

JUDGMENT OF THE COURT  
14 October 1987

In Case 248/84

**Federal Republic of Germany**, represented by M. Seidel, Ministerialrat at the Ministry of Economic Affairs, and by R. Lukes, Professor of Law at Munster University, with an address for service in Luxembourg at its Embassy, 20-22 avenue Emile-Reuter,

applicant,

v

**Commission of the European [Union]**, represented by its Legal Adviser, N. Koch, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission Decision of 23 July 1984 in so far as it prohibits, from 30 June 1985, the granting of aid in the labour market regions of Borken-Bocholt and Siegen in accordance with the guidelines for the award of investment aid for the improvement of the regional economic structure of the *Land* North Rhine-Westphalia, as amended by the circular of the Minister for Economic Affairs, Small Business and Transport of 10 June 1982,

THE COURT,

composed of: Lord Mackenzie Stuart, President, J. C. Moitinho de Almeida (President of Chamber), T. Koopmans, U. Everling, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: M. Darmon

Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 1 July 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 December 1986,

gives the following

### Judgment

- 1 By an application lodged at the Court Registry on 16 October 1984, the Federal Republic of Germany brought an action under [the first and second paragraphs of Article 263 TFEU] for the annulment of the Commission Decision of 23 July 1984 in so far as it prohibits, from 30 June 1985, the granting of aid in the labour market regions of Borken-Bocholt and Siegen in accordance with the guidelines for the granting of investment aid for the improvement of the regional economic structure of the *Land* North Rhine-Westphalia, as amended by the circular of the Minister for Economic Affairs, Small Business and Transport of 10 June 1982.
- 2 In the Federal Republic of Germany regional aid is as a general rule granted by the *Länder* (States). However, since the 1969 amendment of the Grundgesetz (Basic Law) a new Article 91a provides that the Bund (Federal Republic) should contribute to the improvement by the *Länder* of regional economic structures. On the basis of Article 91a a federal law, the 'Gesetz über die Gemeinschaftsaufgabe Verbesserung der Regionalen Wirtschaftsstruktur' (Law on joint action for the improvement of the regional economic structure, hereinafter called 'joint action programme') was adopted on 6 October 1969.
- 3 The joint action programme established a planning committee composed of the Federal Ministers for Economic Affairs and for Finance and one Minister for each of the 11 *Länder*; the Federal State, however, had the same number of votes as all the Länder together. The committee divided the Federal Republic of Germany into 179 'assisted areas' (or labour market regions). It also selected a certain number of economic indicators on the basis of which the areas were classified; the areas in which the economic situation was the least favourable

could then be determined. For the areas furthest below the federal average, aid programmes were set up in the form of framework plans, which have been adopted regularly since 1972 by the Federal State and the *Länder* acting jointly. Aid paid pursuant to those framework plans is financed by both the Federal State and the *Länder*. In 1981 the planning committee amended the boundaries of the assisted areas covered by the joint action programme and adopted new economic indicators.

- 4 In addition to the framework plans adopted under the joint action programme, the *Land* North Rhine-Westphalia has for some time maintained regional aid programmes for the benefit of undertakings making investments in its territory. For that purpose it used the same assisted area boundaries and indicators as the joint action programme. It classified the assisted areas in its territory on that basis. Under its programme, however, the *Land* granted investment aid in areas where the situation was less favourable than the *Land* average even if those areas could not benefit from the framework plans under the joint action programme because they did not lie far enough below the federal average. Initially the maximum amount of aid which might be paid was 7.5% of the amount of the investments made by undertakings. In 1982 the *Land* North Rhine-Westphalia incorporated in its aid programme the amendments made in the joint action programme relating to the boundaries of assisted areas and the choice of economic indicators. At the same time it decided to raise the aid ceiling to 10% of the investments made by undertakings.
- 5 The various framework plans drawn up pursuant to the joint action programme were notified to the Commission. The Commission raised objections in certain cases but did not prohibit any of them. The aid programmes for the *Land* North Rhine-Westphalia were also notified to the Commission, which made observations only in regard to the programme for 1982, notified on 21 July 1982, which is the subject of the present action.
- 6 In the case of the 1982 programme the Commission stated by letter dated 17 December 1982 that it was initiating the procedure provided for in [Article 108 TFEU]. It then made no further comment, however. Because of the Commission's silence the *Land*, it says, assumed that it could apply its programme and each year adopted framework plans in the same form as that of 1982.
- 7 By a decision dated 23 July 1984 the Commission held that the aid granted by

