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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.10.2009
COM(2009)609 final

Proposal for a

COUNCIL DECISION

authorising France to apply differentiated levels of taxation to motor fuels under Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1) GROUNDS FOR AND OBJECTIVES OF THE PROPOSAL

Taxation of energy products and electricity in the Community is governed by Council Directive 2003/96/EC[1] (hereafter referred to as the “Energy Taxation Directive” or the “Directive”).

Pursuant to Article 19(1) of the Directive, in addition to the provisions foreseen in particular in the Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in excise duties for specific policy considerations.

The objective of this proposal is to allow France to apply, within defined limits, differentiated levels of taxation to gas oil and unleaded petrol, with the exclusion of commercially used gasoil. This differentiation is meant to reflect the decentralisation of certain specific powers previously exercised by central government and to adapt the tax regime to the regions' different economic situations.

2) THE REQUEST AND ITS GENERAL CONTEXT

Council Decision 2005/767/EC[2] authorises France to apply, for a period of three years, differentiated levels of taxation to gas oil and unleaded petrol for the purposes of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government. In accordance with its Article 2, Decision 2005/767/EC expires on 31 December 2009.

By letter dated 12 August 2009, under Article 19 of the Directive, the French authorities informed the Commission that they intended to renew their scheme to apply differentiated levels of taxation to gas oil and unleaded petrol after the expiry of the aforementioned derogation. They requested an extension of Decision 2005/767/EC for a period of six more years, ending 31 December 2015.

Based on that Decision, France is currently applying a scheme that allows the French administrative regions to apply a differentiated level of taxation on unleaded petrol and gasoil with the exception of commercially used gasoil. The tax in question is the *Taxe Intérieure sur les Produits Pétroliers* - Domestic Tax on Petroleum Products (TIPP), which is an excise duty.

The French Government introduced the above measure, which has been applied since 2007, as part of a new stage of decentralisation of powers previously exercised at national level. The constitutional reform of March 2003 provides the framework for transfers of State powers and responsibilities to territorial authorities (communes, departments, regions). As counterpart to the new responsibilities a part of the revenue from the TIPP has been allocated to the regions.

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1 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283 of 31.10.2003 p. 51; Directive last amended by Directives 2004/74/EC and 2004/75/EC (OJ L 157 of 30 April 2004, p. 87 and p.100).

2 OJ L 290, 4.11.2005, p. 25.

In this context, the measure in question, intended to adapt the arrangements to the regions' different current economic situations, authorises the administrative regions to apply a reduction in the excise duty applicable to fuels consumed on their territory. This regional variation enables the transferred powers to be used in a way better adapted to each region's specific characteristics, needs and expectations.

Mechanics of the measure

According to the scheme subject to the present request, the regional Councils decide the amount of the reduction by vote, within the limits set by the law and in compliance with the derogation granted.

As hitherto, the reduction would comply with the following criteria:

- it would not exceed €3.54 per hectolitre for unleaded petrol or €2.30 per hectolitre for gas oil throughout the derogation period; the amount of excise duty before reduction would be set at €60.69 per hectolitre of unleaded petrol and €42.84 per hectolitre for gas oil, but these levels could change over time;

- the level of taxation following the reduction would never be lower than the Community minima set in Directive 2003/96/EC;

- the reduction would not apply to gas oil for commercial use.

Control and movement measures

As regards the collection and control of excise duty on gas oil and petrol, the same arrangements would apply as hitherto. Details of these arrangements are described in chapter 1.3 of the original Commission proposal[3] on which Decision 2005/767/EC is based.

Arguments of the French authorities concerning the impact of the measure on the internal market

The French authorities say that the measure would not affect the proper functioning of the internal market, in particular since the scope of the measure is confined to fuels for non-commercial use. Moreover, the variations between distribution networks in the retail price of fuel for non-commercial use are greater than the amount of variations involved in the planned measure. According to the French authorities, no complaints about distortive effects of the measure have been received during its application.

The planned rate reduction would, according to the French authorities, not constitute a state aid since road haulage companies would be subject to the same rate of excise duty on gas oil for commercial use irrespective of the region in which they bought it.

The proposed measure would not therefore distort competition in the transport sector and would not affect trade within the Community.

Existing provisions in the area of the proposal

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[3] Proposal for a Council Decision authorising France to apply differentiated levels of taxation to motor fuels under Article 19 of Directive 2003/96/EC, COM (2004) 597 final.

