

## COMMISSION DECISION

of 17 February 1971

concerning aid granted under § 32 of the law relating to adjustment and reorganization  
in the German collieries and mining areas

(Only the German text is authentic)

(71/121/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 regard to the written and oral observation of the Member States and others concerned;

## I

Whereas under § 32 of the Law of 15 May 1968 relating to adjustment and reorganization in the German collieries and mining areas (*Kohlegesetz*) (BGB1 1, p. 365), persons liable to tax whose profits are established on the basis of regular accounting procedures and who after 30 April 1967 have built or enlarged industrial premises in a mining area may, upon application, deduct from income tax or corporation tax up to 10 % of the cost of depreciable fixed assets obtained or produced after 30 April 1967 and before 1 January 1970 (concessional period) in connection with the building or enlargement of those industrial premises; whereas that concession also applies to depreciable fixed assets obtained or produced within two years of the expiry of the concessional period if those assets form part of premises which the person liable to tax began to build or enlarge during the concessional period (extra concessional period);

Whereas this deduction is permissible only if the Federal representative for the coal mining industry has issued the certificate in accordance with § 32 (2) of the *Kohlegesetz* in consultation with the department determined by the Government of the Land; whereas to that end the industrial premises so built or enlarged must be such as to improve the economic structure of the coalmining region, be particularly deserving of encouragement from the economic standpoint and serve to create an adequate number of additional jobs;

Whereas Article 9 of the Law of 19 August 1969 relating to investment grants and amending certain pro-

visions concerning taxation and grants (*Steueränderungsgesetz* 1969) (BGB1 1, p. 1211) extended until January 1972 the concessional period provided for in § 32 of the *Kohlegesetz*; whereas the Law entered into force on 22 August 1969 (Article 13);

## II

Whereas the investment grant provided for by § 32 of the *Kohlegesetz* constitutes an advantage for undertakings which build or enlarge industrial premises in the German mining areas; whereas that grant constitutes State aid within the meaning of Article 92 (1) of the Treaty;

Whereas with examining the aid project in 1967, on the basis of the economic considerations advanced, of the objective in view and of the then recognized need to accelerate the diversification of industry in the coalmining areas of the Community, the Commission was of the opinion that the project could be considered compatible with the common market within the meaning of Article 92 (3) (c);

Whereas the Commission is of the opinion that the proposal to extend the period of application of the aid is not compatible with the common market in so far as it represents an encouragement to investment in all the mining regions of the Land of North Rhine-Westphalia; whereas, by letter of 30 July 1970, the Commission initiated the procedure provided for in Article 93 (2) of the EEC Treaty and invited the German Government to take no further decision after 1 December 1970 concerning investment grants in North Rhine-Westphalia;

## III

Whereas the economic situation in the Land of North Rhine-Westphalia has greatly improved since the draft law was communicated in 1967; whereas the average rate of economic expansion of that Land is at least equal to that of the other regions of the Federal Republic; whereas, furthermore, product per head has increased as rapidly in North Rhine-Westphalia

as in the Federal territory as a whole; whereas it has always been above the Federal average; whereas even in the Ruhr the output per head is practically equal to the Federal average; whereas gross hourly industrial wages in North Rhine-Westphalia are the second highest in Federal Germany, coming close behind those of Hamburg;

Whereas stocks of coal which in 1966 reached 24 million metric tons in Federal Germany, dropped to 5.1 million metric tons in 1969 and were only about 3.9 million metric tons at the end of 1970; whereas there are practically no more stocks of coking coal; whereas part-time working due to lack of demand has been discontinued;

Whereas the unemployment figures in North Rhine-Westphalia, which averaged 2.3 % in 1967, have dropped to only 0.5 % since the end of 1969; whereas on 31 October 1970 there were 155 000 unfilled vacancies in North Rhine-Westphalia, of which 50 000 were in the Ruhr;

Whereas according to information supplied by the German Government in 1967 the forecasts on which § 32 of the *Kohlegesetz* was based included the creation of 20 000 new jobs in the German mining areas as a whole; whereas in fact up to 1 October 1970 in North Rhine-Westphalia alone applications relating to investments amounting to 10.7 thousand million DM were approved; whereas these investments should create 86 000 new jobs;

#### IV

Whereas the system of aid provided for in § 32 of the *Kohlegesetz* does not fulfil the conditions of Article 92 (2) of the EEC Treaty since the system constitutes regionally undifferentiated support for investment in the mining areas of North Rhine-Westphalia;

Whereas the conditions under which the system of aid could be considered as compatible with the common market in accordance with Article 92 (3) (a) or (b) are not fulfilled; whereas there is neither an abnormally low standard of living nor is there serious underemployment in the North Rhine-Westphalia mining areas; whereas, moreover, this aid does not serve to put an end to a serious disturbance in the economy of the Federal Republic of Germany;

Whereas, because of the changed situation in North Rhine-Westphalia since 1967, the conditions for the application of Article 92 (3) (c) are no longer fulfilled; whereas the recipient regions are very highly industrialized; whereas income per head and the level of employment are high;

Whereas to continue granting aid in the present form would tend to increase still further differences in living standards between the regions of the Community, contrary to the objectives laid down in Article 2 of the Treaty, and would alter trading conditions in a way contrary to the common interest; whereas § 32 of the *Kohlegesetz* is not specific as to the undertakings to be assisted nor as to the localities in which the building or enlargement of industrial premises should be encouraged in order to achieve the structural improvement aimed at in the regions in question; whereas furthermore there is no provision ensuring priority of employment for workers who lost their previous jobs as a result of the mine closures;

#### V

Whereas the provision of investment grants under § 32 of the *Kohlegesetz* must cease in North Rhine-Westphalia so long as selective application of that system is not ensured; whereas not to apply the system of aid requires no amendment of the Law; whereas for the aid to be operated selectively the Federal representative for the coalmining industry need only, in respect of projects in North Rhine-Westphalia, issue certificates, in accordance with § 32 (2) of the Law, on the basis of criteria complying with the principles of Article 92 of the EEC Treaty;

Whereas undertakings which have obtained a certificate from that representative can take advantage of the extra concessional period provided for in the second sentence of § 32 (1) and whereas, therefore, a transitional period is not necessary,

HAS ADOPTED THIS DECISION:

#### Article 1

The Federal Republic of Germany shall forthwith take all necessary measures to put an end in North Rhine-Westphalia to the non-selective provision of investment grants under § 32 (1) of the Law relating to adjustment and reorganization in the German collieries and mining areas (*Kohlegesetz*), as amended by Article 9 of the Law of 18 August 1969 (*Steueränderungsgesetz*).

#### Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 February 1971.

For the Commission

The President

Franco M. Malfatti