



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.12.2006  
COM(2006) 794 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**in accordance with Article 19(1) of Council Directive 2003/96/EC (ambulant vendors)**

## **1. INTRODUCTION**

In accordance with Article 19(1) of Council Directive 2003/96/EC<sup>1</sup> restructuring the Community framework for taxation of energy products and electricity (hereafter referred to as the "Energy Tax Directive" or the "Directive"), in addition to the provisions foreseen in the Directive, in particular in its Articles 5, 15 and 17, the Council acting unanimously on a proposal from the Commission, may authorise any Member State (that so requested) to introduce further tax exemptions or tax reductions for specific policy considerations.

The Commission shall examine the request. Afterwards, it shall either present a proposal to the Council or, alternatively, shall inform the Council of the reasons why it has not proposed the authorisation of such a measure.

Within a broader framework of review of derogations expiring in the Energy Tax Directive by the end of 2006 France submitted a request for authorisation to derogate from 2007 onwards from the provisions of the Energy Tax Directive and to apply tax exemption (subject to an annual quota) to fuel used by ambulant vendors established in regions suffering from depopulation. The request was registered with the Directorate General for Taxation and Customs Union<sup>2</sup>.

The purpose of this communication is to inform the Council of the reasons why the Commission does not propose the authorisation requested.

## **2. SUMMARY OF THE REQUEST**

France would like to exempt from taxation motor fuels within an annual individual limit of 1500 litres used by retailers established in communes with less than 3000 inhabitants, which realise part of their turnover through ambulant sales.

The purpose of the measure is to provide support to retailers carrying out ambulant sales and thus providing a service of primary necessity to the population concerned. According to France, the measure thus contributes to rural development. The measure forms part of the national policy of territorial planning and combating desertification of regions with low population density, notably mountainous areas.

The request foresees a date of termination by 31 December 2012.

## **3. BACKGROUND TO THE REQUEST**

This request for derogation was tabled in the context of the expiry of a specific authorisation granted to France in the past under the procedure referred to in Article 8(4) of Council

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<sup>1</sup> 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).

<sup>2</sup> On 16 October 2006.

Directive 92/81/EEC<sup>3</sup> currently contained in Annex II of the Energy Tax Directive. This authorisation expires by the end of 2006.

In its June 2006 Communication *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006* (hereafter referred to as "the 2006 Communication")<sup>4</sup> the Commission provided an overview of the wide-ranging flexibility contained in the Directive and concluded that for situation where objectives underlying certain derogations have already been duly taken into account by Community legislator while adopting the directive, no further action was needed. For derogations corresponding to objectives not taken into account by the general provisions of the Directive, the Communication concluded that should an individual Member States consider that, for specific policy considerations, a derogation from the Directive was still necessary and could be compatible with the objectives of the Directive, i.e. with the interests and policies set out in its Article 19 (1), third indent, that Member States should submit a request to the Commission in accordance with the procedure referred to in the set article.

#### 4. EVALUATION BY THE COMMISSION

With respect to the specific policy considerations put forward by the Member State concerned, the Commission would like to point out that such arguments relate to concerns of national policies primarily of regional nature and that these might, in a Member State's view, justify corresponding public support. The derogation has however never been considered as an instrument of such policies.

Furthermore, the Commission considers that there is a mismatch between the specificity of the situations targeted and the related policy considerations put forward, on the one hand, and the general character of the tax advantage envisaged on the other. Indeed the advantage is not limited to services rendered in areas where they are specifically needed, but is granted to all ambulant vendors with a fixed establishment in a small commune, on account of fuel consumption caused by ambulant sales activity. More importantly, and more generally, the situations under consideration would be dealt with more appropriately by instruments compatible with Community law and better reflecting the specific services rendered by the operators in question, as opposed to exemption from taxes accruing merely as a consequence of consumption. It must be stressed in this relation that additional costs incurred by the persons exercising this specific activity are not caused by fuel consumption only and therefore a more targeted instrument would appear to be more appropriate for the purposes referred to by France.

The design of the scheme (full tax exemption up to an annual quota) does not take appropriately into account the objectives of the Energy Tax Directive; in particular to create incentives towards energy efficiency and protection of the environment. In this relation the Commission considers that the interests and policies set out in Article 19 (1), third indent, oppose the granting of such an authorisation.

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<sup>3</sup> Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316 of 31.10.1992); Directive repealed together with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils as from 31 December 2003 by means of Council Directive 2003/96/EC.

<sup>4</sup> COM(2006) 342 of 30 June 2006 *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006*.

## 5. CONCLUSION

The arguments made by France in order to justify the derogation relate to concerns of national policies, primarily of a regional nature and that these might, in a Member State's view, justify corresponding public support. However, there are means of supporting such aims that are much better fitted, both in nature and in scope, without the community interests mentioned above being affected by an anomalous exemption from harmonised taxes.

On this basis, the Commission **does not propose the authorisation requested.**

This conclusion does not, however, prevent France from adopting instruments, outside the field of harmonised excise duties and compatible with Community law in all respects<sup>5</sup>, other than excise duties that would serve the same purposes better and in a more targeted way than the intended derogation.

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<sup>5</sup> Including the rules on State aids.