No L 119, 8. 5. 1986, p. 40.

⁽²⁾ OJ No L 146, 31. 5. 1986, p. 56.

ANNEX

Amounts to be levied on products which left the territory of the United Kingdom during
the week 22 to 28 December 1986

(ECU/100 kg net weight)		
CCT heading No	Description	Amount
1	2	3
ex 02.01 A II a) and ex 02.01 A II b)	Meat of adult bovine animals, fresh, chilled or frozen :	
	1. Carcases, half-carcases or 'compensated' quarters	26,26474
	2. Separated or unseparated forequarters	21,01179
	3. Separated or unseparated hindquarters	31,51769
	4. Other :	
	aa) Unboned (bone-in)	21,01179
	bb) Boned or boneless	35,98269
ex 02.06 C I a)	Meat salted, in brine, dried or smoked, of adult bovine animals :	
	1. Unboned (bone-in)	21,01179
	2. Boned or boneless	29,94180
ex 16.02 B III b) 1	Other prepared or preserved meat or meat offal, containing meat or offal of adult bovine animals :	
	aa) Uncooked ; mixtures of cooked meat or offal and uncooked meat or offal :	
	11. Containing 80 % or more by weight of beef meat excluding offals and fat	29,94180
	22. Other	21,01179

COMMISSION REGULATION (EEC) No 82/87
of 13 January 1987
fixing the sluice-gate prices and levies for pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by Regulation (EEC) No 1475/86⁽²⁾, and in particular Articles 8 and 12 (1) thereof,

Whereas sluice-gate prices for pig carcasses and for the other products specified in Article 1 of Council Regulation (EEC) No 2766/75 of 29 October 1975 establishing the list of products for which sluice-gate prices are to be fixed and laying down the rules for fixing the sluice-gate prices for pig carcasses⁽³⁾, as last amended by Regulation (EEC) No 1905/83⁽⁴⁾, and levies for the products specified in Article 1 (1) of Regulation (EEC) No 2759/75, must be fixed in advance for each quarter in accordance with the methods of calculation laid down in Commission Regulation (EEC) No 2132/85 of 29 July 1985 fixing the levies and sluice-gate prices on pigmeat⁽⁵⁾;

Whereas, since sluice-gate prices and levies for pigmeat were last fixed by Commission Regulation (EEC) No 3078/86 of 7 October 1986, fixing the sluice-gate prices and levies for pigmeat⁽⁶⁾ for the period 1 November 1986 to 31 January 1987, they must be fixed anew for the period 1 February to 30 April 1987; whereas such prices and levies should in principle be fixed by reference to feed grain prices for the period 1 August to 31 December 1986;

Whereas, when the sluice-gate price applicable from 1 November, 1 February and 1 May is being fixed, trends in world market prices for feed grain are to be taken into account only if the value of the quantity of feed grain required varies by at least a specified minimum in relation to that used in calculating the sluice-gate price for the preceding quarter; whereas this minimum was fixed by Regulation (EEC) No 2766/75 at 3 %;

Whereas the value of the quantity of feed grain varies by more than 3 % from that used for the preceding quarter;

whereas trends in world market prices for feed grain must therefore be taken into account when fixing sluice-gate prices for the period 1 February to 30 April 1987;

Whereas, when the levies applicable from 1 November, 1 February and 1 May are being fixed, trends in world market prices for feed grain should be taken into account only if at the same time a new sluice-gate price is being fixed;

Whereas, since a new sluice-gate price is to be fixed trends in world market prices for feed grain must be taken into account in fixing the levies;

Whereas, in the case of products falling within any of subheadings 02.01 B II c) 1 to 7, 15.01 A I, 16.01 A or 16.02 A II of the Common Customs Tariff, in respect of which the rate of duty has been bound within GATT, the levies should be limited to the amounts resulting from that binding;

Whereas, Commission Regulation (EEC) No 616/86 of 28 February 1986 on the application of import levies on pigmeat products from Portugal suspended the application of import levies on pigmeat products from Portugal owing to the minimal difference between the prices obtaining in the Community on the one hand and in Portugal on the other hand; whereas the situation still pertains;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the period 1 February to 30 April 1987, the sluice-gate prices provided for in Article 12 of Regulation (EEC) No 2759/75 for the products specified in Article 1 of Regulation (EEC) No 2766/75 and the levies provided for in Article 8 of Regulation (EEC) No 2759/75 for the products specified in Article 1 (1) of that Regulation shall be as shown in the Annex.

