



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.03.2003
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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning a request by Italy 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/EC¹ of 12 March 2001 authorised Italy 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.² This authorisation applied from 1 January 2001 to 31 December 2002.

By letter dated 22 November 2002, the Italian authorities notified the Commission, in accordance with Article 8(4) of the Directive, of their wish to apply a different rate of excise duty to diesel fuel used by commercial vehicles from 1 January 2003 to 31 December 2004.

Considering that it had not received all relevant or necessary information, the Commission asked the Italian authorities, by letter dated 4 December 2002, a number of questions aimed at clarifying certain aspects of the proposed measures. Italy answered these questions on 23 December 2002.

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

The measure would grant enterprises which provide road passenger and goods transport services partial reimbursement of excise duty paid on the total amount of diesel purchased and used in their activities over the course of one year. This reduction is available to any enterprise registered in a Member State of the European Union for purchases of fuel made on Italian national territory for the refuelling of commercial vehicles whose total actual weight exceeds 3.5 tonnes. The amount reimbursed is set at EUR 0.043 per litre. In the case of commercial vehicles whose total actual weight exceeds 11.5 tonnes, a further reduction of EUR 0.017 is also applied.

According to the Italian authorities, the measure has been proposed pending the harmonisation of taxes on energy products, and in particular on “professional” diesel fuel, and because the level of duty applied to diesel fuel in Italy (EUR 403 per thousand litres) is higher than the Community average.

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

¹ OJ L 84, 23.3.2001.

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

³ COM(2000) 678 final.

Article 2 of Council Decision 2001/224/EC of 12 March 2001 authorised Italy to apply, until 31 December 2002, a reduced rate of excise duty on diesel used as fuel by road transport operators, provided that the rates respect the obligations laid down in Directive 92/82/EEC,⁴ and in particular the minimum rates laid down in Article 5 thereof. In the Council minutes concerning the decision, the Commission made an entry:

“The Commission does 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 Italy's request, the measures to refund excise duties to road transport operators compatible with the common market.⁵ Referring to Article 2 of Decision 2001/224/EC, the Council confined the validity of its compatibility decision to 31 December 2002.

Furthermore, the Italian authorities have yet to notify the Commission of the aid plans associated with the request under examination. 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 Italy 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 Italian authorities is examined, compared with the way in which the Commission examined the system of reductions of excise duty on diesel oil applied by Italy in the period 2001-2002.

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 of 9 December 2002) would allow Italy 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.

3. CONCLUSION

The Commission is unable to propose to the Council a decision authorising Italy 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 Italy'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 Treaty⁶ 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.

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

⁵ Council Decision 2002/362 of 3 May 2002 on the granting of a national aid by the authorities of the Italian Republic in favour of road transport undertakings (OJ L 131, 16.5.2002, p. 14).

⁶ OJ L 83, 27.3.1999, p.1.