



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.9.2004
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Proposal for a

COUNCIL DECISION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. SUBMISSION OF THE REQUEST

By letter dated 16 June 2004, under Article 19 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity,¹ the French authorities informed the Commission that they intended to apply differentiated levels of taxation to gas oil and unleaded petrol for the purposes of an administrative reform involving the decentralisation of powers currently exercised by central government.

1.1. General context of the request

The French Government has started on a new stage of decentralisation of powers hitherto 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) and for these authorities to conduct experiments.

Under the act, the transfer of powers is to be accompanied by appropriate financing. For this purpose, after in-depth study of the issues, the French Government has chosen the *Taxe Intérieure sur les Produits Pétroliers* - Domestic Tax on Petroleum Products (TIPP); this is an excise duty. Two different but complementary measures will be implemented.

The first is that a fraction of the domestic excise duty currently levied on the two most-used fuels, which are gas oil and unleaded petrol, will be transferred to the regions. The amount would be the same for each region and the funds allocated to each region would depend on the fuel consumption actually recorded on its territory. The transfer of taxation would partly depend on the level of powers transferred and the current situations of the regions in terms of the powers devolved to them. The objective is thus to achieve a better quality of public service at lower cost through local management and application of the principle of subsidiarity.

The second measure, **intended to adapt the arrangements to the regions' different current economic situations, would authorise the regional Councils (local executive bodies) to vote for a reduction in the excise duty applicable to fuels consumed on their territory. This right of regional differentiation of the TIPP is the only subject of the request for a derogation.** This regional variation enables the transferred powers to be used in a way better adapted to each region's specific characteristics, needs and expectations. The measure corresponds in practice to the objective differences in the regions' socio-economic situations. These differences are apparent from a number of indicators. For instance, the gaps between maximum and minimum tax revenue - a difference of €42.3 per inhabitant - and maximum and minimum tax burden - a difference of 0.79 for a national average of 1 - show the gaps between the richest and the poorest regions. Of the 22 regions, 15 have tax ratio indicators above the national average and so have to impose a heavier tax burden than the national average to obtain the same tax revenue per inhabitant. This means that not all French regions have the same room for manoeuvre when it comes to improving the quality of services provided.

¹ OJ L 283, 31.10.2003, p. 51.

The tax expenditure concerned would, from 2006, be less than €700 million.

1.2. Mechanics of the measure

The right of regions to reduce the TIPP would be granted from 1 January 2006 to 31 December 2011. The regional Councils would decide the amount of the reduction by vote, within the limits set by the law and in compliance with the derogation granted.

The reduction 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 after reductions 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.

1.3. Control and movement measures for the products concerned

Central government would retain responsibility for collecting and controlling excise duty on gas oil and unleaded petrol, irrespective of the reductions adopted by the regions.

The products would be moved under duty-paid arrangements; the fuels would be taxed when released for consumption at the rate of duty in force in the region to which they were supplied.

To respond to the specific fraud risk identified (diversion of deliveries to benefit from tax differentials between two regions), the logistical chain would be supervised by means of prior identification of recipients by suppliers and notification of this information to the customs administration. The risk analysis indicates that recipients should be divided into three categories: end users with the capacity for bulk storage, service stations and distributors of duty-paid fuel. To help identify distributors, whose job it is to deliver fuel between regions, they would be individually issued with status certification by the customs administration. All suppliers would then have to do would be to ask distributors for this certification of status and, in the case of their other customers, ask whether they were service stations or end-users.

In the case of a domestic movement of fuel duty-paid, customs could verify the origin of the product and its region of destination. In cases of atypical routes or inexplicably long transport times, customs could investigate whether consignments had been diverted from the regional destination initially declared.

As regards the exclusion of gas oil for commercial use from the scope of the measure, French or Community road hauliers who meet the conditions for partial refund of excise on gas oil for commercial use would be subject to the same rate of excise duty, irrespective of the region in which they bought the fuel. The planned arrangements would maintain the current refund procedure and completely offset the effects of the rate reductions decided on by the regions through equivalent reductions in the amount of the refund on gas oil for commercial use.

1.4. Impact 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.

The planned rate reduction would 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.

2. EVALUATION BY THE COMMISSION

2.1. Subject of the request and legal basis

The Commission would first point out that the French plan primarily concerns a transfer of excise revenue. This poses no problem in terms of Community law. **Of the measures contained in France's request, the only one to be evaluated by the Commission is the reduction of TIPP which could be varied from one French administrative region to another.**

Under Article 19 of Directive 2003/96/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise a Member State to introduce further exemptions or reductions of excise duties for specific policy considerations.

A request for a derogation under Article 19 of Directive 2003/96/EC must be based on a general analysis of conformity with Community policy.

2.2. Applicable rates

The Commission notes that the TIPP reductions planned by the French authorities produce excise rates higher than the applicable Community minima. The Commission could not accept reduced rates that were lower than these minima.

2.3. Duration of the measure

The Commission notes that the measure is planned for a period of six years, which complies with Article 19 of Directive 2003/96/EC.

2.4. Tax base/distortion of competition

Having conducted an in-depth examination, the Commission is of the view that the low level of differentiation of the excise rates between regions and, on the other hand, the differences in retail prices among distribution networks, imply that the risk of traffic detours (and consequently the risk of increase in environmental damaging emissions) will be very low. Moreover, the Commission notes that the regional differentiation is combined with an increase in the nominal tax rate; this will be an incentive for a more efficient use of motor fuels.

