



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.3.2007  
COM(2007) 106 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**in accordance with Article 19(1) of Council Directive 2003/96/EC (local public passenger transport, disabled people)**

## **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 requested so) 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 Ireland and Denmark submitted requests for authorisation to derogate from 2007 onwards from the provisions of the Energy Tax Directive. These Member States intend to apply partial or total tax exemptions to fuel in the context of certain uses foreseen in Article 5, third indent of the Energy Tax Directive. The intended measures do not comply with one condition set out in Article 5, whereby the "minimum levels of taxation prescribed" by the Energy Tax Directive need to be respected. The above mentioned requests were 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 authorisations requested.

## **2. SUMMARY OF THE REQUESTS**

### **2.1. Ireland's requests**

Firstly, Ireland would like to apply a reduced rate of excise duty (€2.72 per 1,000 liters) on road diesel used by road passenger services licensed by the national licensing authority, or which are otherwise allowed by law, bus operators, school transport services and tour coach operators.

The purpose of the measure is, according to Ireland, to promote the development of local public passenger transport and, more horizontally, to pursue the objective of environmental protection.

Ireland claims that adjusting the scheme to the conditions foreseen in Article 5 would lead to increase of prices and would require adjustments of the fares applied. This would discourage the use of public transport with the subsequent increase of private transport use. The impact of this increase will add to congestion and to greater pollution.

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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> Letters registered on 13 November 2006 (Denmark) and on 14 December 2006 (Ireland)

Furthermore, Ireland considers the measure would affect especially to people from lower-income groups which use more frequently public transport and to routes less profitable (sparsely populated routes).

According to Ireland, the measure would particularly affect buses, one of the basic means of public transport in Ireland and the most flexible of them.

Second, Ireland would like to exempt from taxation the fuel used in a vehicle, for the transport of a person with a severe physical disability, up to a maximum of 600 gallons or 2,728 litres per year. These limits would be increased to 900 gallons and 4,092 litres for an organisation which represents persons with disabilities. Ireland argues that the measure is very restrictive in nature and applies only to persons who meet certain strict criteria. The purpose of the measure is to compensate the significant mobility costs faced by those with a severe disability. Ireland as well argues that many people with severe disabilities have limited incomes. And finally, Ireland argues that the measure has absolutely no impact on the functioning of the internal market. The measure is part of a broader incentive package that exists in Ireland and applies to people with severe disabilities.

The requests do not foresee any date of termination.

## **2.2. Denmark's request**

Denmark would like to exempt from taxation LPG and diesel (low level or free sulphur) used in local public passenger transport vehicles. The purpose of the measure is to promote environmental protection not only by means of supporting public transport, but also by means of favouring more environmental friendly fuels.

The request foresees a date of termination by 31 December 2008

## **3. BACKGROUND TO THE REQUESTS**

According to the third indent of Article 5 of the Energy Tax Directive, Member States may apply differentiated rates of taxation for the following uses: local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances. The main condition linked to this option is that the minimum levels of taxation prescribed by the Directive must be respected.

This optional provision was included into the Energy Tax Directive on the basis of experience acquired during the 1990s with several derogations granted by the Council under Article 8(4) of Council Directive 92/81/EEC<sup>3</sup>; the aim was to give Member States flexibility in certain areas, while ensuring that full account be taken of the concerns underlying the determination of minimum levels of taxation by the Directive. This intention is most obvious for public transport. In its report published in 1996, concerning the derogations granted under Article 8(4) of Directive 92/81/EEC<sup>4</sup>, the Commission concluded that "the derogations be maintained

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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(96) 549 of 14 November 1996.

until a general rule is introduced as part of a common Community framework for the taxation of energy products and at least until 31 December 1998."<sup>5</sup>

This approach was also reflected in the 1997 proposal<sup>6</sup> that led to the adoption of the Energy Tax Directive in 2003. The proposal aimed at giving Member States a degree of flexibility in pursuing their national policy objectives while ensuring that the Community interest is observed. The requirement to respect the minimum levels of taxation reflects, besides the needs of the internal market, the imperative to maintain incentives towards energy efficiency and protection of the environment, a need which also applies to public transport. During the Council negotiations on the Energy Tax Directive, the scope of the relevant provision was further elaborated, but its underlying principle and thus the requirement to respect the minimum levels of taxation was maintained.

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>7</sup> the Commission provided an overview of the wide-ranging flexibility contained in the Energy tax Directive and confirmed that derogations for fuel used in the above cases are no longer necessary since an appropriate provision is explicitly foreseen in Article 5 third indent of the Directive.

#### 4. EVALUATION BY THE COMMISSION

In the following, the Commission will assess the requests to the extent the measures intended by the applicant Member States are not covered by Article 15 (1)(i) of the Energy Tax Directive (cf. also the considerations set out at the end of the present communication).

