COMMISSION DECISION

of 16 November 1978

on the authorization of special Deutsche Bundesbahn tariffs in favour of coal and steel producers in the Saar

(Only the German text is authentic)

(78/975/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

I

Whereas in its Decision 71/293/ECSC of 22 July 1971 (1), the Commission authorized, in view of the need to restructure and adapt the Saar ECSC industry to the new conditions of competition resulting from the opening of waterways in neighbouring industrial regions, the application by the Deutsche Bundesbahn (DB) of special tariffs Nos 188, 196, 197, 263, 270, 273 and tariff No 9133, in favour of coal and steel producers in the Saar, for a period of nine years from 1 January 1971 on condition that the tariff reductions are gradually scaled down over the last four years;

Whereas the Commission, in its Decision 76/166/ECSC of 18 December 1975 (2), delayed scaling down the tariff reductions for two years, i.e. from 1 January 1976 to 1 January 1978, but did not extend the overall period in which tariff aid is to be granted;

Whereas, by letter dated 21 November 1977 to the Commission from the office of the German Permanent Representative, the Government of the Federal Republic of Germany requested the Commission to amend its Decision of 22 July 1971 on the authorization of special Deutsche Bundesbahn tariffs in favour of coal and steel producers in the Saar in order to allow these tariffs to continue as before until the opening of the canalized section of the Saar, or until 31 December 1985, whichever was the sooner; whereas the Federal Government requested in the second place that, if the Commission were unable to comply with its request, it be granted authorization to continue to apply these support tariffs, in order to offset the difficulties which will be caused by scaling down and abolishing the present tariff reductions, until the end of 1983, which is the date laid down in the Agreement between the Federal Government and the Governments of the Saar and the Rhineland-Palatinate for the opening of the canalized section of the Saar; whereas, in addition to these requests, the Federal Government asked for the one third decrease in these special tariff reductions pursuant to Decision 76/166/ECSC from 1 January 1978 to be cancelled.

II

Whereas in support of its requests the Federal Government gives the following reasons:

— the relatively unfavourable competitive position of the Saar's coal and steel producers is largely attributable to action by the public authorities in the transport field and in particular to the canalization of the Main, Neckar and Moselle, which has improved the supply and selling position of rival undertakings in the Ruhr, Lorraine and Luxembourg; these disadvantages can be overcome only by canalizing the Saar; it would however be pointless to canalize the Saar if the competitiveness of the Saar's ECSC undertakings were in the meantime impaired by the abolition of the support tariffs;

— the general recession in the European coal and steel market since 1975 has been particularly marked in the Saar as a result of the combined effects of the slump in sales and production and the deterioration in its competitive position caused by the improvement in the transport infrastructure of its competitors, which the support tariffs have not been able to offset completely;

— in view of the Saar's economic difficulties, its coal and steel industry and public authorities have invested heavily in the reorganization of the economy and the improvement of its competitiveness; despite these measures, the coal and steel industry has remained the Saar's key industry and the unemployment rate over the last few years has

(1) OJ No L 179, 9. 8. 1971, p. 33.
(2) OJ No L 29, 4. 2. 1976, p. 14.

been much higher than the average for the Federal Republic of Germany; the planned scaling-down of the support tariff reductions would aggravate the economic situation and the current problems on the labour market;

— the present protracted recession of the coal and steel industry could not have been foreseen in 1971, when the periods for the duration of the aid measures and the restructuring process were determined;

— for these reasons, every step has been taken to commence the canalization works; since the construction of this waterway link will put the Saar on the same footing as its competitors, it is essential to maintain State aid during a relatively short transitional period until the opening of the canalized section of the Saar.

III

Whereas, at the request of the Federal Government, a thorough review has been made of the situation involving *inter alia* consultation of the economic parties involved and of the Member States; whereas this review has established that:

— in view of the weighty nature of the production of the iron and steel and coal industries, transport costs are a decisive factor in the competitiveness of the delivered price of its products;

— the canalization of the Saar as envisaged in the plans which are now being implemented will have, owing to the route adopted and the substantial detour which this involves, a limited effect on the supply and sale of the Saar's industrial products as regards routes between the Saar and southern Germany, which carry aproximately 80 % of the total volume of the Saar's coal and steel industry's imports and exports at support tariff rates;

— the combined effects of the economic crisis and increased structural difficulties of the Community iron and steel industry had the result in the case of the Saar not only of delaying the completion of the adaptation measures but also of requiring the parties concerned to initiate a major reconstruction which has been the subject matter of a programme communicated by the German Government to the Commission in a letter of the Permanent Representation of the Federal Republic of Germany of 10 July 1978; this new situation and its consequences on employment could not have been foreseen at the time of the 1971 Decision and have brought about a radical change in the circumstances.

