

COMMISSION DECISION

of 22 July 1971

on the authorization of special 'Deutsche Bundesbahn' tariffs in favour of coal and steel producers in the Saar**(Only the German text is authentic)****(71/293/ECSC)****THE COMMISSION OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 2 to 5 and 70 thereof;

I

Whereas since 1 June 1964 the 'Deutsche Bundesbahn' (DB) has introduced a series of special tariffs for the carriage of ECSC products in favour of coal and steel producers in the Saar;

Whereas following a request by the German Government on 11 July 1966 the High Authority of the ECSC by Decision No 14/66/ECSC of 20 July 1966 authorized the application of those special tariffs under certain conditions, pursuant to the fourth paragraph of Article 70 of the ECSC Treaty;

Whereas following the appeal against this Decision by the Netherlands Government on 21 September 1966 the Court of Justice of the European Communities by judgment of 8 February 1968 repealed that Decision and referred the matter back to the Commission of the European Communities;

Whereas on 23 May 1969 the German Government requested provisional authorization of the 'Deutsche Bundesbahn' special tariff Nos 6 B 16, 6 B 38, 6 B 39, 8 B 14, 8 B 40, 8 B 44 and tariff No 91.33 pending a decision on the construction of a waterway connection for the Saar;

Whereas by Decision No 69/238/ECSC of 9 July 1969 the Commission provisionally authorized the tariffs in question on certain conditions until 31 December 1970 but without prejudice to its final decision;

Whereas by verbal note of 12 August 1970 from its Permanent Representative as well as in two meetings on 5 and 26 October 1970 the German Government

informed the Commission of measures to improve the economic structure of the Saar; whereas the German Government requested that the authorization for the special tariffs valid until 31 December 1970 should be extended until the completion of the waterway connection for the Saar;

Whereas in support of its request the German Government pointed out that:

- the canalization of the Main, the Neckar and particularly of the Moselle has made it more difficult for the Saar coal and steel industry to compete with other areas;
- it is therefore necessary to put the Saar coal and steel industry on an equal footing with its competitors;
- structural measures alone are not sufficient to remove the competitive disadvantage in which the Saar mining undertakings find themselves; their purpose is primarily to create new jobs in other branches of industry;
- the disadvantage can be fully offset only by the waterway connection; this connection is at present the subject of cost benefit analysis in accordance with German budgetary law; when the results of that analysis are known, probably during the summer of 1971, the German Government will decide between the construction of a Saar-Palatinate-Rhine canal and the canalization of the Saar up to the Moselle; construction of the canal would take at least ten and the canalization of the Saar at least eight years, and the work could not be started until 1 January 1972;
- until the work is completed and the waterway is in operation supporting tariffs are the only means of putting the Saar coal and steel industries on an equal footing with their competitors as regards transport costs;

II

Whereas in accordance with the fourth paragraph of Article 70 of the ECSC Treaty the application of special internal rates and conditions in the interest of one or more coal- or steel-producing undertakings requires the prior agreement of the High Authority;

Whereas the abovementioned special tariffs of the 'Deutsche Bundesbahn' fall within this definition as they are special internal rates and conditions and are designed to benefit undertakings producing coal or steel in the Saar;

Whereas special internal tariffs in favour of undertakings producing coal and steel can be authorized only if they are compatible with the principles of the ECSC Treaty;

Whereas it would not be compatible with those principles – and particularly with the objective set out in the second paragraph of Article 2 of the ECSC Treaty, which lays down that the Community shall progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity – to authorize special tariffs in favour of undertakings solely because their natural production and marketing conditions are unfavourable;

Whereas the relatively unfavourable competitive situation of the Saar coal and steel producers is not however the result of natural conditions of location; whereas on the contrary this situation is to a large extent attributable to action by public authorities, mainly in the field of transport infrastructure;

Whereas such action includes the canalization of the Main, the Neckar and the Moselle which has created more favourable supply and marketing conditions for the majority of the competing undertakings in the Ruhr, Lorraine and Luxembourg areas; whereas these conditions have been further improved through the lowering of railway tariffs to meet the competition of the new navigable waterways for the traffic in question; whereas the Saar coal and steel producers do not benefit from these tariff reductions;