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

3) ASSESSMENT OF THE MEASURE UNDER ARTICLE 19 OF DIRECTIVE 2003/96/EC

Specific policy considerations

Article 19(1), first subparagraph, of the Directive reads as follows:

> *In addition to the provisions set out in the previous Articles, in particular in Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations.*

According to Council Decision 2005/767/EC, the national measure in question fulfils this requirement. It follows from the Decision that the regional differentiation of rates, as part of a wider decentralisation policy, aims at the specific policy objective of increasing administrative effectiveness. It was considered that the possibility of regional differentiation offers regions an additional incentive to improve the quality of their administration in a transparent fashion. The same decision requires that the reductions be linked to the socio-economic conditions of the regions in which they were applied.

In this regard, the information supplied by France confirmed that a link can in deed be established between application of a regional rate below the national maximum rate and the socio-economic conditions of the regions concerned. In 2007, the first year of the application of the derogation, 13 regions applied a reduced tax rate all of which had a GDP per capita below the national average. In the two following years, the number of regions applying a downward differentiation decreased significantly to three in 2008 and two in 2009. The regions maintaining the decreased rates were among the poorest in terms of GDP[4].

It can therefore be concluded that the possibility to modulate the national rate downward seems to have offered the regional authorities the possibility to use the tax in question in a way adapted to the socio-economic circumstances prevalent in their territory. On the other hand a tendency of convergence of regional rates towards the maximum rate allowable can be observed. Should this tendency in time lead back to a situation where the rates on unleaded petrol and gasoil are the same over the whole territory of France, this derogation would be devoid of substance as its subject is exclusively the regional variation of rates and not the budgetary transfer of a part of the excise duty from the central state to the regions. In this case, it would also have to be reassessed whether the measure does in fact contribute to the specific policy objective described above.

Consistency with the other policies and objectives of the Union

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[4] In 2007 the following regions applied a reduction: Alsace, Aquitaine, Auvergne, Bourgogne, Bretagne, Champagne-Ardennes, Corse, Franche-Comté, Languedoc-Rousillon, Limousin, Midi-Pyrénées, Basse-Normandie, Pays de la Loire, Poitou-Charentes, Provence-Alpes-Côte d'Azur, Rhône-Alpes; in 2008 these were Corse, Franche-Comté and Poitou-Charentes; in 2009 these were Corse and Poitou-Charentes.

According to Article 19, paragraph 1, third subparagraph, of the Directive, each request shall be examined taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition and Community health, environment, energy and transport policies.

This examination has already been conducted at the occasion of the original request by France and which has led to the adoption of Council Decision 2005/767/EC. As stated in this Decision, the general mechanics of the measure were found not to create any obstacles to intra-Community trade; at the same time a number of conditions were fixed in order to ensure that the application of the derogation would not lead to any problem with the functioning of the internal market and would not counteract the achievement of the EU's policy objectives especially in the fields of energy and environment.

For a possible renewal of the scheme as requested by France, the Commission therefore has to assess whether, in light of the conditions laid down in article 1 (2) and (3) of the original decision, compliance with the objectives and policies set out in Article 19, paragraph 1, third subparagraph, of the Directive, has been achieved during its application, so that the same can be predicted, in principle, for the period from 1 January 2010.

In this context, it has also to be verified whether the Community policy context has undergone a relevant change since the adoption of Decision 2005/767/EC or risks to undergo a future change material to the assessment.

Internal market and fair competition

The risk of competitive distortions was considered low in Council Decision 2005/767/EC because of the very tight limits set for the differentiation of duty rates between regions which should be compensated by the large price differentiations between distribution networks and because of the exclusion of commercially used gasoil from the application of regionally differentiated rates.

As for the levels of differentiation, a strict limit was set namely that the reductions are no greater than €35.4 per 1000 litres of unleaded petrol or €23.0 per 1000 litres of gas oil. This condition has been respected by France. Moreover, the Decision laid down that the reductions are no greater than the difference between the levels of taxation of gas oil for non-commercial use and gas oil for commercial use. This second condition, which was to ensure that the differentiation does not affect the commercial transport sector, has also been respected.

The experience gathered with the application of the derogation does not seem to raise doubts as to the assessment reached in 2005. The Commission is not aware of any complaints about distortive effects of the measure on intra-Community trade. Second, the measure was only used to a limited extent given the tendency of regions towards an upward alignment of rates to the national rate. This would further have limited the potential for distortions.