2. Provided that, in the case of products falling within any of subheadings 02.01 B II c) 1 to 7, 15.01

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 133, 21. 5. 1986, p. 39.

⁽³⁾ OJ No L 282, 1. 11. 1975, p. 25.

⁽⁴⁾ OJ No L 190, 14. 7. 1983, p. 1.

⁽⁵⁾ OJ No L 198, 30. 7. 1985, p. 54.

⁽⁶⁾ OJ No L 286, 9. 10. 1986, p. 19.

A I, 16.01 A or 16.02 A II of the Common Customs Tariff, in respect of which the rate of duty has been bound within GATT, the levy shall not exceed the amount resulting from that binding.

application of the levies specified in the Annex shall be suspended.

Article 2

3. For imports from Portugal of products specified in paragraph I and in free circulation in that Member State,

This Regulation shall enter into force on 1 February 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 13 January 1987 fixing the sluice-gate prices and levies on pigmeat

[illegible]

CCT heading No	Description	Sluice-gate price (ECU/100 kg)	Amount of levies (ECU/100 kg)	Conventional rate of duty bound within GATT (%)
02.06	Meat and edible meat offals (except poultry liver), salted, in brine, dried or smoked :			
	B. Of domestic swine :			
	I. Meat :			
	a) Salted or in brine :			
	1. Bacon sides or spencers	110,58	104,78	—
	2. ¾ sides or middles	120,95	114,61	—
	3. Hams and parts thereof	125,27	118,70	—
	4. Fore-ends or shoulders ; parts thereof	96,76	91,69	—
	5. Loins and parts thereof	139,95	132,62	—
	6. Bellies and parts thereof	75,16	71,22	—
	7. Other :			
	aa) Boned or boneless	139,95	132,62	—
	bb) Other	—	132,62	—
	b) Dried or smoked :			
	1. Hams and parts thereof	243,62	230,85	—
	2. Fore-ends or shoulders ; parts thereof	191,79	181,74	—
	3. Loins and parts thereof	241,03	228,40	—
	4. Bellies and parts thereof	125,27	118,70	—
	5. Other :			
	aa) Boned or boneless	243,62	230,85	—
	bb) Other	—	230,85	—
	II. Offals :			
	a) Heads and parts thereof	—	26,20	—
	b) Feet or tails	—	7,37	—
	c) Kidneys	—	85,96	—
	d) Livers	—	99,05	—
	e) Hearts, tongues or lungs	—	49,12	—
	f) Livers, hearts, tongues and lungs with windpipe and gullet all attached	—	72,04	—
	g) Other	—	72,04	—
15.01	Lard, other pig fat and poultry fat, rendered or solvent extracted :			
	A. Lard and other pig fat :			
	I. For industrial uses other than the manufacture of foodstuffs for human consumption (a)	—	26,20	3
	II. Other	27,64	26,20	—
16.01	Sausages and the like, of meat, meat offal or animal blood :			
	A. Liver sausages	—	131,11	24
	B. Other (b) :			
	I. Sausages, dry or for spreading, uncooked	203,02	226,85	—
	II. Other	—	153,62	—

CCT heading No	Description	Sluice-gate price (ECU/100 kg)	Amount of levies (ECU/100 kg)	Conventional rate of duty bound within GATT (%)
16.02	Other prepared or preserved meat or meat offal :			
	A. Liver :			
	II. Other	—	145,81	25
	B. Other :			
	III. Other :			
	a) Containing meat or offal of domestic swine :			
	1. Containing bovine meat, uncooked	—	394,95	—
	2. Other, containing by weight :			
	aa) 80 % or more of meat or offal, of any kind, including fats of any kind or origin :			
	11. Hams or loins, (excluding collars); parts thereof	211,66	240,29	—
	22. Collars or shoulders ; parts thereof	177,10	198,17	—
	33. Other	—	132,36	—
	bb) 40 % or more but less than 80 % of meat or offal, of any kind, including fats of any kind or origin	—	112,42	—
	cc) Less than 40 % of meat or offal, of any kind, including fats of any kind or origin	—	81,36	—

(a) Entry under this subheading is subject to conditions to be determined by the competent authorities.

