II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 May 1976

on the application of certain special tariffs of the Luxembourg National Railways (CFL) favouring Luxembourg agriculture

(Only the French text is authentic)

(76/507/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 80 thereof,

Whereas the Luxembourg Government, in a letter from the Office of its Permanent Representative to the European Communities dated 18 March 1975, informed the Commission pursuant to Article 93 (3) of the EEC Treaty of its intention to grant aid to Luxembourg agriculture by exempting 'all agricultural products and certain means of production' from the general 10 % increase in the tariffs of the Luxembourg National Railways (CFL) which entered into force on 1 January 1975 ; whereas it stated at the same time that the estimated sum of Lfrs 1 440 000 would be entered in the national budget for 1975 to compensate the CFL for the loss of income resulting from this measure ;

Whereas the measure did in fact enter into force on 21 March 1975 ;

Whereas, since this is an imposition by the Luxembourg Government of rates and conditions involving, on its own admission, a support to agriculture, the measure undeniably falls within the sphere of Article 80 of the EEC Treaty and the application of these rates and conditions of transport was therefore subject to prior authorization by the Commission ;

Whereas, having informed the Luxembourg Government of this state of affairs, and after an inquiry with the latter and with the CFL into the tariffs, products and routes concerned, the Commission summoned the said Government to a consultative meeting as provided for in Article 80 (2) of the EEC Treaty, pointing out that, should the results of this consultation confirm the supportive character of the tariffs in question, the Commission would be obliged to take any measures necessary to end the breach arising from their application without authorization by the Commission ;

Whereas the consultation, which took place on 9 July 1975, confirmed that the exemption from the 10 % tariff increase imposed on the CFL and compensated for by the Luxembourg Government, concerns :

— Chapters I, II and III of Special Tariff No 10 applicable to cereals, animal feedingstuffs and natural and chemical fertilizers,

— Chapters I and II of Special Tariff No 11 applicable to Thomas slag on certain routes,

— Franco-Luxembourg International Tariff No 9469 (No 7401 since 1 August 1975) applicable to the carriage of cereals ;

Whereas Chapter II of Special Tariff No 10 and Chapters I and II of Special Tariff No 11 are applied by the CFL to meet competition from road transport and/or mixed transport by road and the River Moselle via Mertert and whereas, in particular, Chapter I of

Special Tariff No 11 applies exclusively to the export of Thomas slag from Luxembourg steel works;

Whereas, since prices in Chapters I and II of Special Tariff No 11 are exempted from the 10 % increase, the aid measure also favours Luxembourg production of Thomas slag;

Whereas the application of all the above tariffs as support tariffs imposed by a Member State cannot be denied, seeing that it necessarily results from the fact that the Luxembourg Government grants the CFL corresponding compensation pursuant to Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway [1];

Whereas, because of its express aim of aiding Luxembourg agriculture, the measure is likely to disturb the functioning of the common agricultural market; whereas, moreover, it favours Luxembourg steel works producing Thomas slag *vis-à-vis* other steel works in the Community; whereas the Luxembourg Government has not put forward any ground of regional policy which could justify it; whereas by its application to rail transport alone and, moreover, to tariffs applied as competitive tariffs by the CFL, it is of a nature such as to affect competition between the different modes of transport;

Whereas, in spite of repeated action by the Commission and in spite of reiterated declarations by the Luxembourg Government of its intention to abolish this measure as soon as possible, it continues to be applied,

HAS ADOPTED THIS DECISION:

Article 1

The application of the reduced rates in the following CFL special tariffs, resulting from the exemption of the transport operations concerned from the general 10 % tariff increase on 1 January 1975, is not authorized:

— Chapters I, II and III of Special Tariff No 10 — Agricultural products,

— Chapters I and II of Special Tariff No 11 — Fertilizers,

— International Tariff No 7401 (formerly 9469) — Carriage of cereals, fodder and oilcakes between France and Luxembourg.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 17 May 1976.

For the Commission

Carlo SCARASCIA MUGNOZZA

Vice-President

[1] OJ No L 130, 15. 6. 1970, p. 1.