the *Land* in respect of the regions of Borken-Bocholt and Siegen was incompatible with the common market and must cease to be granted from 30 June 1985. It gave the following reasons for its decision.

- 8 As regards the application of [Article 107(1) TFEU], the Commission considered that the aid granted by the Land distorted or threatened to distort competition within the meaning of [Article 107(1) TFEU] by favouring certain undertakings or production of certain goods and was likely to affect trade between Member States.
- 9 The Commission further considered that the contested aid did not fall within the exception provided by [Article 107(3)(a) TFEU], as 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment', or that provided under [Article 107(3)(c) TFEU], as 'aid to facilitate the development ... of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.
- 10 According to the Commission, North Rhine-Westphalia cannot rely on [Article 107(3)(a) TFEU] in view of the favourable economic situation of the *Land* in relation to the rest of the [Union]. To determine whether the exception in [Article 107(3)(c) TFEU] could apply to the *Land's* programme in respect of the Borken-Bocholt and Siegen regions the Commission first considered how the contested regions stood in a [Union] context by comparing GDP per inhabitant and unemployment in those regions with the [Union] averages. It then considered whether there were disparities between the areas and other areas in the country which might warrant the grant of aid. For that purpose it relied on indicators covering, in particular, income and the level of economic activity, unemployment, labour supply and migration. On completing that review it came to the conclusion that the economic situation in the Borken-Bocholt and Siegen regions did not permit the application to them of the exception in [Article 107(3)(c) TFEU], since their rate of unemployment was not sufficiently different from the federal average.
- 11 Reference is made to the Report for the Hearing for a fuller account of the facts and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 12 In support of its application the German Government alleges that the decision contains no sufficient statement of reasons, contrary to [Article 296 TFEU], infringes [Article 107 TFEU], constitutes a misuse of powers and contains substantive errors.
- 13 In its first submission the German Government maintains that the contested decision infringes [Article 296 TFEU] inasmuch as it contains no finding of fact to show that the conditions for applying the relevant rule of law are satisfied. The statement of reasons for the decision does not explain why the aid granted by North Rhine-Westphalia distorts or threatens to distort competition and affects trade, why the exception in [Article 107(3)(a) TFEU] cannot apply to North Rhine-Westphalia or why the exception in [Article 107(3)(c) TFEU] does not apply to the contested programme in so far as it relates to the Borken-Bocholt and Siegen regions.
- 14 In its second submission the German Government considers that the Commission infringed [Article 107(1) TFEU] in that its decision does not set out the criteria adopted in order to determine whether a regional aid programme is compatible with the Treaty or the facts enabling the contested programme to be considered in the light of such criteria. The German Government states, moreover, that it has never admitted that regional aid is automatically prohibited by [Article 107(1) TFEU]; the Commission ought therefore in its decision to have explained why the contested aid programme fell under [Article 107(1) TFEU]. Finally, the German Government considers that the contested decision gives no clear explanation why the contested aid could not be exempted under [Article 107(3) TFEU].
- 15 The first two submissions put forward by the German Government amount essentially to a claim that the Commission did not sufficiently explain its decision why the North Rhine-Westphalia regional aid programme fell under [Article 107(1) TFEU] and could not be exempted under [Article 107(3)(a) TFEU] or [Article 107(3)(c) TFEU] in so far as it relates to the Borken-Bocholt and Siegen regions. Those two submissions should therefore be considered together.
- 16 In order to determine their validity it seems necessary as a preliminary matter to set out certain principles concerning the application of [Article 107 TFEU] to an

aid programme such as that in issue in the present case.

