

COMMISSION DECISION

of 23 July 1971

on tax exemptions under the German Law of 28 December 1968, as extended on 23 December 1970, relating to the imposition of a tax on the carriage of goods by road

(Only the German text is authentic)

(71/295/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of paragraph 2 and paragraph 3 of Article 93 thereof;

Having regard to the written and oral observations put forward by the parties concerned;

I

Whereas in its recommendation of 31 January 1968¹ relating in particular to the tax system governing the carriage of goods by road, the Commission has already drawn the attention of the German Government to the fact that certain forms of tax exemption and abatements provided for by the draft law communicated to it in accordance with Article 1 of the Council Decision of 21 March 1962, might prove to be incompatible with the common market within the meaning of Article 92 of the EEC Treaty;

Whereas the Law of 28 December 1968² includes provision for:

- (a) tax exemptions in respect of German seaports (§ 3 (7));
- (b) tax abatements in respect of regions other than West Berlin and the Zonenrandgebiet as defined by German law (§ 5 (1) and 6 (2) and (3));
- (c) tax relief in respect of certain inter-works long-

Whereas, by a Law of 23 December 1970³, the Law of 28 December 1968, application of which was initially limited to 31 December 1970, was extended un-

til 31 December 1971, without the Commission having been informed in sufficient time to submit its comments in accordance with Article 93 (3) of the Treaty;

II

Whereas under Article 92 (1) aid granted by a Member State or through State resources in any form whatsoever affecting trade between Member States, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, is incompatible with the common market; whereas the concept of aid extends not only to actual financial payments such as subsidies, but also to measures in various forms which reduce the financial obligations normally borne by an undertaking and which thus, without being subsidies in the strict sense of the term, resemble them and have identical effects;

- (a) whereas the exemptions in respect of German seaports are likely to affect trade and distort competition between service undertakings at German seaports and those at other Community ports on the one hand, and, on the other, as regards intra-Community provision of services between carriers serving respectively German ports and other Community ports;
- (b) whereas the tax exemptions and abatements applying to regions other than West Berlin and the Zonenrandgebiet are also likely to bring about equivalent reductions in the cost prices of undertakings operating in those regions; they are therefore likely to distort competition and affect trade between Member States;
- (c) whereas the tax relief in respect of inter-works long-distance traffic has the same effects as regards the undertakings receiving it;

Whereas the exceptions provided for by the Law in question, which are in the nature of aid within the meaning of Article 92 (1), have an objective which is

¹ OJ No L 35, 8.2.1968, p. 14.

² 'Gesetz über die Besteuerung des Strassengüterverkehrs' of 28 December 1968 (Bundesgesetzblatt I, p. 1461, paragraph 6.1).

³ Bundesblatt I, p. 1869

diametrically opposed to that of transport coordination, since the changeover from road transport to rail transport – which is the main objective of the Law – is thereby limited; whereas these exceptions cannot therefore find justification under Article 77;

Whereas, furthermore, these exceptions are not covered by any of the derogations provided for in paragraphs 2 and 3 of Article 92, even if such derogations could be applied to this case;

- (a) whereas the tax exemptions in respect of German seaports benefit the service undertakings at German seaports to the detriment of those at other Community ports, and are therefore such as might alter trading conditions in a manner contrary to the common interest;
- (b) whereas the tax exemptions and abatements applying to regions other than West Berlin and the Zonenrandgebiet as defined by German law cannot be considered as likely to promote the development of those regions; whereas, furthermore, the fact that those regions differ from those selected by the German Government for the granting of regional investment aid shows that the exemptions and abatements in question do not have such an objective; whereas therefore the provisions of Article 92 (3) (a) and (c) in respect of regional development cannot apply to this case;

Whereas, however, even had such an objective been in view, that type of support constitutes operational aid to undertakings which may lead them into errors of siting or discourage them making adjustment necessary in the long term; whereas, consequently, such aid cannot in any case be regarded as being compatible with the common market;

- (c) Whereas the tax relief in respect of inter-works long-distance traffic by undertakings which would be placed in difficulty if the tax were levied in full, cannot fall within any of the derogations provided for in Article 92 (3), since its scope, being general, goes beyond the limited regional or sectional field of application of those derogations,

HAS ADOPTED THIS DECISION:

Article 1

The Federal Republic of Germany shall forthwith take the measures necessary to abolish:

- (a) the exemptions in respect of German seaports (§ 3 (7) of the law of 28 December 1968, as extended on 23 December 1970, relating to the imposition of a tax on the carriage of goods by road);
- (b) the tax exemptions and abatements in respect of regions other than West Berlin and the Zonenrandgebiet (§ 5 (1) and § 6 (2) and (3) of the Law);
- (c) the tax relief in respect of inter-works long-distance traffic (§ 7 of the Law).

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 23 July 1971.

For the Commission

The President

Franco M. MALFATTI