IV

Whereas it would not seem justified economically to link the period of application of the support tariffs to the completion of the construction of the canal, which is the temporary solution advocated by the Federal Government;

Whereas the Federal Government had also adduced the argument that the support tariffs constituted an essential element in restructuring and adapting the Saar's coal and steel industry, already lagging behind as a result of the present economic crisis;

Whereas the examination of the abovementioned tariffs must be undertaken on the basis of the fourth paragraph of Article 70 of the ECSC Treaty in the light of the objectives laid down in the said Treaty;

Whereas, with regard to steel, it is furthermore appropriate to examine whether the support tariffs of the iron and steel industry are compatible with Community thinking in this matter and fall within the terms of a reconstruction plan for the Saar iron and steel industry;

Whereas, under the programme communicated by the German Government, the interests concerned are to undertake large-scale reconstruction of the iron and steel sector, involving the closure of obsolete plants, the modernization of those which are already quite competitive and the concentration of certain production by means of increased specialization by two Saar companies, Röchling-Burbach and Neunkircher-Eisenwerk; whereas this restructuring process will result in a large reduction in production capacity accompanied by an increase in productivity in the two Saar companies concerned to a level enabling them, in view of their size and geographical position, to face competition in the future;

Whereas the competitiveness of Dillinger Hüttenwerk, the third Saar iron and steel company, which has installations of an advanced technical level, should also be improved by centralizing liquid steel production in accordance with procedures to be determined in due course;

Whereas the larger part of the reconstruction plan should be complete by the beginning of the 1980s, but the whole operation foreseen under the programme will only be finished in 1983;

Whereas the centralization of liquid steel production remains to be determined and it is necessary to encourage the firms concerned to settle and implement their plans in this field as quickly as possible;

Whereas the planned reconstruction should start to improve noticeably the competitiveness of the firms during 1981 and accordingly it seems justified to accompany the application of the support tariffs commencing on 1 January 1982 by a certain degressivity; the tariff support should accordingly be decreased annually by 33 1/3 % starting on 1 January 1982 and be abolished on 1 January 1984;

Whereas, with regard to the Saar coal industry, part of its outlet represented by the Saar iron and steel industry will be reduced by the decrease in the production capacity for steel provided for in the restructuring plan; whereas the coal industry must therefore offset this reduction by, in particular, seeking openings in markets outside the Saar in respect of which it is already at a disadvantage in comparison to the coal producers benefiting from existing waterways; whereas, furthermore, for important markets (southern Germany in particular) it will fail to benefit, in view of the route adopted, from the advantages of the projected canalization; whereas, for the purposes of adaptation, the search for opening in markets outside the Saar should not be hampered by abolishing the tariff support measures which, on account of their connection with the Saar iron and steel industry, must be applied under the same conditions in favour of the Saar coal industry;

Whereas, in view of the unfavourable location of the Saar and of its economic situation, the amount of the tariff aids is limited to what is strictly necessary to encourage effectively the recipient firms to adjust to new economic conditions;

Whereas the abolition of support tariffs at this stage might jeopardize this gradual process of conversion and recovery;

Whereas, support tariffs can be authorized only under certain conditions, so as to prevent them, in view of their limited scope, from affecting the proper functioning of the common market to the detriment of certain producers, buyers or users of Community coal or steel from outside the Saar;

Whereas, under these conditions, the maintenance of aid to the Saar coal and steel industry by means of support tariffs for six years, with progressive reductions during the last three years, is unlikely to create disturbances in the functioning of the coal and steel market and does not appreciably affect competition in the corresponding transport markets; whereas the technical characteristics relating to the transportation of ECSC products in fact limit the area of possible competition between road and rail only to finished laminated products, which constitute only a small proportion of ECSC products; whereas these tariff measures authorized in accordance with the conditions laid down in this Decision appear to be in conformity with the principles of the ECSC Treaty and contribute to the attainment of its objectives as defined in particular in Articles 2 and 3 thereof;

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

HAS ADOPTED THIS DECISION:

Article 1

The previous Decisions of the Commission on the authorization of special Deutsche Bundesbahn tariffs in favour of coal and steel producers in the Saar are hereby revoked.

Article 2

The application of special Deutsche Bundesbahn tariffs Nos 188, 196, 197, 263, 270, 273 and of tariff No 9133, in favour of coal and steel producers in the Saar, is authorized until 31 December 1983.

Article 3

The authorization provided for in Article 2 shall be subject to the following conditions:

1. that the percentage tariff reductions on the tariffs usually applied are decreased by at least 33 1/3 % on 1 January 1982 and 1983 and completely abolished on 1 January 1984.

2. that the special Deutsche Bundesbahn tariffs Nos 207, 208, 209, 280 and 281 and the special rates for tariff No 5092 (formerly No 1231) extending the tariffs referred to in Article 2 to the frontier points concerned must continue to be applied during the same periods at corresponding rates.

Article 4

This Decision shall be amended or revoked if the Commission finds that it is no longer justified.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 November 1978.

For the Commission

Richard BURKE

Member of the Commission