- 17 First of all, the fact that the aid programme was adopted by a State in a federation or by a regional authority and not by the federal or central power does not prevent the application of [Article 107(1) TFEU] if the relevant conditions are satisfied. In referring to 'any aid granted by a Member State or through State resources in any form whatsoever' [Article 107(1) TFEU] is directed at all aid financed from public resources. It follows that aid granted by regional and local bodies of the Member States, whatever their status and description, must be scrutinized to determine whether it complies with [Article 107 TFEU].
- 18 Aid programmes may concern a whole sector of the economy or may have a regional objective and be intended to encourage undertakings to invest in a particular area. [Article 107(1) TFEU] makes no distinction between different kinds of aid and does not provide that any one kind automatically falls within its ambit. Even if in certain cases the very circumstances in which aid is granted are sufficient to show that the aid is capable of affecting trade between Member States and of distorting or threatening to distort competition, the Commission must at least set out those circumstances in the statement of reasons for its decision (see the judgment of 13 March 1985 in *Joined Cases 296 and 318/82 Kingdom of the Netherlands and Leenwarder Papierwarenfabriek v Commission* [1985] ECR 809, at p. 817). In the case of an aid programme the Commission may confine itself to examining the characteristics of the programme in question in order to determine whether, by reason of the high amounts or percentages of aid, the nature of the investments for which aid is granted or other terms of the programme, it gives an appreciable advantage to recipients in relation to their competitors and is likely to benefit in particular undertakings engaged in trade between Member States.
- 19 When a programme of regional aid falls under [Article 107(1) TFEU] it must be determined to what extent it may fall within one of the exceptions in [Article 107(3)(a) and (c) TFEU]. In that respect the use of the words 'abnormally' and 'serious' in the exemption contained in [Article 107(3)(a) TFEU] shows that it concerns only areas where the economic situation is extremely unfavourable in relation to the [Union] as a whole. The exemption in [Article 107(3)(c) TFEU], on the other hand, is wider in scope inasmuch as it permits the development of certain areas without being restricted by the economic conditions laid down in [Article 107(3)(a) TFEU], provided such aid 'does not adversely affect trading

conditions to an extent contrary to the common interest'. That provision gives the Commission power to authorize aid intended to further the economic development of areas of a Member State which are disadvantaged in relation to the national average.

- 20 It is on the basis of those principles that the applicant's claim that the decision contains no sufficient statement of reasons and is therefore unlawful under [Article 296 TFEU] must be examined.
- 21 In its decision, the Commission confined itself to quoting the words of [Article 107(1) TFEU] without discussing the characteristics of North Rhine-Westphalia's aid programme in order to show that it was incompatible with the common market within the meaning of [Article 107(1) TFEU]. As has been stated above, the Commission must comply with its obligation under [Article 296 TFEU] to state reasons for its decisions even in the case of an aid programme and where that programme concerns regional aid.
- 22 Consequently, it must be held that the contested decision does not satisfy the obligation under [Article 296 TFEU] to state the reasons on which it is based; the decision must therefore be declared void to the extent claimed, on the ground of infringement of essential procedural requirements, and it is not necessary to consider the other submissions put forward by the applicant.

### **Costs**

- 23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

**(1) Declares the Commission Decision of 23 July 1984 void in so far as it prohibits, from 30 June 1985, the granting of aid in the labour market regions of Borken-Bocholt and Siegen in accordance with the guidelines for the award of investment aid for the improvement of the regional economic structure of the *Land* North Rhine-Westphalia, as amended by the circular of the Minister for Economic Affairs, Small Business and Transport of 10 June 1982;**

**(2) Orders the Commission to pay the costs.**

Mackenzie Stuart

Moitinho de Almeida

Koopmans

Everling

Kakouris  
Schockweiler

Joliet

Delivered in open court in Luxembourg on 14 October 1987.

For the President A. J.  
Mackenzie Stuart

P. Heim

G. Bosco

Registrar

acting as President