Under the proposed arrangements, the amount of the tax refund on gas oil for commercial use will be reduced by the amount of the reduction of the regional excise duty on gas oil. However, it must be specified in the relevant act that the maximum amount of the regional

reduction must not be greater than the difference between the national rates applicable to gas oil for non-commercial use and gas oil for commercial use.

The intra-community commercial circulation of diesel and unleaded petrol is almost completely done in duty suspension. This form of intra-community circulation is not affected by the devolution of excise duties contemplated by France. For the very limited number of cases where commercial circulation is done duty-paid, the planned procedures of control are of non discriminatory nature, and, according to estimates, without negative impacts on the intra-community circulation of duty paid products. Under these conditions, the excise duties decentralisation will not hamper the good functioning of the internal market.

The very tight limits set for the differentiation of duty rates between regions ensure that the decentralisation will not create distortion of competition on the oil products market. Moreover, the differentiation would be compensated by the large price differences among distribution networks. As the requested measure does not apply to commercial diesel, any distortion of competition on the markets of freight and passenger transport is excluded.

The Commission has also concluded that the regional differentiation does not constitute a state aid.

2.5. Specific policy objectives

After examining the information supplied by France, the Commission finds that the decentralisation planned by France is part of an approach designed to increase administrative effectiveness by improving the quality and reducing the cost of public services. France's experience of decentralisation, which has enabled the regional authorities to acquire management expertise, seems to confirm the value of this approach. Decentralisation is also a growth factor for the national economy. The gross fixed capital formation of local public authorities represents 2% of French GDP, whereas that of the State represents 0.5%, i.e. a ratio of 1 to 4 in favour of the local public sector.

Furthermore, the requested measure provides an additional incentive for the regions to improve the quality of their administration in a transparent manner while responding in a differentiated fashion to the socio-economic situation. In this respect the proposal for a Decision must stipulate that the reductions are linked to the economic conditions in the regions.

The decentralisation is part of a policy of subsidiarity, allowing for decisions to be adopted at an adequate level in many areas (vocational training, economic development, health, education, management of infrastructures, culture).

The Commission therefore concludes that the requested regional differentiation serves a specific policy consideration within the meaning of Article 19 of Directive 2003/96/EC.

2.6. Control and movement rules

The administrative supervision arrangements provided for by the French authorities comply with the control and movement rules laid down in Directive 2003/96/EC and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to

excise duty and on the holding, movement and monitoring of such products.² The planned control measures are proportionate.

DECISION

The Commission proposes that under Article 19 of Directive 2003/96/EC the Council authorise France to apply reduced rates of taxation on unleaded petrol and gas oil used as fuel from 1 January 2006 to 31 December 2011. These reductions may be differentiated by administrative region provided the following conditions are fulfilled:

- the reductions are no greater than €35.4 per 1000 litres of unleaded petrol or € 23.0 per 1000 litres of gas oil;
- 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;
- the reductions are linked to the objective socio-economic conditions of the regions in which they are applied.

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

Gas oil for commercial use within the meaning of Article 7(2) of Directive 2003/96/EC is not eligible for the reductions authorised.

² OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2000/47/EC (OJ L 193, 29.7.2000, p. 73).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity³, and in particular Article 19 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By letter of 16 June 2004 France requested authorisation to apply differentiated levels of taxation to gas oil and unleaded petrol for the purposes of an administrative reform involving the decentralisation of certain specific powers currently exercised by central government.
- (2) The decentralisation planned by France is part of an approach designed to increase administrative effectiveness by improving the quality and reducing the cost of public services. It is also part of a policy of subsidiarity, allowing for decisions to be adopted on many domains at the appropriate level. The possibility of regional differentiation offers regions an additional incentive to improve the quality of their administration in a transparent fashion. The reductions are to be linked to the socio-economic conditions of the regions in which they are applied.
- (3) Derogations cannot be authorised for indefinite periods. Article 19(2) of Directive 2003/96/EC restricts the duration of further exemptions or reductions of taxation applicable to energy and electricity products to six years with a possibility of renewal.
- (4) The low level of differentiation of the excise rates between regions and, on the other hand, the differences in retail prices among distribution networks, imply that the risk of traffic detours (and consequently the risk of increase in environmental damaging emissions) will be very low. This will also meet the needs of the energy policy.
- (5) The intra-community commercial circulation of diesel and unleaded petrol is almost completely done in duty suspension. This form of intra-community circulation is not affected by the devolution of excise duties contemplated by France. For the very

³ OJ L 283, 31.10.2003, p. 51.

limited number of cases where commercial circulation is done duty-paid, the planned procedures of control are of non discriminatory nature, and, subject to a regular review of their practicalities, without real impact on the intra-community circulation of duty paid products. Under these conditions, the excise duties decentralisation does not seem to hinder the good functioning of the internal market.

- (6) The very tight limits set for the differentiation of duty rates between regions would ensure that the decentralisation of excise duties does not create distortion of competition on the oil products market. Moreover, the differentiation would be compensated by the large price differences among distribution networks. As the requested measure does not apply to commercial diesel, any distortion of competition on the markets of freight and passenger transport is excluded.
- (7) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

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. These reductions may be differentiated by administrative region provided the following conditions are fulfilled:
 - the reductions are no greater than €35.4 per 1000 litres of unleaded petrol or €23.0 per 1000 litres of gas oil;
 - 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;
 - the reductions are linked to the objective socio-economic conditions of the regions in which they are applied.
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 expire on 31 December 2011.

It shall apply from 1 January 2006.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
The President*