The Commission considers that most of the concerns put forward by the two applicant Member States in order to justify the need for the authorisation requested are exactly the same as those that lead to the inclusion of Article 5, third indent into the Energy Tax Directive in the first place

As a result, they cannot be considered as specific policy considerations for the purposes of Article 5. This provision, adopted on the basis of Article 93 EC, already strikes a balance between policy considerations pleading for a more favourable tax treatment of fuel used in the areas it covers, on the one hand, and concerns pleading for the application of certain minimum levels of taxation. The latter concerns relate to the Community interests and policies explicitly mentioned in Article 19(1) third subparagraph of the Energy Tax Directive, which in particular justify incentives for improved energy efficiency and environmental protection. Therefore, a derogation under Article 19 cannot be granted merely on the basis of the very same arguments which led to the adoption of Article 5 of the Directive. This has already been explained in detail in the Commission Communication concerning similar requests and adopted on 30 November 2006<sup>8</sup>.

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<sup>5</sup> Section 5.5 of the report.

<sup>6</sup> COM(97)30 of 12 March 1997. Cf. in particular draft Article 5.

<sup>7</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*.

<sup>8</sup> COM(2006) 741 of 30 November 2006 *Communication from the Commission to the Council in accordance with Article 19(1) of Council Directive 2003/96/EC (local public passenger transport, armed forces, public administration, ambulances)*

This reasoning also applies to the request made by Ireland and referring to disabled people. Their position is indeed explicitly taken into account in Article 5 of the Energy Tax Directive. In fact, this reference mirrors the derogation Ireland enjoyed under the previous legal framework.

As regards social considerations such as those put forward by Ireland, the Commission would like to recall that Ireland itself confirms not all people with severe disabilities must necessarily need social support and general full tax exemption available to everybody does not allow to reflect it. More specific needs related to the economic resources of the persons concerned could more appropriately been dealt with through means targeted correspondingly but which do not interfere with the minimum levels of taxation set out in the Energy Tax Directive.

With respect to the specific element of tour coach operators contained in the Ireland's request for derogation for "local public passenger vehicles", the Commission would like to stress that the reasoning above applies to this part of the request to the extent that such tour coach operators can be considered as falling under the notion of "local public passenger transport". As to situations going beyond the term, the Commission would like refer to Article 7 of the Directive that allows Member States under certain circumstances to introduce differentiated tax rates for diesel used in certain passenger transport vehicles (cf. in particular paragraphs 2 and (3)(b) of this provision). Ireland did not provide any specific policy considerations that would justify the grant of tax advantages going beyond what is allowed by Article 7 of the Directive. In this respect, the Commission observes that the requirement set out in paragraph 2 of this provision, whereby minimum levels of taxation have to be respected, corresponds to the standard applicable under Article 5 of the Directive, in the context notably of local public passenger transport.

As far as Denmark's request for public transport is concerned, in the Commission's view the request refers indifferently to objectives of promotion of public transport and of promotion of more environmental friendly fuels, more specifically diesel containing no sulphur or only low levels thereof.<sup>9</sup> As to the first objective, the Commission would like to refer to the considerations set out above and in the said Communication adopted in November 2006. Similar considerations apply however to the objective consisting in the promotion of higher quality fuels. In this context, it may be added that interests of fair competition provide an additional argument to the effect that Community minimum levels of taxation should be observed.

## 5. CONCLUSION

On the basis of the above the Commission considers that, as far as they concern local public passenger transport or disabled people, none of the requests contains specific policy considerations that would differ from those that lead to the inclusion of Article 5, third indent into the Energy Tax Directive. Article 5 expresses the need to reconcile those concerns with the ones underlying the minimum levels of taxation, namely to create a level playing field within the internal market and to maintain an incentive for improved energy efficiency and environmental protection. These aspects are part of the Community interests and policies

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<sup>9</sup> LPG used as propellant falls under the particular provisions of Article 15(1)(i) of the Energy Tax Directive. Cf. the observations made at the end of the present Communication.

explicitly mentioned in Article 19 (3) third indent. Given the existence of Article 7 of the Energy Tax Directive and in the absence of any specific argument put forward by Ireland, similar considerations apply to that Member State's request, as far as it concerns passenger transport other than local transport.

The said Member States have had enough time to adjust to the balance, established by the Community legislator. For very specific social and/or local needs instruments other than excise duties (and which do not interfere with the minimum requirements of the Energy Tax Directive) would appear to be a much more appropriate remedy<sup>10</sup>.

The Commission therefore concludes that the conditions set out in Article 19 are not fulfilled. Consequently, **the Commission does not propose the authorisations** sought by the two applicant Member States.

To the extent the request made by Denmark refers to the use of alternative fuels privileged under Article 15(1)(i), it has to be noted that exemptions or reductions may be granted by the Member State under this provision without any intervention by the Commission and the Council. Consequently, and according to the wording and spirit of Article 19, such exemptions or reductions do not fall within the scope of this provision. It equally follows that they lie outside the conclusion set out immediately above.

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<sup>10</sup> Without prejudice to the other Community provisions, in particular the State aid rules of the Treaty.