(b) The levy on sausages imported in containers which also contain preserving liquid shall be charged on the net weight, i. e. minus the weight of the liquid.

COMMISSION REGULATION (EEC) No 83/87**of 13 January 1987****altering the corrective amount applicable to the refund on cereals**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1579/86 ⁽²⁾, and in particular the fourth sentence of the second subparagraph of Article 16 (4) thereof,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽³⁾,

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EEC) No 52/87 ⁽⁴⁾;

Whereas, the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the

market into account, the corrective amount at present applicable to the refund on cereals should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 16 (4) of Regulation (EEC) No 2727/75, fixed in the Annex to Regulation (EEC) No 52/87 which is applicable to the export refunds fixed in advance in respect of cereals, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 January 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 7, 9. 1. 1987, p. 23.

ANNEX

to the Commission Regulation of 13 January 1987 altering the corrective amount
applicable to the refund on cereals

(ECU/tonne)

CCT heading No	Description	Current 1	1st period 2	2nd period 3	3rd period 4	4th period 5	5th period 6	6th period 7
10.01 B I	Common wheat and meslin for exports to :							
	— China	0	+ 6,00	+ 6,00	+ 6,00	+ 6,00	+ 6,00	— 20,00
	— other third countries	0	0	0	0	0	0	— 20,00
10.01 B II	Durum wheat	0	0	0	0	0	0	—
10.02	Rye	0	0	0	0	0	—	—
10.03	Barley	0	0	0	0	0	0	— 20,00
10.04	Oats	—	—	—	—	—	—	—
10.05 B	Maize other than hybrid maize for sowing	0	0	0	—	—	—	—
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	—	—	—	—	—	—	—
11.01 A	Common wheat flour	0	0	0	0	0	—	—
11.01 B	Rye flour	0	0	0	0	0	—	—
11.02 A I a)	Durum wheat groats and meal	0	0	0	0	0	0	— 50,00
11.02 A I b)	Common wheat groats and meal	0	0	0	0	0	—	—

N. B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977), as last amended by Regulation (EEC) No 3817/85 (OJ No L 368, 31. 12. 1985).

COMMISSION REGULATION (EEC) No 84/87**of 13 January 1987****altering the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 2727/75
of 29 October 1975 on the common organization of the
market in cereals ⁽¹⁾, as last amended by Regulation (EEC)
No 1579/86 ⁽²⁾, and in particular the fifth subparagraph of
Article 16 (2) thereof,

Whereas the export refunds on cereals and on wheat or
rye flour, groats and meal were fixed by Regulation (EEC)
No 51/87 ⁽³⁾;

Whereas it follows from applying the detailed rules
contained in Regulation (EEC) No 51/87 to the informa-
tion known to the Commission that the export refunds at

present in force should be altered to the amounts set out
in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a),
(b) and (c) of Regulation (EEC) No 2727/75, exported in
the natural state, as fixed in the Annex to Regulation
(EEC) No 51/87 are hereby altered as shown in the
Annex to this Regulation in respect of the products set
out therein.

Article 2

This Regulation shall enter into force on 14 January
1987.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 13 January 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 118, 7. 5. 1986, p. 1.

⁽³⁾ OJ No L 7, 9. 1. 1987, p. 19.