No obstacles to the proper functioning of the internal market have been reported either as regards more particularly the circulation of the products in question in their capacity as products subject to excise duty.

As regards the State aid aspect, it should first be repeated that commercially used gasoil is excluded from the measure. However, as far as other business users not falling under the definition of article 7 (3) of the Energy Taxation Directive would benefit from the reduced rates for unleaded petrol or to the extent that competition on the level of producers of oil products is affected, the measure might constitute State aid in accordance with Article 87 (1) of the EC Treaty. Since the reduced rates are above the Community minima, any possible State aid would, however, be in line with the General Block Exemption Regulation[5] and would be compatible with Article 87(3)(c) of the Treaty.

Community energy and environment policies

Taxes on energy products have the effect of lowering the demand for these products and therefore also reduce emissions related to their consumption. The Commission therefore has to assess whether the reduction of rates applied in certain regions does not lead to an increase in fuel consumption (and thus related emissions) that would be in contradiction with the objectives quoted above.

Council Decision 2005/767/EC noted that the introduction of the possibility for a downward adjustment of rates was accompanied by an increase in the underlying national rate in France. It concluded that it was unlikely that the overall effect of the new scheme would be a reduced incentive for fuel efficiency since the application of the derogation did not allow regions to go below the rate in force on national level before the introduction of the scheme. Decision 2005/767/EC also concluded that there was little risk that the regional variations would lead to differences in retail prices that would induce traffic detours as the level of differentiation was low and these were superseded by differences in retail prices among distribution networks. It was therefore expected that the measure would not, in principle, come into contradiction with Community energy and environment policy.

Figures provided by the French authorities on the development of fuel consumption in those regions which actually applied a reduced rate would appear to confirm the conclusions drawn in 2005. In fact, an assessment of the development of fuel consumption of the three regions which maintained tax reductions for more than one year shows that the consumption of petrol decreased more than the national average for the years 2006 – 2008 whereas the consumption of gasoil increased above the trend. Overall, no clear trend is observable that would set the three regions out against the rest of France. Other factors than the reduction in excise duty will thus very likely have played a role.

On the other hand, price elasticity for transport fuels is usually higher in the medium to long term whereas the below covers only an extremely short period. It can therefore not be excluded that the effects from a longer-term application of the regional tax reductions would be more visible. However, nothing suggests so far that the effects would in the short term go beyond what is suggested by the narrow margins available for regional differentiation.

	SP 95 (in m3)				
	2006	2007	2008	%07-06	%08-07
Poitou-Charentes	315 278	320 837	308 729	1,76%	-3,77%

5 Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3.

Franche Compte	179 450	171 456	163 904	-4,45%	-4,40%
Corse	97 333	97 082	93 045	-0,26%	-4,16%
France	10 038 226	9 923 607	9 626 807	-1,14%	-2,99%

	gasoil 95 (in m3)				
	2006	2007	2008	%07-06	%08-07
Poitou-Charentes	1 432 726	1 514 184	1 509 861	5,69%	-0,29%
Franche Compte	806 862	831 643	849 432	3,07%	2,14%
Corse	168 215	176 480	183 557	4,91%	4,01%
France	37 740 477	39 003 877	38 909 562	3,35%	-0,24%

Source: CPDP

Developments in the Community policy context

One area in which Community policy has evolved considerably since the initial derogation was granted and on which the regionalisation scheme in question could have an impact is the EU's energy and climate policy. In April 2009, a package of measures was adopted with an autonomous greenhouse gas emission reduction targets of 20% by 2020. The transport sector is covered by the Effort-sharing decision[6], which sets binding emission reduction targets for all Member States for the period 2013-2020.

This might in time also include the necessity to revise the Community framework on energy taxation to bring it more closely in line with the objectives of energy and environment policies. It is not clear at this stage how such further developments would correspond to the continued operation of the derogation in question. In this context, renewing the derogation for a period of six years, the longest period allowable under Article 19 (2), as requested by France would incur the risk of coming into conflict with future developments of Community policy.

For the reasons cited above the Commission can propose to renew the authorisation for France to apply differentiated levels of taxation for motor fuels for a period of three more years. This will allow France to apply the scheme for six years in total, as originally proposed by the Commission.

[6] Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, OJ L 140, 5.6.2009, p. 136. The target is -14% in the case of France.

4) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

This proposal is based on a request made by France and concerns only this Member State.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal concerns an authorisation for an individual Member State upon its own request.

