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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.6.2007
COM(2007) 307 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**in accordance with Article 19(1) of Council Directive 2003/96/EC (differentiated rates of
taxation for petrol distributed from specially equipped petrol stations)**

1. INTRODUCTION

In accordance with Article 19(1) of Council Directive 2003/96/EC¹ 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, Denmark submitted a request for authorisation to apply from 2007 onwards for a period of two years a differentiated rate of excise duty between petrol distributed from petrol stations equipped with a return system for petrol fumes and petrol distributed from other petrol stations, provided that the differentiated rates are in accordance with the obligations laid down in the Directive, and in particular the minimum rates of excise duty. The letter was registered with the Directorate General for Taxation and Customs Union².

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

Denmark would like to apply a differentiated rate of excise duty to petrol distributed from all petrol stations equipped with a return system for petrol fumes and petrol distributed from other petrol stations, respecting the obligations laid down in the Directive, and in particular the minimum rate of excise duty.

The purpose of the measure is to maintain the incentive for petrol stations to install a return system for petrol fumes which limit the distension of volatile organic compounds into the atmosphere with the subsequent benefit for the environment.

The request foresees a date of termination by 31 December 2008.

3. BACKGROUND TO THE REQUEST

The derogation granted to Denmark dates back to 1995³ and was extended for the last time in 2001⁴. In 2003 it was incorporated into the Energy Tax Directive with a view to expire by the end of 2006.

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 Letter registered on 13 November 2006

³ Council Decision 95/585/EC of 22 December 1995.

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 June 2006 Communication")⁵ the Commission stated that the measure might have served to encourage the introduction of specific equipment when first introduced but it is logical that the derogation should be phased out after a certain period of time. The Commission expressed the view that from 2007 onwards the derogation should no longer be renewed.

Although the Commission did not propose the renewal of any of the derogations set out in Annexes II and III to the Directive, it indicated, that Member States could introduce a request in accordance with Article 19 of the Directive, in case they considered that for specific policy considerations a further derogation was still necessary.

4. EVALUATION BY THE COMMISSION

The Commission considers that the control of volatile organic compounds (VOCs) emitted from the refuelling of vehicles constitutes, in general, a useful measure in favour of the environment. This has more recently been confirmed through the objectives set by Directive 2001/81/EC⁶. Moreover, in the context of a new legislative proposal on petrol and diesel quality and again as measure for environmental protection, the Commission has indicated its willingness to bring forward another proposal in the near future, with a view to ensuring that petrol vapor recovery is undertaken throughout the EU.⁷

For these reasons, Denmark was granted a derogation for the first time in 1995 and which has since been extended, most recently with a view to expiry in 2006 (cf. above). Since initiation of the scheme and according to the information provided, 1,802 stations out of a total of 1,843 have installed the special equipment, which corresponds to 97 %. The positive effect of the measure has not been linear during the 11 years of application of the differentiated rate. The impact has been decreasing over the past six years during which only 180 stations installed the system, leaving 41 without the equipment. During the year 2006 only 15 stations installed the equipment in comparison to 437 in 1996. It would, therefore, appear that the impact of the derogation is almost exhausted.

Taking into account the concrete current situation in Denmark, as described above, the measure no longer appears proportionate to its objective, which has remained unchanged.

As regards the stations already equipped, and due to the time that has elapsed since the derogation was originally granted, the costs of the investment have, in most cases, already been written-off. Therefore, the measure requested by Denmark, to apply a rate lower than the standard national rate of excise duty to petrol distributed from all petrol stations equipped with a return system for petrol fumes, would mean an unjustified benefit for a large number of the stations already equipped today. In this regard, the measure can no longer be justified by the above mentioned objective. .

⁴ Council Decision 2001/224/EC of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes (OJ L 84 of 23 March 2001, p. 23).

⁵ 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*.

⁶ Directive 2001/81/EC of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, OJ L 309, p. 22.

⁷ Cf. COM(2007)18 final/2, at page 8.

The considerations set out above equally imply that the measure is disproportionate, to the extent the objective in question now concentrates on the equipment of the small number of remaining stations (41 stations), i.e. consists in maintaining a corresponding incentive in their regard.

5. CONCLUSION

Whilst recognising the sound environmental justification for the control of VOCs emitted during refuelling of vehicles⁸, the Commission considers that the arguments put forward by Denmark can no longer justify the need to further derogate from Community rules on the harmonisation of excise duties, as set out in Directive 2003/96/EC.

If Denmark considers that further support in favour of the equipment of service stations is needed, and provided that Community law is complied with in all respects⁹, it could resort to means more appropriate, both in nature and in scope, and which would not involve an anomalous exemption from harmonised taxes.

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

⁸ Cf. the first paragraph of the Commission's evaluation and the references set out there.

⁹ Including the rules on State aids.