ANNEX

to the Commission Regulation of 13 January 1987 altering the export refunds on cereals
and on wheat or rye flour, groats and meal

CCT heading No	Description	Refund (ECU/tonne)
10.01 B I	Common wheat and meslin for exports to : — Switzerland, Austria, Liechtenstein, Ceuta and Melilla — zone II b) — other third countries	122,00 128,00 15,00
10.01 B II	Durum wheat for exports to : — Switzerland, Austria and Liechtenstein — zone I and zone II a) — other third countries	5,00 ⁽³⁾ 196,00 ⁽³⁾ 10,00 ⁽³⁾
10.02	Rye for exports to : — Switzerland, Austria and Liechtenstein — other third countries	5,00 10,00
10.03	Barley for exports to : — Switzerland, Austria, Liechtenstein, Ceuta and Melilla — zone II b) — Cyprus, Israel and Tunisia — other third countries	125,00 129,00 25,00 20,00
10.04	Oats for exports to : — Switzerland, Austria and Liechtenstein — zone I — other third countries	— 95,00 —
10.05 B	Maize, other than hybrid maize for sowing for exports to : — Switzerland, Austria and Liechtenstein — zone I, zone V, the German Democratic Republic and the Canary Islands — other third countries	10,00 20,00 —
10.07 B	Millet	—
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	—
ex 11.01 A	Wheat flour : — of an ash content of 0 to 520 — of an ash content of 521 to 600 — of an ash content of 601 to 900 — of an ash content of 901 to 1 100 — of an ash content of 1 101 to 1 650 — of an ash content of 1 651 to 1 900	193,00 193,00 170,00 157,00 146,00 130,00

CCT heading No	Description	(ECU/tonne) Refund
ex 11.01 B	Rye flour : — of an ash content of 0 to 700 — of an ash content of 701 to 1 150 — of an ash content of 1 151 to 1 600 — of an ash content of 1 601 to 2 000	193,00 193,00 193,00 193,00
11.02 A I a)	Durum wheat groats and meal : — of an ash content of 0 to 1 300 ⁽¹⁾ — of an ash content of 0 to 1 300 ⁽²⁾ — of an ash content of 0 to 1 300 — of an ash content of more than 1 300	308,00 ⁽³⁾ 292,00 ⁽³⁾ 262,00 ⁽³⁾ 247,00 ⁽³⁾
11.02 A I b)	Common wheat groats and meal : — of an ash content of 0 to 520	193,00

⁽¹⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,250 mm mesh.

⁽²⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,160 mm mesh.

⁽³⁾ With the exception of the quantities referred to in the Commission's Decision of 19 March 1986.

N.B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977), as last amended by Regulation (EEC) No 3817/85 (OJ No L 368, 31. 12. 1985).

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 Community 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 not believe 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 Government was entitled to designate the areas listed in the 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 weighted 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 Government 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 institu-

tion 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:

	<i>Per capita</i> 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

COMMISSION DECISION

of 23 April 1986

on a proposal by the Italian Government to grant aid to a firm in the chemical industry (producing industrial auxiliaries, intermediates and pesticides)

(Only the Italian text is authentic)

(87/16/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, in accordance with the above Article, to interested parties to submit their comments, and having regard to those comments,

Whereas :

I

By letter dated 7 January 1985, the Italian Government notified the Commission, as required by Article 93 (3) of the EEC Treaty, and in accordance with the Commission Decisions of 11 July 1983 and 2 August 1985 on Law No 46/82 (Innovation Fund), of a proposal to grant aid under the said Law for a programme relating to innovation in the field of finished and intermediate products in the fine chemicals sector.

The programme involves research, development and experimentation for new processes and products in the field of industrial auxiliaries, intermediates and pesticides.

The cost of the programme comes to Lit 30 399 million. The proposed aid would take the form of a low-interest loan of Lit 12 958 million, which corresponds to 42,6 % of the programme's cost. With a reference rate of 17,13 %, the cost of the loan amounts to 2,57 % during the first five years and 10,27 % during the following 10 years. The net grant equivalent may be estimated at approximately 11 % of the programme's cost.

Law No 46/82 of 17 February 1982, published in the *Gazzetta Ufficiale della Repubblica Italiana* No 57 of 27 February 1982, established in its Articles 14 to 19 a 'Fondo Speciale rotativo per l'innovazione tecnologica' having as its object the promotion of programmes aimed at bringing about technological advances centred on new products or production processes or on the improvement of existing products or production processes.