5) LEGAL ELEMENTS OF THE PROPOSAL

The proposal aims at authorising France to derogate from the general provisions of Council Directive 2003/96/EC and to apply, within defined limits, differentiated levels of taxation to gas oil and unleaded petrol, with the exclusion of commercially used gasoil.

Legal basis

Article 19 of Council Directive 2003/96/EC.

Subsidiarity principle

The field of indirect taxation covered by Article 93 EC is not in itself within the exclusive competence of the Community within the meaning of Article 5 EC.

However, the exercise by Member States of their concurrent competences in this field is strictly circumscribed and limited by existing Community law. Pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

Proportionality principle

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question.

Choice of instruments

Instrument(s) proposed: Council decision.

Article 19 of Directive 2003/96 makes provision for this type of measure only.

6) BUDGETARY IMPLICATION

The measure does not impose any financial and administrative burden on the Community. The proposal therefore has no impact on the Community budget.

Proposal for a

COUNCIL DECISION

authorising France to apply differentiated levels of taxation to motor fuels under Article 19 of Directive 2003/96/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the proposal from the Commission[7],

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[8], and in particular Article 19 thereof,

Whereas:

(1) Council Decision 2005/767/EC authorises France to apply, for a period of three years, differentiated levels of taxation to gas oil and unleaded petrol. That authorisation had been requested, at the time, in the context of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government. Decision 2005/767/EC expires on 31 December 2009.

(2) By letter of 12 August 2009 France requested authorisation to continue to apply differentiated rates of taxation under the same conditions for a period of six more years after that expiry.

(3) Council Decision 2005/767/EC was adopted on the basis that the measure requested by France met the requirements set out in Article 19 of Directive. In particular, it was considered that that measure would not hinder the proper functioning of the internal market. It was also considered that it is in conformity with the relevant Community policies.

(4) The national measure is part of a policy designed to increase administrative effectiveness by improving the quality and reducing the cost of public services, as well as a policy of subsidiarity. It offers regions an additional incentive to improve the quality of their administration in a transparent fashion. In this respect, Council Decision 2005/767/EC requires that the reductions be linked to the socio-economic circumstances of the regions in which they are applied. So far, the possibility for a reduction has only been used by regions with a lower than average GDP. Overall, the national measure is based on specific policy considerations..

7 OJ C , , p. .
8 OJ L 283, 31.10.2003, p. 51.

(5) The tight limits set for the differentiation of rates on a regional basis as well as the exclusion of gas oil used for commercial purposes from the measure imply that the risk of competitive distortions in the internal market is very low. Moreover, the application of the measure so far has shown a strong tendency of regions to levy the maximum rate allowable which has further decreased any potential for competitive distortions.

(6) No obstacles to the proper functioning of the internal market have been reported either as regards more particularly the circulation of the products in question in their capacity as products subject to excise duty.

(7) The national measure had at the time been preceded by a tax increase equal to the margin for regional reductions. Against this background and in light of the conditions of the authorisation as well as experience gathered, it does not at this stage appear to be in conflict with Community energy and climate policies.

(8) It follows from Article 19, paragraph 2, of Directive 2003/96/EC that each authorisation granted under this Article must be strictly limited in time. Due to the possible future developments of the Community framework on energy taxation, the present authorisation needs to be limited to a period of three years.

HAS ADOPTED THIS DECISION:

Article 1

1. France is hereby authorised to apply reduced rates of taxation to unleaded petrol and gas oil used as fuel. Gas oil for commercial use within the meaning of Article 7(2) of Directive 2003/96/EC shall not be eligible for any such reductions.

2. Administrative regions may be permitted to apply differentiated reductions provided the following conditions are fulfilled:

   – (a) the reductions are no greater than €35.4 per 1000 litres of unleaded petrol or €23.0 per 1000 litres of gas oil;

   – (b) the reductions are no greater than the difference between the levels of taxation of gas oil for non-commercial use and gas oil for commercial use;

   – (c) the reductions are linked to the objective socio-economic conditions of the regions in which they are applied.

   – (d) the application of regional reductions does not have the effect of granting a region a competitive advantage in intra-Community trade.

3. The reduced rates must comply with the requirements of Directive 2003/96/EC, and in particular the minimum rates laid down in Article 7.

Article 2

This Decision shall be applicable from 1 January 2010 and shall expire on 31 December 2012.

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Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
Laszlo KOVACS
Member of the Commission