



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.3.2003  
COM(2003) 122 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**concerning a request by France in accordance with the procedure laid down in Article 8(4) of Council Directive 92/81/EEC for authorisation to apply a differentiated rate of excise duty to diesel fuel used by commercial vehicles**

## **1. PRESENTATION OF THE REQUEST**

Council Decision 2001/224/EC of 12 March 2001<sup>1</sup> authorised France to apply a differentiated rate of excise duty to diesel fuel used by commercial vehicles, in accordance with Article 8(4) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils.<sup>2</sup> This authorisation applied from 1 January 2001 to 31 December 2002.

By letter dated 8 November 2002, the French authorities notified the Commission, in accordance with Article 8(4) of the Directive, of their wish to extend, until 31 December 2008, the validity of Article 2 of Council Decision 2001/224/EC of 12 March 2001 authorising France to apply a differentiated rate of excise duty to diesel fuel used by commercial vehicles.

Considering that it had not received all relevant or necessary information, the Commission asked the French authorities, by letter dated 5 December 2002, a number of questions aimed at clarifying certain aspects of the proposal measures. France answered these questions on 3 January 2003.

The other Member States were notified of the French request on 23 January 2003.

The measure grants road hauliers established in the Community partial reimbursement of the excise duty on diesel fuel, within the limits of a six-monthly quota, in respect of diesel purchased in France. The vehicles eligible are commercial vehicles used for road haulage, registered in a Community Member State, with a gross laden weight of more than 7.5 tonnes. Reimbursement is permitted within a maximum quota of 20 000 litres per six-month period. For the period 2003/2004, the amount of the reimbursement granted will be fixed at EUR 21.3 per thousand litres of diesel fuel.

Both French and Community enterprises have received refunds.

This request does not concern diesel fuel consumed by passenger vehicles.

The French authorities believe this measure to be fully compatible with the proposal for a directive on diesel fuel, which is intended to harmonise the tax on "professional" diesel.

## **2. EVALUATION BY THE COMMISSION**

Under Article 8(4) of Council Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions of excise duties for specific policy considerations.

On 15 November 2000 the Commission approved a proposal for a Council decision authorising France to extend for a two-year period, with no possibility of renewal beyond 31 December 2002, the derogation concerning reductions in excise duty on diesel fuel

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<sup>1</sup> OJ L 84, 23.3.2001.

<sup>2</sup> OJ L 316, 31.10.1992, p. 12. Directive last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

consumed by commercial vehicles and road transport operators, without prejudice to the application of the rules on State aids.<sup>3</sup>

Article 2 of Council Decision 2001/224/EC of 12 March 2001 authorised France to apply, until 31 December 2002, a reduced rate of excise duty on diesel used in commercial vehicles, provided that the rates respect the obligations laid down in Directive 92/82/EEC,<sup>4</sup> and in particular the minimum rates laid down in Article 5 thereof. In the Council minutes concerning the Decision, the Commission made an entry to the effect that it did not consider tax measures in favour of the road transport sector, and in particular their extension, wholly consistent with the objectives of Community environment, transport and energy policies and would not therefore propose that derogations for road transport operators be extended beyond 2002.

On 3 May 2002 the Council declared, at France's request, the measures to refund excise duties to road transport operators compatible with the common market.<sup>5</sup> Referring to Article 2 of Decision 2001/224/EC, the Council confined the validity of its compatibility decision to 31 December 2002.

Furthermore, the French authorities have yet to notify the Commission of the aid plans associated with the request under examination. However, the Commission considers that these plans have to be examined in the light of Articles 87 and 88 of the EC Treaty to decide what sort of State aid is involved and whether it is compatible with the common market. The Commission considers that the adoption of the directive on the taxation of energy products, though not releasing France from its obligation to notify the Commission of the planned aid, could alter the way in which the compatibility of the State aids contained in the measure planned by the French authorities is examined, compared with the way in which the Commission examined the system of reductions of excise duty on diesel oil applied by France in the period 2000-2002.

Discussions are continuing in the Council on the taxation of energy products. The Presidency's latest draft compromise (Doc. 15354/1/02 - Fisc 311 Rev 1 Cor 1 of 13 February 2003) would allow France to extend the differentiated taxation of diesel fuel used by commercial vehicles to 1 January 2005. However, the directive in question has yet to be adopted by the Council.

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<sup>3</sup> COM(2000) 678 final.

<sup>4</sup> OJ L 316, 31.10.1992, p. 19. Directive last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

<sup>5</sup> Council Decision 2002/363/EC of 3 May 2002 on the granting of aid by the French Government for road transport undertakings (OJ L 131, 16.5.2002, p. 15).

### 3. CONCLUSION

The Commission is unable to propose to the Council a decision authorising France to apply a differentiated rate of excise duty to diesel fuel used by commercial vehicles. It requests the Council to examine the follow-up to be given to France's request in accordance with the third subparagraph of Article 8(4) of Directive 92/81/EEC.

Lastly, the Commission points out that Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty<sup>6</sup> requires any plans to grant new aid to be notified to the Commission in sufficient time by the Member State concerned. Moreover, notifiable aid may not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.

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<sup>6</sup> OJ L 83, 27.3.1999, p.1.