The Fund provides support at the design stage of programmes and at the experimental, development and pre-production stages in the form of low-interest loans of up to 55 % of the programme cost, granted for 15 years

with a five-year suspension of principal repayment. The rate of interest payable on such loans is 15 % of the reference rate during the first five years and 60 % of the reference rate during the next 10 years. Taking as a basis a reference rate now fixed at 17,13 %, the cost of the loans amounts to 2,57 % during the first five years and 10,27 % during the following 10 years. A non-repayable grant may be awarded, where appropriate, instead of all or part of a low-interest loan. Aid given under the Fund may not be combined with other aid for the same programme.

By letter dated 11 July 1983, and more recently by letter sent on 2 August 1985 concerning the reconstitution of the Fund, the Commission approved the implementation of Law No 46/82. It took the view that, in the case in point, the encouragement of research and innovation programmes as provided for in the Law can be in the Community's interest, on condition that the aid is not granted for productive investments and that an excessive concentration of the aid in question on certain sectors is avoided as it might affect trade between Member States to an extent contrary to the common interest.

The Commission also made its authorization of the implementation of Law No 46/82 subject to the condition that significant individual cases, that is to say those where the cost of the programme exceeds Lit 15 000 million (10 000 million if the programme is carried out by a firm which has already received support from the Fund for another programme), should be notified to it in advance, pursuant to Article 93 (3) of the EEC Treaty, since it was not possible for the Commission to ascertain on the basis of Law No 46/82 alone whether operations were actually involved which (a) were of an innovative nature, (b) did not concern the production cycle, and (c) contributed to the attainment of an objective of value to the Community as a whole. The Commission reserved the right to examine each significant case on its merits in the light of the above factors and having regard to the effects of the aid in question on the competitive position of firms in the sectors concerned within the meaning of Article 92 (3) of the EEC Treaty.

After an initial examination of the aid proposed, notified by the Italian Government by letter dated 7 January 1985, the Commission came to the conclusion that it could not be considered compatible with the common market.

It was not apparent from the information furnished to the Commission that the aid was in fact intended for an innovation operation which would lead to the attainment of an objective of value to the Community as a whole. Instead, the expenditure seemed to be needed to enable the firm concerned to continue operating normally in this sector. Consequently, the Commission decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty in respect of the aid proposal.

The Italian Government was informed of this decision by letter dated 18 April 1985; the Governments of the other Member States were informed by letters dated 25 June 1985. The notice in the *Official Journal of the European Communities*, informing interested parties other than the Member States, was published on 11 July 1985⁽¹⁾.

II

The Italian Government replied within the framework of the Article 93 (2) procedure by letter dated 12 June 1985 from its Permanent Representation and at a technical meeting held in Brussels on 17 June 1985.

It maintained that the research programme in question could not be considered as forming part of the normal innovatory activities which every Community chemical company carries on. The objectives pursued by the programme would make it possible to widen the Community's technology base. This would then include new products and production processes which would be so secret that the company would be ill-advised even to take out patents.

The sectors in which the research would be carried out were as follows:

- new industrial auxiliaries,
- new processes for synthesizing industrial intermediates,
- new technologies for producing pesticides.

As regards the first sector, the Italian authorities stated that the research would be aimed at discovering, developing and introducing onto the market new industrial auxiliaries which would help improve the performance of plastics under hostile conditions. The improvement would consist in creating higher-stability polymers using new compounds with properties not yet found in currently marketed products, which are mostly imported from the United States and Switzerland. Because of their special characteristics, the new compounds might be used in areas not covered by conventional products.

As regards the second sector, the research would be directed towards discovering original, innovative processes for synthesizing organic intermediates for pharmaceutical products, additives for polymers, feed or food additives, etc.

In particular, the research would be aimed at:

- eliminating the potential hazards inherent in working with certain chemical reagents. An example would be the new process whereby dimethylcarbonate can be utilized without having to store dangerous reagents such as methyl isocyanate and phosgene,
- reducing energy consumption. An example would be the activation of oxygenated water by zeolitic catalysis. This entirely new catalysis had led to the discovery of a process for the hydroxylation of phenol, making possible energy savings of 50 % compared with existing processes.