Whereas the alteration in the conditions of competition of the Saar coal and steel undertakings resulting from the improvement of the transport infrastructure from which the competing areas benefit must not be confused with the difficulties which the alteration entails for those undertakings: whereas this alteration is a lasting one, but it does not follow that the difficulties entailed for Saar coal and steel producers must also be of a permanent nature;

Whereas the Saar coal and steel industry can overcome the difficulties which it is at present encountering by reorganizing and by adjusting its production and marketing arrangements; whereas aid through

special tariffs can facilitate such reorganization and adjustment;

Whereas a too rapid reduction of manpower in the Saar coal and steel industry, which occupies a prominent place in the Saar economy, would be contrary to the objectives of social policy mentioned in Article 2 of the ECSC Treaty which lays down that the Community shall safeguard continuity of employment and take care not to provoke fundamental and persistent disturbances in the economies of Member States; whereas the special tariffs serve these objectives in particular in that they facilitate the phasing of the necessary reduction of manpower in the coal and steel undertakings benefiting from the special tariffs;

Whereas adequate temporary aid by means of special tariffs therefore appears compatible with the principles of the ECSC Treaty as set out in particular in Articles 2 and 3 thereof;

Whereas this case for the compatibility of the special tariffs with the principles of the Treaty applies to all Saar coal and steel producers; whereas a study of the operating conditions of each undertaking is therefore not necessary;

Whereas, as regards the extent of the reductions resulting from the special DB tariffs, the percentage reductions on tariffs normally applicable at the time authorized until 31 December 1970 by Commission Decision No 69/238/ECSC of 9 July 1969 were the maximum which could be authorized having regard to the objectives of the Treaty; whereas in the meantime, as part of a general alteration of German railway goods tariffs, there has been an increase in the rate of reduction on tariffs normally applicable; whereas this increase cannot be considered as compatible with the principles of the ECSC Treaty; whereas therefore the percentage reduction must within a reasonable time be brought back to the level which was authorized until 31 December 1970;

Whereas however the special tariffs must be such as to constitute an effective inducement to the undertakings benefiting therefrom to adjust to the new conditions of competition and whereas they may not be regarded as permanent compensation to be continued so long as the disadvantages they have suffered through the provision of waterways persist or remain unchanged; whereas the authorization of these tariffs must therefore stipulate an adequate time limit and must provide for the progressive decrease of the reductions over a suitable period;

Whereas in this connection the reorganization and adjustment of both the coal and steel industries in the Saar call for comparatively long time limits because of the complexity of the problems for the undertakings concerned; whereas these problems concern

at the same time the social, structural, financial, technical and commercial spheres; whereas these problems can only be solved gradually; whereas the necessary measures will start to show results only after several years;

Whereas the period of application of the special tariffs and the arrangements for the progressive decrease of the reductions must be determined in the light of these facts;

Whereas moreover authorization of the special tariffs, because of the limitation of their field of application, must be given under conditions such as will prevent their affecting the smooth functioning of the common market to the detriment of certain producers, buyers or consumers of Community coal or steel outside the Saar;

Whereas the Commission must reserve the right to review its decision if the factors on which it is based change or no longer obtain,

HAS ADOPTED THIS DECISION:

Article 1

Application of the 'Deutsche Bundesbahn' special tariff Nos 188, 196, 197, 263, 270, 273 and tariff No 9133 in favour of coal and steel producers in the Saar is hereby authorized:

1. until 31 December 1975 on condition:
 - that the percentage reduction on existing tariffs normally applicable is not greater than that represented by the special tariffs authorized until 31 December 1970 by Decision No 69/238/ECSC of 9 July 1969; and

- that the consequent adjustment of the present special tariffs for iron and steel products shall be made not later than 1 December 1971;

2. during a further period of four years, on condition that the said reductions shall be decreased by at least 20 % on 1 January each year from 1976 to 1979 and completely abolished by 1 January 1980.

Article 2

The 'Deutsche Bundesbahn' special tariffs Nos 207, 208, 209, 280, 281 and the special rates of tariff No 1231, extending the special tariffs mentioned in Article 1 to the relevant frontier points, shall be applied during the same periods at corresponding rates.

Article 3

Should the Commission find that the application of the special tariffs referred to in Articles 1 and 2, or of some of them, is affecting the smooth functioning of the ECSC common market, appropriate alterations shall be made to those tariffs.

Article 4

If the Commission finds that this Decision is no longer justified, it shall be amended or repealed.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 22 July 1971.

For the Commission

The President

Franco M. MALFATTI