As regards the third sector, the research would be aimed at developing new methods for synthesizing pesticides, exploiting the opportunities afforded by the availability of dimethylcarbonate. In particular, these were plans to study the synthesis of urea compounds, carbonates and methyl isocyanate, using dimethylcarbonate as a carbonylating or carboxylating agent instead of phosgene.

The Italian authorities concluded their observations by asserting that, not only should the research programme not be considered a normal activity of the firm, but, on the contrary, it was an extremely innovative programme entailing a high degree of technical and commercial risk. Consequently, the programme would not only not cause any distortions of competition contrary to the common interest but would, on the contrary, be of much value to the Community as it would widen its technology base.

Among the observations submitted under the same procedure, four other Member States and certain competing firms supported the Commission's point of view and expressed deep concern about the aid proposal.

They stated that, in their opinion, the activities in the present case already existed more or less in other Member States and that the programme did not have any innovative aspects beyond what other firms were achieving in the normal course with their own resources.

In the field of plastics and pesticides, there were, moreover, many European firms engaged in research. The aid in question was therefore likely to distort competition in the Community by giving the recipient Italian firm an unfair advantage. They stressed the scale of intra-Community trade and the capacity of producers to satisfy the market's pesticides requirements without difficulty.

⁽¹⁾ OJ No C 172, 11. 7. 1985, p. 3.

III

First of all, the Commission considers that the aid proposal in question, which was notified by the Italian Government as an individual case of application of Law No 46/82, constitutes an aid within the meaning of Article 92 (1).

The Commission has established that the proposal concerns a major European chemical company which exports to the other Community countries a substantial proportion of its production. In this connection, it is worthwhile examining the statistics for 1983 relating to the company, supplied by the Italian authorities.

In 1983, the company exported to the other Member States:

- 30,5 % of its plastics,
- 44,4 % of its synthetic rubber and latex,
- 20,9 % of its fine chemicals,
- 17,3 % of its intermediates for detergents,
- 6,7 % of its fertilizers and pesticides,
- 14,3 % of its pharmaceutical products,
- 28,2 % of its synthetic fibres and textiles.

It must be borne in mind that these percentages correspond to large quantities of goods, as the company's total production of each of the products referred to above is considerable.

The company's output of products to which the research relates was worth Lit 2 500 million in 1983. The Italian authorities have stated that the destination of the research-related products will remain essentially the same as the present destination of similar products. As a guide, the Italian authorities indicated that the company estimates it will export about 40 % of its industrial auxiliaries production to the other Member States; it forecasts that it will export 10 % of its industrial intermediates production; it also forecasts that it will export its entire production of pesticide intermediates to non-member countries.

When the relative position of a firm *vis-à-vis* its competitors in intra-Community trade is strengthened by financial assistance from the State, that assistance must be regarded as affecting such trade. In the present case, the planned assistance, which would reduce the investment expenditure the chemical company in question would normally have to bear itself, is likely to affect trade and distort, or threaten to distort, competition by favouring the said company within the meaning of Article 92 (1) of the EEC Treaty. That provision states that, in principle,

any aid fulfilling the criteria it sets out is incompatible with the common market.

The exceptions to this principle set out in Article 92 (2) of the Treaty are inapplicable in this case owing to the nature of the proposed aid, which would be granted under a law (Law No 46/82) which does not pursue the objectives specified in those exceptions.

Article 92 (3) of the Treaty lists the aids which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and not in that of a single Member State. In order to safeguard the proper functioning of the common market, the exceptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be understood in the strict sense in examining any aid scheme or any individual case, regard being had to the principle embodied in Article 3 (f) of the Treaty.

In particular, they may be applied only where the Commission establishes that, in the absence of the aid, the free play of market forces would not by itself induce the potential recipient to act in such a manner as to contribute to the attainment of one of the objectives set out in the exception clauses.

To apply such exceptions to cases in which the aid is not essential to the attainment of those objectives would be tantamount to granting an undue advantage to the industries or firms of certain Member States in that their financial position would be strengthened, and might affect trade between Member States and distort competition, without this being justified in any way by the Community interest within the meaning of Article 92 (3).

Without expressly mentioning any of the categories of exception provided for in Article 92 (3), the Italian Government, nevertheless, affirmed that the research programme satisfied the conditions underlying Law No 46/82, that is to say it would be highly innovative and, in general, not only would it not cause any distortions of competition contrary to the common interest but was indeed clearly of value to the Community as it would widen its technology base.

The Commission considers that the Italian Government was invoking the exception provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities. This exception is the one which the Commission considered could justify the general aid scheme introduced by Law No 46/82 as a means of promoting research, development and innovation in industry. As indicated above, the Commission examines

each significant case of application of Law No 46/82 on its merits and having regard not only to the innovative aspects of the operation, which must contribute to the attainment of an objective in the common interest, but also to the effects of the aid on the competitive position of firms in the industry concerned.

The Commission thus proceeded to examine in detail the aid proposal in question to see whether any of the exceptions provided for in Article 92 (3) were applicable to it.

As to the exceptions provided for in Article 92 (3) (a) and (c), in favour of aid to promote or facilitate the development of certain areas, it should be noted that, first of all, the standard of living in the areas concerned is not abnormally low, secondly there is no serious underemployment there within the meaning of the exception in Article 92 (3) (a) and, thirdly, this exception was not mentioned by the Italian Government.

As to the exceptions provided for in Article 92 (3) (b), it is clear that the aid is intended neither to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Italian economy.

The last exception possible is that which is provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities.

This is the exception indirectly invoked by the Italian Government. After examining the research programme, the Commission has come to the conclusion, however, that the aid proposal in question does not qualify for application of this exception.

In the light of the observations submitted in writing by the Italian Government, the Governments of four other Member States and competing firms, and of the explanations given at a technical meeting by representatives of the Italian Government, the Commission has reached the conclusion that, while it has certain innovative features — and this is inevitable as the sectors in which the research is being carried out are fields in a constant state of flux where all the major chemical companies, whether they be European or from outside the Community, are conducting research — the research programme does not display on the whole the high degree of innovation required for the individual cases of application of Law No 46/82.

The Commission has established that the sectors in which the research is being carried out are as follows:

- new industrial auxiliaries,
- new processes for synthesizing industrial intermediates,

- new technologies for producing pesticides.

As regards the first sector, the Commission has been unable to find that the research is into new products not yet available on the market. As the Italian authorities themselves state, it is aimed at producing products having improved characteristics. The term 'new auxiliaries' is so sweeping and vague that it is impossible to assert, as the Italian authorities do, that the Community depends for its supplies of such products on more advanced, non-member countries. On the contrary, the larger part of industrial auxiliaries is produced by Community firms.

According to the Italian authorities, the company implementing the programme is already the European market leader in certain industrial auxiliaries; 40 % of the new auxiliaries would, moreover, be exported, in the proportions given by the Italian authorities, to the other Community countries.

As regards the sector of new processes for synthesizing industrial intermediates and that of new technologies for producing pesticides, the Commission has found that the technological innovations mentioned by the Italian authorities are, in reality, not as innovative as they claim. The Italian authorities also explained that, in the company's new plants, methyl isocyanate (MIC) is present as a temporary intermediate during the chemical process and, moreover, in very small quantities, i.e. less than 1,5 kilograms in the case of a plant producing 800 tonnes a year of carbonyl or carbufuron. The Commission, whilst it does not underestimate the scale of the effort made by the Italian firm, has established that other Community producers already use phosgene-free precursors such as dimethylurea and diphenyl carbonate which, from the point of view of the protection of health and safety, are comparable to the dimethylamine gas used by the Italian firm.

As regards the second innovative aspect referred to, that is, the presence during the chemical reaction, only temporarily and in small quantities, of MIC, the Commission is of the opinion that this is not a true innovation but is the consequence, rather, of the fact that the new plants use continuous processes. Any new plant using continuous processes rather than batch processes does not need to store the intermediate product MIC.

There are in the Community other plants using the continuous process in which, as a result, the quantities of the intermediate MIC are smaller than those found in conventional plants. Even if the Italian firm's new plants were to prove even better from the safety angle than those of the same type currently in existence, solely because they are more modern, this would not alter the Commission's assessment. The Commission considers that the present case involves normal technical improvements stemming from new investment rather than true innovations.

As regards the research effort to reduce energy consumption, for example the activation of oxygenated water by zeolitic catalysis, which is the chief example given by the Italian authorities of the innovative nature of the research being carried out by the firm concerned, the Commission has found that other competing European firms state that they already use the same process.

In the Community there is at present a zeolite production capacity of the order of 300 to 320 000 tonnes, of which 200 000 tonnes are in Germany. It would appear, moreover, that several European companies are in the middle of an intensive programme of research into zeolites and that some already lay claim to innovations similar to those put forward by the Italian firm in question.

In the Commission's view, therefore, the programme at issue does not possess the highly innovative features which are essential if the aid the programme would receive is to qualify for application of the exception contained in Article 92 (3) (c) of the EEC Treaty.

In the chemical industry, it is only natural that firms should devote large sums of money to research into new processes, new products and the improvement thereof.

What is more, as indicated earlier, there is strong competition between Community firms in the sector to which the research relates, and trade in that sector is very substantial. In addition, the Commission has already pointed out that the products into which the research is being conducted are the subject of intra-Community trade, although it was unable to give precise figures on trade flows as NIMEXE often classifies whole groups of chemicals under one heading.

The Commission has already reproduced the statistics forwarded by the Italian authorities on exports in 1983 and on future estimates. Only in the case of pesticide intermediates does the firm not intend exporting to other Member States.

This is probably due to the awareness that Europe's pesticide requirements are satisfied in full without any difficulty, and shows that the Commission's position regarding the insufficiently innovative nature of the products in question is justified, for if they were really highly innovative they would without doubt be exported to other Community countries.

The Commission considers that in the case of the research programme in question the high degree of innovation is lacking. This factor is to be taken into consideration, together with the other factors examined above, in

determining whether the aid awarded to the programme qualifies for application of the exception provided for in Article 92 (3) (c) of the EEC Treaty.

In short, in the Commission's opinion the proposed aid would be granted solely in the interests of the firm, which would enjoy a considerable financial advantage and would benefit from a reduction in the financing costs it would at all events have to bear in order to modernize its products and remain competitive, as the other European firms, which do not receive the same financial benefits, also have to do for their part. The proposed aid, which would favour the firm in question, would therefore adversely affect trading conditions to an extent contrary to the common interest.

Consequently, the aid proposal in question does not satisfy the conditions necessary for the application of one of the exceptions set out in Article 92 (2) and (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Italian Government proposes to grant under Law No 46/82 to an Italian firm with plants in the North and South of Italy, for the carrying-out of an innovation programme in the field of chemistry concerning industrial auxiliaries, intermediates and pesticides, is incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

The Italian Government shall therefore refrain from implementing its aid proposal.

Article 2

The Italian Government shall inform the Commission within one month of the date of notification of this Decision of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 April 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 1108/82 of 21 April 1982 determining Community methods for the analysis of wines and repealing Regulation (EEC) No 2984/78

(Official Journal of the European Communities No L 133 of 14 May 1982)

Page 84, Annex, 22. 3, 2. *Sparkling and semi-sparkling wines, beer, etc., Calculation*, second indent :

for: '— in grams of carbon dioxide per litre of wine : $1,977 P_{a_{20}} (0,86 - 0,01 A) (1 - 0,00144 s)$
or $1,977 (1 + 0,987 I) (0,86 - 0,01 A) (1 - 0,00144 s)$,'

read: '— in grams of carbon dioxide per litre of wine : $1,977 P_{a_{20}} (0,86 - 0,01 A) (1 - 0,00144 s)$
or $1,977 (1 + 0,987 P) (0,86 - 0,01 A) (1 - 0,00144 s)$.'
